



April 22, 2008

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive the supporting documentation into the record, conclude the hearing and adopt the recommendation to deny the appeal and revoke business license number BU20301080 and retail sales license number BU20301090 issued for the Princess Inn located at 1879 Magnolia Avenue. (District 6)

DISCUSSION

The Long Beach Municipal Code (LBMC) requires a hearing be held before the City Council whenever a revocation of a business license is appealed.

The LBMC also requires the City Council review and consider a hearing officer's written report, when the Council appoints a hearing officer to conduct the appeal proceedings. The City Council may adopt, reject or modify the recommended decision. In its discretion, the City Council may take additional evidence at the hearing or refer the case to the hearing officer with instructions to consider additional evidence.

Attached for your review is Hearing Officer Ronald J. Sokol's March 14, 2008, written report. Attorney Sokol recommended that the appeal of the revocation of business license number BU20301080 and retail sales license number BU20301090, issued to the Princess Inn located at 1879 Magnolia Avenue, be denied. The Hearing Officer determined that:

- Shortly after the City licenses were issued in January 2003, the business was the subject of complaints involving illegal drug activity, domestic violence, child abuse, and prostitution.
- The location was deemed a nuisance in 2004, and was assessed penalties and costs.
- In 2006, the Police Department once again identified the Princess Inn as a problem location for illegal activity, and advised the licensee of violations and possible consequences, including license revocation.

- On July 17, 2007, the Police Department requested the Department of Financial Management revoke the Princess Inn's business and retail sales licenses.
- During October 2007, an administrative hearing was conducted to afford the business an opportunity to show cause why its licenses should not be revoked.
- Following these proceedings, Hearing Officer Michelle M. Lents recommended that the City revoke both the business and retail sales licenses.
- The licensee appealed this decision and a subsequent hearing was conducted during February 2008.
- Contrary to the retail sales license, which was limited to the sale of prepackaged food items, police observed condoms offered for sale inside the business office.
- Guest room records were not maintained, as required by the LBMC.
- Rooms were re-rented within 12-hour periods, in violation of the LBMC.
- The licensee, known on the street as "Big Poppy," rented these rooms on an hourly basis to under cover VICE detectives posing as prostitutes and johns.
- There were numerous drug related arrests.
- One motel resident, who also functioned as an un-permitted employee, attempted to sell narcotics to an undercover VICE detective and was arrested and convicted.
- Guest rooms offered for rent had blood stained bed sheets, torn carpets, urine covered bathroom floors, unflushed toilets, and the presence of drug paraphernalia.
- The business operations constituted a nuisance.

Deputy City Attorney Cristyl Meyers reviewed this report on April 2, 2008.

TIMING CONSIDERATIONS

City Council action on this matter is not time critical.

FISCAL IMPACT

There is no fiscal impact associated with this item.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,


LORI ANN FARRELL
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

LAF:RB
K:\Exec\Council Letters\Commercial Services\Hearing Letters\04-22-08 ccl - Princess Inn - Hearing Officer Findings.DOC

ATTACHMENTS

APPROVED:



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March 14, 2008

L14001

Ms. Irma Heinrichs, City Clerk Department
City of Long Beach
333 West Ocean Blvd.
Long Beach, CA 90802

RE: Long Beach/Princess House

Dear Irma:

Here is the original Recommended Decision in the above matter, which has already been served by fax and by mail on counsel.

Very truly yours,


Ronald J. Sokol, A.P.C.

Encl.

RJS/ad

cc: Cristyl Meyers, Esq. w' encl

Frank A. Weiser, Esq. w' encl

1
2 ADMINISTRATIVE HEARING
3 THE CITY OF LONG BEACH
4

5 IN THE ADMINISTRATIVE HEARING)
6 ON THE REVOCATION OF BUSINESS)
7 LICENSE NUMBER BU 20301080 AND)
8 RETAIL SALES LICENSE NUMBER)
9 20301090 FOR JAYANTIBHAI PATEL,)
10 DBA THE PRINCESS INN, LOCATED AT)
11 1879 MAGNOLIA AVENUE, LONG)
12 BEACH, CALIFORNIA)
13
14 _____)

FINDINGS AND
RECOMMENDED DECISION

Hearing Officer: Ronald J. Sokol

Hearing Dates: February 25, 26
and 28, 2008

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PRELIMINARY STATEMENT

This matter was heard over the course of three days. The City of Long Beach (hereafter "the City") submits that both the Business and Retail Sales License for the Princess Inn Motel should be revoked on various grounds, to which the Licensee objects.

The City was represented by counsel, and presented five witnesses (a sixth was called, but his testimony was mooted when the information being offered was stricken by the Hearing Office in the face of several objections on behalf of the Licensee).

The Licensee, Jayantibhai Patel (hereafter "the Licensee") also was represented by counsel, and presented six witnesses, which included his spouse. Mr. Patel, the Licensee, did not testify (the Hearing Office was told that his wife spoke for him).

There were 38 exhibits introduced, with objections to admissibility made on behalf of the Licensee to the final exhibit submitted by the City for consideration (number 38). Questions or issues were raised by the Licensee with regard to various of the testimony and evidence offered by the City, but the Licensee stipulated to the admissibility of most of the exhibits. Of the exhibits, only a few were submitted by the Licensee.

This particular case is one of two that were consolidated involving this same Licensee, and heard by the same Hearing Officer. In the first instance, the City sought the revocation of suspension of the Licensee's license with regard to another facility, known as the Club Hotel, also in Long Beach. The Club Hotel matter involved alleged non-payment of transient occupancy taxes. The Recommended Decision was made on February 6, 2008. There is overlap in some legal issues addressed, and thus the discussion there is not repeated here.

In evaluating the testimony and evidence, the Hearing Examiner has been guided by Long

Beach Municipal Court (hereafter "LBMC"), Section 2.93.030. Specifically, the testimony and evidence has been given whatever weight to which it may be entitled. Under Section 2.93.030, the rules of evidence are not as strictly construed as if the matter were proceeding in Court. In addition, under LBMC Section 2.93.030, the Hearing Officer "shall determine the order of proceedings and shall afford all parties a reasonable opportunity to present any relevant evidence."

Note further that on October 3, 2007, a prior hearing was conducted between the City and this same Licensee, with regard to whether the same two licenses in focus on this occasion should be revoked, but before a different Hearing Officer. The Licensee did not have counsel present on that occasion. After testimony and evidence, and after considering the merits, the initial Hearing Examiner concluded that the Licensee's Business and Retail Sales Licenses for the Princess Inn should both be revoked (the prior Report and Recommendation was introduced into evidence as Exhibit 3 at the within hearing). The Licensee filed a timely appeal therefrom, and is entitled to, and provided herein with, a "*trial de novo*".

The within hearing took place specifically on February 25, 26, and 28, 2008. The Licensee (and his spouse) were present on each day. After argument the first morning (February 25), the Hearing Office decided to require the City to present its case first, followed by the Licensee.

The City contends that the Business and Retail Licenses for the Princess Hotel should and must be revoked because of alleged, prolonged misconduct at the Princess Inn, including that the Licensee had ample opportunity in the past to remedy the situation. The Licensee makes multiple contentions, including to challenge the propriety of these proceedings, and emphasizes that much

if not all of the City's proof is hearsay, flimsy and not credible, but, if the Hearing Examiner is inclined to do anything other than reject the City's position, he should rule not to revoke the licenses, but to condition the continuation of each license upon "clean up" of and "supervision" at the Princess Inn (these quoted words are those of the Hearing Examiner, and paraphrase the Licensee's suggestion).

At the conclusion of the hearing, the Hearing Examiner admonished both sides to seek to resolve this situation without requiring a decision, but final briefs have since been submitted. Thus, the matter is presented for this Recommended Decision. As part of the briefing, the parties were asked to address certain issues over and above what otherwise would be included in their closing summaries. Attached hereto behind Tab 1 is the list of the other issues.

ISSUES PRESENTED

The primary issue is whether the Business License, and the Retail Sales License, issued by the City of Long Beach to Jayantibhai Patel dba The Princess Inn, should be revoked for failing to comply with applicable LBMCs and/or other state and federal laws. There are other issues associated therewith, as detailed behind Tab 1.

FACTUAL FINDINGS

(a) Preface

This section of the Recommended Decision provides a detail of salient information leading to a discussion thereafter of legal issues. Not all of what is set forth here would be accepted as "fact" by one party or the other. To the extent there is disagreement in how certain items are set forth, the Hearing Officer is only making effort to provide an overall sense of what was presented, and how it was heard by him in any given instance.

(b) Background

In January 2003, the City of Long Beach issued Business License BU20301080 to Mr. Patel, as both the owner and the operator of the Princess Inn located at 1879 Magnolia Avenue, in Long Beach. Mr. Patel, the Licensee, wrote on the application form for the Business License that the Princess Inn would be operated as a motel. Motel is defined by LBMC 21.15.1800 as a “commercial land use for the rental of six or more guest rooms to primarily transient occupants for a period of not more than thirty consecutive days.” A motel in Long Beach is subject to certain conditions and requirements under LBMC Section 5.48.010, such as the maintenance of a register of each guest, keeping the registers for 3 years, no altering, defacing or erasing a register, and no renting of any guestroom or dwelling unit more than once within a twelve hour period.

In January 2003, the City also issued Retail Sales License BI 20301090 to Mr. Patel for the Princess Inn. No one other than Mr. Patel signed the applications for each license, which were marked into evidence as Exhibits 5 and 6 at the hearing. Further, no one is listed on either form as an employee of the Princess Hotel, other than Mr. Patel, which translates into a payment required therefore (one employee only). In this regard, under LBMC 3.80.150, the word “employee” means “each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner’s family... (or) manager, and each and every other person employed or working in such business for a wage, salary, commission or room and board. Notwithstanding the above, the owner of a sole proprietorship shall not be deemed an ‘employee’...”

On the Retail Sales License Application, the sole item checked by Mr. Patel under the section “Food/Alcohol/Entertainment” is that food will be sold or served (including pre-packaged food).

No changes were ever submitted by or on behalf of the Licensee after the initial application for each license. Thus, nothing came forward reflecting that someone else was an employee or had become an employee of the Princess Inn, or that there was any change in ownership of the property itself, or as to the kind of item(s) being sold or served there.

Nonetheless, according to the Licensee's spouse, Daksha Patel, she is actually a co-manager of the Princess Inn with her husband, the Licensee, they receive salary for their services, and they are not the owners of the property; instead, Mrs. Patel testified the property is owned by the Licensee's brother and sister-in-law whose names (spelled phonetically) are Praveen and Depak Patel.

Each application (for the Business License and the Retail Sales License, respectively) contain the following language above where the Licensee signed and separately printed his name:

"I have received a copy of "OPERATING A BUSINESS IN LONG BEACH". I understand that before I can operate my business in Long Beach, my establishment must comply completely or I will be in violation of the L.B.M.C. Section 3.80.42l.5. I declare under penalty of perjury, that I am authorized to complete this application. To the best of my knowledge and belief, the provided information and statements are true and correct."

In late January 2003 (several years ago), Rita Hooker, Nuisance Abatement Coordinator for the City of Long Beach, sent a certified letter to the Licensee which indicates the Licensee was informed that the City had worked with the prior owner of the business there because "we had received numerous complaints of alleged drug activity taking place... Police calls for service were very high... We have scheduled a meeting for February 5, 2003.... to discuss continued nuisance abatement efforts... Please contact Sherri Seldon.... to confirm your attendance". This letter was

marked as Exhibit 29 at the hearing.

There are then several follow up written communications addressed to the Licensee, later in 2003, and one in early 2004, concerning abatement issues, and that “a public nuisance exists at the” Princess Inn Motel. Ultimately, penalties and costs were assessed (and paid by the Licensee). These are Exhibits 30 through 34.

(c) The City’s Presentation

Officer Ryan Lee, a police officer with the City of Long Beach, testified that in 2006 he was part of “community policing, targeted enforcement”. At that time the Princess Inn was considered a “problem source”. Officer Lee assembled “a task force”, which included Rita Hooker (referenced above), and Police Detective Heather Rebbeck (part of the Long Beach Vice Investigation Detail), to evaluate the situation, and to make a determination of what step(s) to take, if any. Officer Lee testified that he ultimately concluded from his own observations, personal involvement, but also on the basis of “confidential informants” as well as what people in the community told him (the latter two sources are subject to hearsay objections), that there is illegal activity occurring in the area where the Princess Inn is located, such as drugs and prostitution, but that the problems are concentrated at the Princess Inn. Officer Lee further testified that his several efforts over time to talk with the Licensee about the problems, the consequences thereof, and what could and should be done about them, were rebuffed by the Licensee. Additionally, none of the other businesses in that specific area had near the extent of police calls and problems as the Princess Inn.

Officer Lee further stated that in his view the Licensee was intimately involved in the illegal activities occurring at the Princess Inn, which included operating the Inn as if it were an

apartment building as opposed to a motel. Officer Lee also, along with at least Detective Reddeck, indicated that he personally saw condoms for sale at the Princess Inn, along with other items such as toothpaste and aspirin (ie, items other than food or prepackaged food, contrary to the Licensee's application). It would later also be disclosed by various witnesses, including witnesses for the Licensee, that the Inn has a vending machine on its premises.

Detective Lee described an incident at which he requested to see registration slips for certain rooms at the Princess Inn, associated with activities carried out "under cover" by Detective Reddeck, but was advised by the Licensee that no one had rented those rooms on the dates in question. But, at the prior hearing on this matter on October 3, 2007 -- which led to the initial recommendation by the first Hearing Officer that each license be revoked -- registration slips therefore were produced by the Licensee which the City now submits were fabricated in whole or in part (by the Licensee) to try to avoid the problems associated with Detective Reddeck's undercover activities.

Officer Lee also participated in an arrest at the Princess Inn related to drug dealing (a resident there referred to as "Baby", whose name is Tafailagi Milo). Ms. Milo would later plead No Lo Contendere. Milo claimed to be an employee of the Princess Inn. Officer Lee testified he saw her several times in the business office there. This was not the only arrest for drugs about which Officer Lee testified; for example, he also mentioned the arrest of a woman named Delisha Smith.

All together, Officer Lee said he was at the Princess Inn more than ten times in 2007. Testimony and evidence addressed 41 calls answered by the police to the Princess Inn from January through September 2007, for a variety of issues, ranging from alleged abuse to violence,

loitering, narcotic use and sales, and prostitution. Further, there were 38 police calls to the Princess Inn during the prior year, 2006. [Exhibit numbers 9-18, 20-21, and 23 were addressed during Officer Lee's testimony, Exhibits 26-28 were touched upon or are also being considered herein, and Exhibit 9 is Officer Lee's report. The list of police calls for 2006 and 2007 is Exhibit 23]. Office Lee testified that according to his sources, the Licensee has a street nickname or moniker of "Big Poppy".

Detective Heather Rebbeck testified about four separate instances (two in May 2007 and two in June 2007) where, posing undercover as a prostitute, she rented a room from Mr. Patel at the Princess Inn for one hour. Her report is at pages 5-6 of Exhibit 20. She said she paid either \$20 or \$25 in cash, and that she received no receipt. On each occasion she had a fake "John" with her (another undercover officer). On one of the occasions the "drug deal" through Milo played out, and Milo was arrested. Detective Rebbeck testified that the condition of the rooms she saw or went into was disturbing, such as a blood stain on the bed sheets, drug paraphenalia, torn carpet, and an unclean, unflushed toilet. (Exhibits 20 and 22)

Rita Hooker, the Nuisance Abatement Officer, testified about the 2003 and into-2004 circumstances that resulted in the Licensee paying a fine and penalties – including that Mr. Patel definitely understood her when she emphasized what would happen if he did not pay the fine and penalties on time – and the earnest discussions she and others went through to reach the recommendation now made by the City that the only solution is to revoke the licenses. Her testimony was complemented by Exhibits 1-18, 20, and 22-28. In response to concerns expressed by the Hearing Officer as to the impact on tenants if the Princess Inn could no longer operate – as an upshot of the licenses being revoked – Ms. Hooker stated that the City has programs which

seek to help placement of tenants, and to seek to transition them into another facility while mitigating disruption for them.

As to this hearing itself: The Licensee was given written notice by the City first on August 15, 2007, to inform him of a hearing at which the Princess Inn would be entitled to show cause why its business license should not be revoked (Exhibit 2). The August 15 letter incorporates an internal memo dated July 17, 2007 from the City's Acting Chief of Police to the City's Director of Financial Management, summarizing the underlying concerns and problems with the Inn, and upon which license revocation of each license is recommended (Exhibit 1). On October 23, 2007, after the October 3, 2007 hearing afore noted, a letter was sent to the Licensee informing him that the Inn's Business and Retail sales licenses had been revoked (Exhibit 4), and attaching a copy of the initial Hearing's Office Recommended Decision (Exhibit 3). The within hearing is the *trial de novo* therefrom.

(d) The Licensee's Presentation

With the sole exception of the City's paperwork from 2003 and one letter in early 2004, the Licensee has had no indication of any major problems or concerns since – until the City sent the August 2007 letter (Exhibit 2) for hearing on revocation. No opportunity was provided to the Licensee to make changes, or do any corrective work, which the Licensee has been doing and trying to do for years, and which the Licensee has continued to carry out since September 2007.

The Licensee does not sell condoms at the Inn. Mrs. Patel, the Licensee's spouse, co-manages the Inn with him. If she is supposed to be separately listed as an employee, that is unknown to Mr. Patel and her, and, for all intents and purposes, this is a sole proprietorship. As it is, Mr. Patel had a serious stroke (as the City) knows two years ago, and his English is not good

in any event.

The problems about which the City complains are associated with Magnolia Avenue, in front of the Princess Inn – such as the sidewalk or street – but are not internal to the Princess Inn, not supported by the Princess Inn, and not occurring at the Princess Inn. None of the witnesses who testified on behalf of the Licensee has seen prostitutes loitering in or around the Inn's parking lot, nor any indication or events of drugs or drug dealing at the Inn. Instead, the Patels work hard to keep the Inn in good condition, are responsive to the occupants, post the Rules in front of the office, have a video/security camera in place, and Mr. Patel is vigilant in trying to keep trouble out of and away from the Inn.

Mr. and Mrs. Patel reside at the Inn, and their salaries from it are their livelihood. They are raising two children, ages 15 and 19. The Inn is owned by relatives, to whom they pay some \$6,000 per month. The owners in fact are paying very close attention to what is happening at this hearing, and there is frequent communication between the Patels and the owners about what the City is doing and seeking to do herein.

The Inn has over 20 separate guest rooms. There are people who reside there (such as Ms. Anderson and Mr. Wince, who testified for the Licensee) who will be badly displaced if they have to abruptly move should the City revoke the Inn's Business and Retail licenses. Ms. Anderson lives there with her young daughter, now for quite a few months. Mr. Wince is a caretaker full time there of an elderly woman, and has lived there for several years.

While no witness for the Licensee could definitively state that the various police calls and incidents testified about by City witnesses had not occurred, they did not (and do not) see police presence at the Inn. There is a police station down the street, the police drive up and down

Magnolia and the surrounding area, but the problems of unlawful activity are not associated with the Inn – they are peripheral to and outside the Inn – according to the witnesses, including Mrs. Patel.

CREDIBILITY OF WITNESSES

No one appeared to be untruthful, for either side, but some of the witnesses for the Licensee (particularly those who live in the vicinity of the Princess Inn, but do not actually live there, namely Juan Diaz, Lupe Bermudez, and Albert Mora), were not of as much significance to the Hearing Officer as those who actually reside there (Kimberly Anderson and Troy Wince).

The City's witnesses all came across well, without noticeable bias, although there was quite a bit of testimony by Officer Lee which (he readily acknowledged) was based on information provided by informants whose identifies he would not disclose. He also relied in part on "word from the street", and "calls for service details" (of which there are many as part of Exhibits 10-18, 22, and 25, which also have quite a few redactions). As a result, some of Officer Lee's testimony, and the evidence associated with it, is subject to hearsay and other credibility/reliability objections. As such, this portion of his testimony was only given the weight to which it is entitled, taking reliability carefully into consideration.

What the City's witnesses provided, and which was not well deflected or cast into serious doubt by the Licensee, were first hand participation in many events at the Princess Inn; including to answer multiple calls as a result of apparent violent or illegal conduct there.

It is of particular significance to the Hearing Examiner that the testimony of Detective Rebbeck, about posing undercover as a prostitute on four occasions at the Princess Inn, was not deflected or cast into any real doubt by the Licensee. To an appreciable degree, her testimony

stands unchallenged, except in a dismissive manner by the Licensee's spouse, Daksha Patel. The Licensee chose not to testify, except through his wife. Thus, the testimony presented by Detective Rebbeck is largely unchallenged.

While the impression presented by the Licensee's witnesses overall is that the Princess Inn is not the "cesspool" it is made out to be by the City, ultimately none of those witnesses – with the exception of the Licensee's spouse – really denied or could truthfully deny the actual particulars of the many calls that brought law enforcement to the Princess Inn in just the 9 month time frame of January through September 2007; nor, as noted, the testimony of Detective Rebbeck about four separate undercover "stings" posing as a prostitute, renting a room for an hour, and paying cash at less than the typical rates for the rooms to Mr. Patel.

The Hearing Officer heard from two witnesses who reside at the Princess Inn (Kimberly Anderson and Troy Wince) that they find it suitable and quite habitable. Ms. Anderson lives there with, among others, her infant daughter. Mr. Wince is a care taker for an elderly person. Each has been there for far more than would otherwise be permissible under the LBMC for a motel. They both also acknowledged that they largely stay to themselves. Mr. Wince, who has been there several years, goes to bed early, closes the drapes, and insists the windows are sound proof. They both seemed in earnest to the Hearing Officer, *but there would seem to be two worlds at the Princess Inn: The world in which Ms. Anderson and Mr. Wince live comfortably versus the world which resulted in 41 separate police calls from January through September 2007, the undercover activity of Detective Reddeck, the observations of Rita Hooker about the unsanitary conditions there in at least some of the areas, the drug-related arrest of Milo, and the drug-related arrest of Delisha Smith.*

Similarly, the persons who live in the vicinity who testified on behalf of the Licensee (Juan Diaz, Albert Mora, and Lupe Bermudez) know of no complaints about the Princess Inn, and stated that the Licensee was frequently outside trying to make sure to clear the “riff raft” from his premises. Their testimony is observational from a distance, however, and their relationship to Mr. Patel seems to involve primarily “waving” at him.

To compound things, there is a dearth of documentary evidence on behalf of the Licensee. No receipts for repair work done. No bills or copies of checks paid for improvements over time, or with regard to efforts to keep the Princess Inn in good or improved condition. While Mrs. Patel spoke about the salary they receive from the Inn as the livelihood for herself and her husband, there were no records presented in that regard either. As noted above, hardly any exhibits were introduced by the Licensee.

In sum, for the Hearing Officer, the testimony and evidence presented by the City – although superficially it conflicted with that offered on behalf of the Licensee – nonetheless exists consistent with what the City witnesses said and produced, and was not sufficiently discounted, cast into doubt, or overcome. Further, the silence of the Licensee is very troubling to the Hearing Officer. To a degree, it is the equivalent of an “empty chair”. While his wife testified “on his behalf”, Mr. Patel was present at the hearing. The Hearing Officer believes Mr. Patel testified in the earlier hearing on October 3, 2007. In this instance he left it to others, but the fact of the matter is that Mr. Patel is the focal point of the charges. The impression the Hearing Officer has is that the Mr. Patel is running the show more so than any one else, calling the shots more so than anyone else, and thus the testimony of his wife of their efforts to operate a habitable, clean and safe hotel – and the money and time spent to do so, but without any documentary proof – falls

short of what the Hearing Officer expected to hear and to see, including to challenge what Detective Rebbeck described, to actually explain the 41 police calls from January through September 2007, to show that there been real effort to avoid illegal conduct at the Princess Inn (and demonstrate it), that they are running a motel not an apartment complex, and even that the hotel registration (Exhibit 21) is authentic. Otherwise the latter does appear to suggest, to the Hearing Officer, a probable effort by the Licensee to “recreate history”.

Put more succinctly: The testimony and evidence offered on behalf of the City was stronger and more persuasive than the testimony and evidence offered on behalf of the Licensee.

LEGAL DISCUSSION AND FINDINGS

(a) Burden of Proof

The Hearing Officer believes the burden of proof is by a preponderance of the evidence, and that a *de novo* hearing is what is required on this appeal (Evidence Code Section 115; LBMC Section 3.80.429.5). Further, that the Long Beach City Council, under LBMC Sections 2.93.010 and 2.93.050(A), is authorized to appoint a hearing officer to conduct this hearing.

Both sides argue that the other has the burden of proof. The License submits that the City has to establish that the licenses should be revoked, and that a “willfulness” standard must apply. The City contends that since this is the Licensee’s appeal from a prior determination that revocation is recommended, the Licensee has the burden of proof (to show cause why that revocation should not occur). Each cites Breakzone Billiards v. City of Torrance (2000), 81 Cal.App. 4th. 1205, which recites that a petitioner in an administrative mandamus has the burden of proof.

It is logical to the Hearing Examiner that the burden of proof would lie with the Licensee,

since indeed the Licensee is the one who has appealed. If the Licensee is “the appellant”, it is his job to show cause why the revocation should not occur. But, as noted above, the Hearing Officer ultimately exercised his discretion to control the proceedings, and thus had the City presents its case first. For the sake of this decision, the Hearing Officer will treat the matter as if the City had the burden of proof

As to the Licensee’s argument that “willfulness” must be found, and that the LBMC in focus must have a scienter requirement to pass muster: The City asserts that these are part of the various constitutional challenges made by the Licensee, which are not applicable in this administration hearing (Cal. Const. Art III, Section 3.5); which was also addressed in the prior Recommended Decision made by this same Hearing Officer in the consolidated case involving the Club Hotel.

In either event, as in the Club Hotel consolidated case, the Hearing Officer finds that the actions and inactions of the Licensee were neither inadvertent nor mistaken. Instead, they were volitional. The Licensee, as far as the Hearing Officer can determine based on the weight given to the most credible testimony and evidence, participated in or, at minimum, allowed illegal activities to go forward at the Princess Inn, unabated, for a prolonged period of time. Thus, whether the City has the burden of proof or not is less significant to the Hearing Officer than what he has concluded based upon all the testimony and evidence submitted by each side. As just one example: Mr. Patel allowed Detective Rebbeck to rent a room four separate times for one hour. It is not unreasonable to infer (at minimum) that he would be able to surmise, by the second, third or fourth occasion, that she was renting the room for prostitution purposes. Then there are the 41 separate police calls to the Inn over a course of nine months in 2007, 38 police calls in 2006, all

with a prior history in 2003-2004 when the Licensee paid fines and penalties to avoid more serious action by the City at that time.

(b) Disparate Treatment

The Hearing Officer would have entertained testimony and evidence that the treatment of the Princess Inn indeed showed bias, disparate or different treatment than other businesses in Long Beach, but after three days of hearing, 38 offered exhibits – and checking over 80 pages of handwritten notes – simply does not see any real demonstration in that regard at all. To the contrary, there was testimony by the City that none of the other business on Magnolia have anywhere near the number of police calls as the Princess Inn. Officer Lee testified, as noted above, that the problems are “concentrated” at the Princess Inn. The Licensee did not provide any paperwork or details to show or establish that there is trouble, or there are problems, caused by some other business(es) in that same vicinity, which is/are not being dealt with by the City in a manner similar to how the City has dealt here (or seeks to treat) the Princess Inn.

Further, in the letter by the Licensee’s counsel -- which commenced the appeal from the earlier Recommended Decision herein against the Licensee -- a contention was made by the Licensee that the City was retaliating against him as a result of his purported non-payment of transient occupancy tax associated with the consolidated case (regarding the Club Hotel); however, there was no testimony or evidence in that regard, nor is counsel’s letter an Exhibit.

Finally, the City argues these kinds of issues cannot properly be addressed in this administrative hearing, and that the sole focus is to determine if the Licensee can show cause as to why its license(s) should not be revoked. Whether the City is correct or not, the Hearing Officer was not able to find any disparate or retaliatory treatment against this Licensee based on the

record before him.

(c) Scope of the Hearing

There was testimony on behalf of the Licensee that there has been a stepped-up effort to improve the conditions at the Princess Inn, and to clean up any alleged inadequacies and/or improprieties, after September 2007 to the present. In fact, the City sought to introduce Exhibit 38 (an incident from January 2008) to counter that kind of information, if necessary. In responding to the "Issues letter" hereto behind Tab One, however, the Licensee specifically states in response to the Hearing Officer's inquiry "Does the scope of issues here include the condition of the property subsequent to September 2007?", as follows: "No. The City's order to show cause and the evidence given Mr. Patel prior to the hearing only was as of September 30, 2007."

As such, the Licensee would thereby seem to acknowledge the scope of the hearing does not extend beyond September 30, 2007. From the Hearing Officer's standpoint, if the Licensee indeed has undertaken and successfully completed a significant turnaround of conditions and activities at the Princess Inn since September 30, 2007, his most viable option would have been to so demonstrate to the City, without taking the risks associated with this appeal. Also, what's done is done. What has happened cannot be wiped clean today, as if fixing the problems after 41 police calls, Detective Rebbeck's undercover work, and the arrests of Milo and Smith, are no longer material as to whether the licenses issued to Mr. Patel should remain in force.

(d) No Lo Contendere Plea

The City presented testimony about an arrest of, and charges against, a woman named Milo who resided at the Princess Inn, for allegedly selling or arranging to sell rock cocaine to Detective Rebbeck. The City also introduced as Exhibit 19 a certified copy of the Court docket

sheet or record which contains the plea and sentencing of Milo by the Los Angeles Superior Court. This includes that she was required to register as a drug offender. The Hearing Officer believes he is entitled to take judicial notice of Exhibit 19 under Evidence Code Sections 452 and 453, not for the truth thereof, but is entitled to give it the weight to which it is or may be entitled under LBMC 2.93.030.

The case upon which the Licensee relies to argue the no lo contendere plea is inadmissible [Cartwright v Board of Chiropractic Examiners (1976), 16 Cal.3d 762] appears inapplicable because that matter involved one or more alleged charges of a moral turpitude nature – one with a no lo contendere plea – and whether the chiropractor’s license to practice should have been revoked. Here, the effort by the City is not to claim that the Licensee is guilty of drug peddling, but to show as part of its overall case the kind of activities that occurred at the Princess Inn under the tutelage of Mr. Patel, the Licensee. The Hearing Examiner did not understand the City to accuse Mr. Patel of himself selling drugs, but instead that Mr. Patel’s operation of the Princess Inn has allowed, among other illegal activities, drug dealing (let alone prostitution, and a plethora of other disturbances and incidents that resulted in so many police calls in 2007, let alone in 2006 as well). If nothing else, it can be said that Mr. Patel has “looked the other way” for a long time.

(e) Which Nuisance Definition Applies?

The City submits that LBMC 21.15.1870 defines “nuisance” for purposes of evaluating the Licensee’s conduct, and whether or not his licenses should be revoked. Section 21.15.1870 provides “‘Nuisance’ means anything that interferes with the use or enjoyment of property, endangers personal health or safety or is offensive to the senses.”

The Licensee indicates, in addressing item number 5 on the list attached hereto at Tab 1,

that California Civil Code 3480 applies. It reads: "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

The Hearing Examiner does not have in mind why the Licensee argues that Civil Code Section 3480 should apply. First, these are proceedings under the LBMC, and, certainly, Long Beach can adopt its own ordinances. The Licensee provides no citation that the State definition must or may take precedence over the LBMC, or is applicable here.

Nonetheless, if the Hearing Examiner had either definition in mind, the operation of the Princess Inn by this Licensee would constitute a "nuisance". Among the reasons are because the Licensee has not been truthful in his applications for either license – there is another employee, he does not own the property, he sells more than just prepackaged food, and he allows persons to stay far beyond what is permitted under the definition of a motel. In addition, the Licensee knows or, at minimum, has considerable reason to know that prostitution occurs there, as do drug deals or attempted drug deals; it simply does seem as if those are without the Licensee's knowledge. Then there are all those police calls in 2007 (let alone the year before), and of at least equal significance the prior history in 2003 going into 2004. Further, there is the question about the registry (Exhibit 21), and the violation of the rules associated with renting a room more than once in a twelve hour period. This volume of improprieties and/or illegalities creates a nuisance under either definition, LBMC or Civil Code Section 3480. *The time the police have had to take to address call after call after call at the Princess Inn is itself a real burden on the public, on the neighborhood, and on the community. Based on the testimony and evidence presented, that volume of calls, and those kinds of incidents, are far more prevalent at the Princess Inn than any*

other business in that immediate area.

(f) Was Notice to the Property Owners Necessary?

There are two threshold problems with the Licensee's argument that this proceeding is invalid, or should not go forward because notice was not given to the owners of the property here: First, the Licensee's wife testified very clearly that the owners know all about this proceeding, and are keeping very close tabs on it. Secondly, the Licensee led the City to believe he was the owner; that's what he wrote under penalty of perjury on both applications of each license. The City does not have an affirmative duty to find out that he was wrong.

This hearing concerns whether or not the Business and Retail Sales Licenses issued to Mr. Patel should be revoked. He has been the licensee, as defined under LBMC Section 3.80.163. Under LBMC Section 3.80.429.5, Mr. Patel, the Licensee, expressly "shall have the right... to file a written appeal to the City Council" if his License is revoked (as per the earlier Recommended Decision). Thus, the right person is before the Hearing Examiner.

The Licensee insists notice must be given "to all interested or affected parties", if their whereabouts are reasonably ascertainable, "in all forfeiture proceedings of this kind", *citing Jones v Flowers and Mennonite Board of Missions v Adams* (both United States Supreme Court cases). The Hearing Examiner does not find those case on point because they involved owners of real property not given notice of tax sales, who thereby could or would lose their title interest to the property. Here, the way the Licensee is operating the business on the property is what is under review. The City is not seeking to take the property away from its actual owners, who turn out to be someone other than the Licensee. If the license is revoked, and a new operator comes in and maintains the Princess Inn in an appropriate manner, it would seem logical that this would

benefit the actual owners. Further, as noted above, the Licensee's spouse was quite clear the owners know what is going on with this hearing, and what the City has been (and is seeking to) accomplish as to the licenses issued to Mr. Patel. Thus, the owners might want to be pro active, under the circumstances. Are we to believe they have no clue about the many police calls to their property? The Hearing Officer finds that difficult to believe, given Mrs. Patel's testimony. Put another way: Does the Licensee contend that the City has to search out the owners, to give notice to them that their Licensee may lose his job, as opposed to the owners ought to come forward and deal with the situation themselves?

(g) Further Constitutional Issues

(i) Searches

The Licensee contends that LBMC Section 5.48.010(e) is unconstitutional under the Fourth Amendment warrant requirement, and cites New York v. Burger (1987), 482 U.S. 691. In Burger, however, the fact that the business was part of a "closely regulated industry" meant there was a lowered expectation of privacy, and there was considerable State interest involved. Thus, the Supreme Court in Burger upheld the warrantless searches.

Here, it is questionable the constitutional challenge is appropriate at the within hearing. Assuming it is, the Hearing Officer considers Section 5.48.010(e) a reasonable ordinance geared toward assisting the local government in seeking to assure that the operator of a hotel or motel is complying with subsections (a) through (d) thereof. After all, the City is charged with protecting health, safety and welfare, as a matter of common sense. Moreover, there was no testimony or evidence that the City, through anyone, rifled through anything at the Princess Hotel. Officer Lee asked for a registry, and did not get it. Detective Rebbeck paid for a room, four times, and went

into it with Mr. Patel's consent. Also, much of what was testified about involved circumstances and observations "in plain view", including for the Nuisance Abatement Officer Rita Hooker. Thus, if there is a specific, overly intrusive search in issue for the Licensee, it is unclear to the Hearing Officer. If the challenge is made to Section 5.48.010(e) in a kind of vacuum, that is for a Court to consider. To the extent testimony and evidence was given herein by the City that was not entirely credible, or not fully reliable, the Hearing Officer only gave it whatever weight to which it may be entitled.

(ii) Redactions

The Licensee seeks exclusion of evidence introduced (such as specific police call reports herein) because some of the information thereon is redacted. The Licensee cites Evidence Code Section 402, 403, 405, 412 and 413 in support thereof. The Hearing Officer does not recall, however, any request made by the Licensee for a "402 hearing". In either event, what is missing from the Licensee's argument is acknowledgement of LBMC Section 2.93.030 (referenced at the early part of this Recommended Decision). The Hearing Officer agrees that testimony and evidence which conceals, or does not disclose, all details and/or identities is subject to suspicion. Yes, it is understandable why the City redacted certain items in some of the exhibits – such as driver's license numbers, social security numbers, phone numbers, victim and witness names and addresses – but, as a result thereof, the Hearing Officer could only give that evidence (and related testimony) whatever weight to which it may be entitled. Having done that, along with all the other testimony and evidence, the Hearing Officer does not feel compelled to wholly exclude the exhibits with partial redactions, but to consider them only as reliable, if at all, to a degree.

(iii) Goat Hill Tavern

As with regard to the consolidated case involving the Club Motel, the Licensee again cites **Goat Hill Tavern** (1992), 6 Cal.App.4th 1519. **Goat Hill** emphasizes the serious interference that occurs when a business is not allowed to go forward, and the Licensee asks at least that some determination be made here that is less onerous than revocation of the licenses.

But, **Goat Hill** does not appear analogous to this case because there the business was in operation for so very long (more than 35 years) – not a matter of 4 or so years, as here. Also, in **Goat Hill** there was admissible evidence about the substantial invested sums of monies to refurbish the business, including at the City's behest. The Licensee, at the within hearing, produced no evidence to demonstrate expenditures of monies to maintain and/or improve the Princess Inn. The only monies that the Hearing Officer really learned about are what Mr. Patel paid back in 2004 in the way of penalties and interest to avoid further problems with the City at that time.

The Hearing Officer would prefer to be able to tailor a decision that does not result in upheaval at the Princess Inn. The City may well prefer that, because revocation is going to involve disruption on a number of fronts – from tenants who will have to be dealt with, to fees and/or monies from the operation to which the City otherwise is or may be entitled – and likely requires more time, cost and effort on behalf of the City as opposed to conditioning the continuation of each license as suggested by the Licensee.

It is very disappointing to the Hearing Officer that this matter festered for so long, and has now been the subject to two separate administrative hearings. Yet, this decision will go the City Council for evaluation. The Licensee, if not happy with the outcome, has the ability of course to

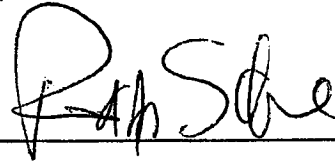
pursue relief in Court. In the interim, the Licensee could have worked this out months ago, or tried to work it out and shown the Hearing Officer his concerted, genuine efforts to avoid the hammer, as it were. In the Club Hotel consolidated case, the Hearing Officer found that the transient occupancy taxes are due, but provided a pay out schedule for the Licensee. Here, there is no solution that the Hearing Officer can present. The Licensee can relinquish the operation, he and his wife move out, and someone else apply. The owners, if really not the Licensee, can come forward and try to remedy the problems as well. But, this is not for the Hearing Officer to dictate or recommend.

RECOMMENDED DECISION

The Business License and the Retail Sales License issued to Mr. Patel for the Princess Inn should be revoked, under these circumstances.

DATED: March 14, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Sokol", written over a horizontal line.

Ronald J. Sokol
Hearing Officer

Ronald J. Sokol

A Professional Law Corporation

1334 Park View Avenue, Suite 100

Manhattan Beach, CA 90266

Telephone: (310) 546-8124

Facsimile: (310) 546-8125

Email: RonSesq@aol.com

February 29, 2008

L14001

VIA FACSIMILE AND US MAIL

Cristyl L. Myers, Esq.
Deputy City Attorney
City of Long Beach
333 West Ocean Blvd.
Long Beach, CA 90802

Frank A. Weiser, Esq.
3460 Wilshire Blvd., Ste 1212
Los Angeles, CA 90050

RE: City of Long Beach/ City of Long Beach/ Princess Hotel

Dear Counsel:

We concluded the evidentiary hearing yesterday. Your final argument briefs, which will also address the issues listed below, are to be to my office in hand by close of business (5:00 p.m., p.s.t.), Friday March 7. If, however, Mr. Weiser is engaged in trial (ie, starts the trial) this coming Monday March 3, then the time for you to get those briefs to me will be extended to close of business Monday March 10.

The additional issues to address are as follows:

1. Who has the burden of proof in this matter at this hearing?
2. Was disparate treatment shown with regard to Mr. Patel, and, if so, is that a viable argument to make in these proceedings?
3. Does the scope of issues here include the condition of the property subsequent to September 2007?
4. It was brought out that one of the residents at the Princess Inn (frequently referred to as "Milo") pled No Lo Contendere to a criminal charge. Is that admissible here, and what weight should that plea be given as a No Lo Contendere plea, if any?
5. Which nuisance definition applies in this proceeding?

Cristyl L. Myers, Esq.
Frank A. Weiser, Esq.
Page 2

6. Is it necessary or required to also give notice to the property owners of these proceedings?
If so, what impact is there, if any, if notice is not given?

7. Is there a constitutional issue that can properly be addressed in these proceedings as to
LBMC 5.48.010 (a copy follows for ease of reference)?

8. Does the licensee have standing on due process grounds to object to exhibits that are
admitted into evidence (such as number 25), but which contain redactions?

Thank you for your attention to this matter. I look forward to receipt of your final briefing.

Sincerely yours,



Ronald J. Sokol, A.P.C.

encl.
RJS/ad

Title 5 REGULATION OF BUSINESSES, TRADES AND PROFESSIONS[1]**Chapter 5.48 HOTELS AND MOTELS**5.48.010 Hotel and motel rentals.**5.48.010 Hotel and motel rentals.**

A. Every owner, manager or operator of any hotel or motel shall keep a register in which shall be entered the name and address of each guest. No owner, manager or operator of any hotel or motel shall let, lease, or rent a hotel or motel room to any person without verifying the guest has valid identification and has accurately and legibly completed the register and/or registration card with the information that corresponds to the valid identification presented by the guest. Said register shall also indicate the day, month, year and hour of arrival of each guest and the number or other identifying symbol of location of the room, dwelling unit or space rented or assigned each guest and the date that such guest departs. All such registers shall be maintained for a period of three (3) years from and after the date of entry. No person shall alter, deface or erase such a register so as to make the information recorded therein illegible or unintelligible.

B. No owner, manager, operator, employee, or agent of any hotel or motel shall rent or assign any room, dwelling unit or space in said hotel or motel to any person until such time as said person shall have registered as set forth in subsection 5.48.010.A.

C. No owner, manager, operator, employee or agent of any hotel or motel shall rent any guestroom or dwelling unit in such hotel and motel more than once within a twelve (12) hour period. For purposes of this section the terms "guestroom", "dwelling unit", "hotel", and "motel" shall be as defined in chapter 21.15 of this code.

D. No person shall provide any false information, register under a fictitious name or show or use a forged, altered or counterfeit identification when procuring a hotel or motel room within the city. The hotel or motel agent and/or employee shall be responsible for verifying the authenticity of the identification used by the person letting, leasing or renting the hotel or motel room.

E. Inspection of hotels and motels that are open for business may be made at any reasonable hour by any member of the police department or by any employee of the department of financial management for the purpose of determining that the provisions of this section are met. (Ord. C-7517 § 1, 1997; Ord. C-7461 § 2, 1997; Ord. C-7423 § 20, 1996; Ord. C-6260 § 1 (part), 1986).

<< previous | next >>

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a
5 party to the within action; my business address is 1334 Park View Avenue, Suite 100, Manhattan Beach,
6 California 90266. On the date below I served on the interested parties listed below the foregoing document(s)
described as follows:

7 **RECOMMENDED DECISION**

8 by placing ___ the original a true copy thereof enclosed in sealed envelopes addressed as follows:

9 Cristyl Meyers, Esq.
10 Deputy City Attorney
11 Office of the City Attorney
12 City Hall, Eleventh Floor
13 333 West Ocean Boulevard
14 Long Beach, CA 90802
15 (City Attorney)

16 Frank A. Wesier, Esq.
17 Attorney at Law
18 3460 Wilshire Blvd., Suite 1712
19 Los Angeles, CA 90010
20 (Counsel for Licensee)

21 **By Mail** - I placed the envelope for collection and mailing on the date and at the place shown
22 herein following the firm's ordinary business practices. I am "readily familiar" with the firm's
23 practice of collection and processing correspondence for mailing. Under that practice it would be
24 deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at
25 Manhattan Beach, California in the ordinary course of business. I am aware that on motion of the
26 party served, service is presumed invalid if postal cancellation date or postage meter date is more
27 than one day after date of deposit for mailing an affidavit.

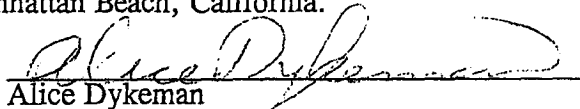
28 **By Facsimile** - A true and correct copy of the document was transmitted via facsimile to the
addressee as indicated above.

By Federal Express (Overnight Mail) - I am readily familiar with the business practice of Ronald
J. Sokol for collection and processing of correspondence for transmitting by Federal Express.
Under such practice, correspondence would be deposited with the Federal Express pick up box on
the same day as received in the ordinary course of business. Following such practices, and in the
ordinary course of business, on the date set forth above, I placed in the Federal Express pick up
box, the aforesaid sealed envelope.

(State) I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose
direction the service was made.

Executed on March 14, 2008 at Manhattan Beach, California.

26
27 
28 Alice Dykeman

Ronald J. Sokol
A Professional Law Corporation
1334 Park View Avenue, Suite 100
Manhattan Beach, CA 90266
Telephone: (310) 546-8124
Facsimile: (310) 546-8125
Email: RonSesq@aol.com

March 15, 2008

L14001

VIA FACSIMILE AND US MAIL

Ms. Irma Heinrichs, City Clerk Department
City of Long Beach
333 West Ocean Blvd.
Long Beach, CA 90802

RE: **Long Beach/Princess Inn**

Dear Irma:

Yesterday I faxed the Findings and Recommended Decision to counsel, and mailed the original to you, with a copy by mail to each counsel. Having discovered typos, which follow on the fax for each of you, those corrected pages are being mailed to you (the originals), with copies to counsel. I regret any inconvenience this may cause. When you get the corrected pages with this cover letter, please simply take out the ones on the version you received with the March 14th cover letter, and insert these instead. They are typos only, of no substance (eg., Hearing Examiner should be Hearing Officer). You will all note the typos being corrected per the pages that follow by fax, but for ease of reference, I am copying and enclosing those to you as well with this cover letter by mail.

Kind regards,


Ronald J. Sokol, A.P.C.

encls.

RJS/ad

cc: Cristyl Meyers, Esq. w' encl
Frank A. Weiser, Esq. w' encl

PRELIMINARY STATEMENT

This matter was heard over the course of three days. The City of Long Beach (hereafter "the City") submits that both the Business and Retail Sales License for the Princess Inn Motel should be revoked on various grounds, to which the Licensee objects.

The City was represented by counsel, and presented five witnesses (a sixth was called, but his testimony was mooted when the information being offered was stricken by the Hearing Officer in the face of several objections on behalf of the Licensee).

The Licensee, Jayantibhai Patel (hereafter "the Licensee") also was represented by counsel, and presented six witnesses, which included his spouse. Mr. Patel, the Licensee, did not testify (the Hearing Officer was told that his wife spoke for him).

There were 38 exhibits introduced, with objections to admissibility made on behalf of the Licensee to the final exhibit submitted by the City for consideration (number 38). Questions or issues were raised by the Licensee with regard to various of the testimony and evidence offered by the City, but the Licensee stipulated to the admissibility of most of the exhibits. Of the exhibits, only a few were submitted by the Licensee.

This particular case is one of two that were consolidated involving this same Licensee, and heard by the same Hearing Officer. In the first instance, the City sought the revocation or suspension of the Licensee's license with regard to another facility, known as the Club Hotel, also in Long Beach. The Club Hotel matter involved alleged non-payment of transient occupancy taxes. The Recommended Decision was made on February 6, 2008. There is overlap in some legal issues addressed, and thus the discussion there is not repeated here.

In evaluating the testimony and evidence, the Hearing Officer has been guided by Long

Beach Municipal Code (hereafter "LBMC"), Section 2.93.030. Specifically, the testimony and evidence has been given whatever weight to which it may be entitled. Under Section 2.93.030, the rules of evidence are not as strictly construed as if the matter were proceeding in Court. In addition, under LBMC Section 2.93.030, the Hearing Officer "shall determine the order of proceedings and shall afford all parties a reasonable opportunity to present any relevant evidence."

Note further that on October 3, 2007, a prior hearing was conducted between the City and this same Licensee, with regard to whether the same two licenses in focus on this occasion should be revoked, but before a different Hearing Officer. The Licensee did not have counsel present on that occasion. After testimony and evidence, and after considering the merits, the initial Hearing Examiner concluded that the Licensee's Business and Retail Sales Licenses for the Princess Inn should both be revoked (the prior Report and Recommendation was introduced into evidence as Exhibit 3 at the within hearing). The Licensee filed a timely appeal therefrom, and is entitled to, and provided herein with, a "*trial de novo*".

The within hearing took place specifically on February 25, 26, and 28, 2008. The Licensee (and his spouse) were present on each day. After argument the first morning (February 25), the Hearing Officer decided to require the City to present its case first, followed by the Licensee.

The City contends that the Business and Retail Licenses for the Princess Hotel should and must be revoked because of alleged, prolonged misconduct at the Princess Inn, including that the Licensee had ample opportunity in the past to remedy the situation. The Licensee makes multiple contentions, including to challenge the propriety of these proceedings, and emphasizes that much

(b) Background

In January 2003, the City of Long Beach issued Business License BU20301080 to Mr. Patel, as both the owner and the operator of the Princess Inn located at 1879 Magnolia Avenue, in Long Beach. Mr. Patel, the Licensee, wrote on the application form for the Business License that the Princess Inn would be operated as a motel. Motel is defined by LBMC 21.15.1800 as a “commercial land use for the rental of six or more guest rooms to primarily transient occupants for a period of not more than thirty consecutive days.” A motel in Long Beach is subject to certain conditions and requirements under LBMC Section 5.48.010, such as the maintenance of a register of each guest, keeping the registers for 3 years, no altering, defacing or erasing a register, and no renting of any guestroom or dwelling unit more than once within a twelve hour period.

In January 2003, the City also issued Retail Sales License BU 20301090 to Mr. Patel for the Princess Inn. No one other than Mr. Patel signed the applications for each license, which were marked into evidence as Exhibits 5 and 6 at the hearing. Further, no one is listed on either form as an employee of the Princess Hotel, other than Mr. Patel, which translates into a payment required therefore (one employee only). In this regard, under LBMC 3.80.150, the word “employee” means “each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner’s family... (or) manager, and each and every other person employed or working in such business for a wage, salary, commission or room and board. Notwithstanding the above, the owner of a sole proprietorship shall not be deemed an ‘employee’...”

On the Retail Sales License Application, the sole item checked by Mr. Patel under the section “Food/Alcohol/Entertainment” is that food will be sold or served (including pre-packaged food).

seek to help placement of tenants, and to seek to transition them into another facility while mitigating disruption for them.

As to this hearing itself: The Licensee was given written notice by the City first on August 15, 2007, to inform him of a hearing at which the Princess Inn would be entitled to show cause why its business license should not be revoked (Exhibit 2). The August 15 letter incorporates an internal memo dated July 17, 2007 from the City's Acting Chief of Police to the City's Director of Financial Management, summarizing the underlying concerns and problems with the Inn, and upon which revocation of each license is recommended (Exhibit 1). On October 23, 2007, after the October 3, 2007 hearing afore noted, a letter was sent to the Licensee informing him that the Inn's Business and Retail sales licenses had been revoked (Exhibit 4), and attaching a copy of the initial Hearing's Office Recommended Decision (Exhibit 3). The within hearing is the *trial de novo* therefrom.

(d) The Licensee's Presentation

With the sole exception of the City's paperwork from 2003 and one letter in early 2004, the Licensee has had no indication of any major problems or concerns since – until the City sent the August 2007 letter (Exhibit 2) for hearing on revocation. No opportunity was provided to the Licensee to make changes, or do any corrective work, which the Licensee has been doing and trying to do for years, and which the Licensee has continued to carry out since September 2007.

The Licensee does not sell condoms at the Inn. Mrs. Patel, the Licensee's spouse, co-manages the Inn with him. If she is supposed to be separately listed as an employee, that is unknown to Mr. Patel and her, and, for all intents and purposes, this is a sole proprietorship. As it is, Mr. Patel had a serious stroke (as the City knows) two years ago, and his English is not good

short of what the Hearing Officer expected to hear and to see, including to challenge what Detective Rebbeck described, to actually explain the 41 police calls from January through September 2007, to show that there been real effort to avoid illegal conduct at the Princess Inn (and demonstrate it), that they are running a motel not an apartment complex, and even that the hotel registration (Exhibit 21) is authentic. Otherwise the latter does appear to suggest, to the Hearing Officer, a probable effort by the Licensee to "recreate history".

Put more succinctly: The testimony and evidence offered on behalf of the City was stronger and more persuasive than the testimony and evidence offered on behalf of the Licensee.

LEGAL DISCUSSION AND FINDINGS

(a) Burden of Proof

The Hearing Officer believes the burden of proof is by a preponderance of the evidence, and that a *de novo* hearing is what is required on this appeal (Evidence Code Section 115; LBMC Section 3.80.429.5). Further, that the Long Beach City Council, under LBMC Sections 2.93.010 and 2.93.050(A), is authorized to appoint a hearing officer to conduct this hearing.

Both sides argue that the other has the burden of proof. The Licensee submits that the City has to establish that the licenses should be revoked, and that a "willfulness" standard must apply. The City contends that since this is the Licensee's appeal from a prior determination that revocation is recommended, the Licensee has the burden of proof (to show cause why that revocation should not occur). Each cites Breakzone Billiards v. City of Torrance (2000), 81 Cal.App. 4th 1205, which recites that a petitioner in an administrative mandamus has the burden of proof.

It is logical to the Hearing Officer that the burden of proof would lie with the Licensee,

since indeed the Licensee is the one who has appealed. If the Licensee is "the appellant", it is his job to show cause why the revocation should not occur. But, as noted above, the Hearing Officer ultimately exercised his discretion to control the proceedings, and thus had the City presents its case first. For the sake of this decision, the Hearing Officer will treat the matter as if the City had the burden of proof

As to the Licensee's argument that "willfulness" must be found, and that the LBMC in focus must have a scienter requirement to pass muster: The City asserts that these are part of the various constitutional challenges made by the Licensee, which are not applicable in this administration hearing (Cal. Const. Art III, Section 3.5); which was also addressed in the prior Recommended Decision made by this same Hearing Officer in the consolidated case involving the Club Hotel.

In either event, as in the Club Hotel consolidated case, the Hearing Officer finds that the actions and inactions of the Licensee were neither inadvertent nor mistaken. Instead, they were volitional. The Licensee, as far as the Hearing Officer can determine based on the weight given to the most credible testimony and evidence, participated in or, at minimum, allowed illegal activities to go forward at the Princess Inn, unabated, for a prolonged period of time. Thus, whether the City has the burden of proof or not is less significant to the Hearing Officer than what he has concluded based upon all the testimony and evidence submitted by each side. As just one example: Mr. Patel allowed Detective Rebbeck to rent a room four separate times for one hour. It is not unreasonable to infer (at minimum) that he would be able to surmise, by the second, third or fourth occasion, that she was renting the room for prostitution purposes. Then there are the 41 separate police calls to the Inn over a course of nine months in 2007, 38 police calls in 2006, all

other business in that immediate area.

(f) Was Notice to the Property Owners Necessary?

There are two threshold problems with the Licensee's argument that this proceeding is invalid, or should not go forward because notice was not given to the owners of the property here: First, the Licensee's wife testified very clearly that the owners know all about this proceeding, and are keeping very close tabs on it. Secondly, the Licensee led the City to believe he was the owner; that's what he wrote under penalty of perjury on both applications of each license. The City does not have an affirmative duty to find out that he was wrong.

This hearing concerns whether or not the Business and Retail Sales Licenses issued to Mr. Patel should be revoked. He has been the licensee, as defined under LBMC Section 3.80.163. Under LBMC Section 3.80.429.5, Mr. Patel, the Licensee, expressly "shall have the right... to file a written appeal to the City Council" if his License is revoked (as per the earlier Recommended Decision). Thus, the right person is before the Hearing Officer.

The Licensee insists notice must be given "to all interested or affected parties", if their whereabouts are reasonably ascertainable, "in all forfeiture proceedings of this kind", *citing* Jones v Flowers and Menonite Board of Missions v Adams (both United States Supreme Court cases). The Hearing Officer does not find those case on point because they involved owners of real property not given notice of tax sales, who thereby could or would lose their title interest to the property. Here, the way the Licensee is operating the business on the property is what is under review. The City is not seeking to take the property away from its actual owners, who turn out to be someone other than the Licensee. If the license is revoked, and a new operator comes in and maintains the Princess Inn in an appropriate manner, it would seem logical that this would