

**BEFORE THE STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF:)	
TOREMAC, LLC d/b/a PAPI CHULO'S CANTINA)	Permit No: RR60-39184
330 W STATE ROAD 46 #1)	
SPENCER, IN 47460)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Toremac LLC dba Papi Chulo's Restaurant & Cantina, ("Toremac" or "Permittee"), 330 W. State Road 46 #1, Spencer, Indiana ("Permit Premises"), filed its application for renewal of a Type 210-1 alcoholic beverage permit ("Renewal Application") on June 30, 2023, under permit number RR60-39184 ("Permit"). The Renewal Application was assigned to the Owen County Local Alcoholic Beverage Board ("Local Board") for hearing. The Local Board conducted its hearing on September 11, 2023, and voted 3-0 to deny the Renewal Application. The Indiana Alcohol and Tobacco Commission ("ATC" or "Commission") adopted the Local Board's recommendation on September 19, 2023.

On or about September 20, 2023, Permittee received notification of the Commission's adoption of the Local Board decision. Permittee filed a timely Notice of Appeal, and the matter was set for appeal hearing on December 18, 2023. At that time, witnesses were sworn, evidence heard, and the matter was taken under advisement. The Hearing Officer also took judicial notice of the entire contents of the ATC file related to the Permit, including the Local Board hearing. Having been duly advised of the facts and law at issue, the Hearing Office now submits theses Proposed Findings of Fact and Conclusions of Law to the full Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

A. The following individuals testified before the Local Board in favor of the Permittee in

this cause:

1. Meinardo Cristobal-Rios, Sole Member, Permittee.

B. The following documentary evidence was introduced and admitted before the Local Board in favor of the Permittee in this cause:

1. None

C. The following individuals testified before the Local Board against the Permittee in this cause:

1. None

D. The following documentary evidence was introduced and admitted before the Local Board against the Permittee in this cause:

1. None

III. EVIDENCE BEFORE THE COMMISSION

A. The following individuals testified before the Commission in favor of the Permittee in this cause:

1. Meinardo Cristobal-Rios, Sole Member, Permittee.

2. Thomas Orman, Cowden Enterprises

3. Han Chong

B. The following evidence was introduced and admitted before the Commission in favor of the Permittee in this cause:

1. Transcription of September 11, 2023 Local Board Hearing

2. Application for Renewal of Retailer or Dealer Alcoholic Beverage Permit submitted by Permittee, including Mr. Cristobal's attached past conviction records.

3. Permittee Responsible Service of Alcohol Policy.

C. The following individuals testified before the Commission against the Permittee in this cause:

1. None

D. The following evidence was introduced and admitted before the Commission against the Permittee in this cause:

1. None

IV. FINDINGS OF FACT

1. Toremac LLC dba Papi Chulo's Restaurant and Cantina (Permittee), 330 W. State Road 46 #1, Spencer, Indiana 47460, permit number RR60-39184, is the applicant for the renewal of a permit to sell liquor, beer and wine, in a restaurant located in an incorporated area (no carryout) to be issued by the Indiana Alcohol and Tobacco Commission. (ATC file; Exhibit 2).

2. Permittee seeks to renew its permit acquired in 2022 and Permittee has operated its restaurant at the Permit Premises since that time. (ATC file).

3. There was no information presented or concern expressed at the Local Board that the Permit premises had become a public nuisance or that any criminal offense had taken place at the permit premises. (Local Board Hearing).

4. At the Local Board Hearing, an Excise Officer Member of the Local Board expressed concern over a Notice of Violation issued on July 18, 2023, on the Permit for Falsification of Records (I.C. 7.1-5-6-4) and Reputation and Character (905 IAC 1-27-1). (Local Board Hearing).

5. The Excise Officer questioned the Permittee about the violation and the Permittee explained that the violation was resolved by settlement whereby Permittee paid a fine of One Thousand Dollars (\$1,000) and served a three-day suspension of the Permit. Permittee further explained that identical violations related to the same issue had been issued for multiple permits held by its restaurant businesses in the Bloomington area. (Local Board Hearing).

6. At the Local Board Hearing, the owner of Permittee explained that the failure to disclose the past convictions was not intentional and was a mistake on his part. He also attempted to explain that he did not mislead his counsel, but that there was a misunderstanding about what must be disclosed because he was asked about convictions since renewal and the convictions at issue were from several years ago. (Local Board Hearing).

7. At the Local Board Hearing, Permittee repeatedly sought clarification of the questions being asked of him. He was asked about his ability to read and speak English and responded, "A little bit." At that point, a Local Board Member recommended the Local Board allow the Applicant to consult with counsel, however the Board Member was told that was not an option. (Local Board Hearing).

8. Thereafter, a Local Board Member proposed that the Local Board renew for a one-year period, but no vote was called despite the pending proposal. (Local Board Hearing).

9. The Local Board was not informed at the hearing that the Permittee had disclosed the past convictions with the Renewal Application, stating on the Renewal Application, "In the interest of full disclosure, Applicant is providing his past conviction records to this application. Please note that Permittee was not convicted of a misdemeanor or felony since the last renewal and/or filing of this Permit." Permittee provided the records as an attachment to the Renewal Application, including information that various charges were dismissed and that Mr. Cristobal pleaded to lesser, misdemeanor charges. (Local Board Hearing; Exhibit 2). The Renewal Application asks, "Since your last renewal, have you or anyone with an interest in this permit been convicted of a misdemeanor or felony." (Exhibit 2 at p.1, Question 4 (emphasis added)).

10. On September 11, 2023, The Local Board voted to deny the Renewal Application. The Excise Officer told the Local Board members that they were required to state a permissible reason for denial of the renewal on the record at the time of their vote. One Local Board Member stated his denial vote was because "he's lied on his application." The Excise Officer stated his denial was "based on your violations." The third Local Board Member voted to deny and stated, "My reason is that it's a majority." (Local Board Hearing).

11. Mr. Cristobal has twelve (12) restaurants in the Bloomington and Spencer area with alcohol permits at each location. Before the July 2023 violations, those locations did not have prior violations. (ATC Hearing).

12. In July 2023, eight (8) of Mr. Cristobal's permits were issued violations. All of the violations were based on the same subject – Mr. Cristobal's failure to disclose past convictions in relation to each permit. (ATC Hearing).

13. Mr. Cristobal reached settlements with the ATC as to each of the violations. In total, Mr. Cristobal paid Eight Thousand Dollars (\$8,000) in Civil Penalties related to the violations and served a combined Twenty-One (21) days of suspensions of the various permits. As to this permit, Mr. Cristobal paid a One Thousand Dollar (\$1,000) Civil Penalty and served a three (3) day suspension running from August 8, 2023, through August 10, 2023. (ATC Hearing).

14. Mr. Cristobal testified that the failure to disclose the past criminal convictions was a mistake and not intentional. He further testified that he misunderstood the requirement for

disclosure. (ATC Hearing).

15. Mr. Cristobal testified that the convictions were disclosed and attached to the Renewal Application which was the subject of the Local Board Hearing. (ATC Hearing; Exhibit 2).

16. Since leasing the Permit Premises for a ten (10) year period (until 2032), Mr. Cristobal has made significant investment in and improvements to the Permit Premises and has twelve (12) employees at the location. In total, his businesses employ over three hundred (300) individuals in the Bloomington and Spencer local area. (ATC Hearing).

17. Mr. Cristobal stated that without an alcohol permit, it will be difficult to keep the restaurant under the above permit number in operation. (ATC Hearing).

18. After the violations, Mr. Cristobal initiated changes at all of his restaurant locations to ensure compliance with applicable laws and regulations related to the service of alcohol. Training has been conducted with the employees by Indiana state Excise Officers. Additionally, Mr. Cristobal has implemented a "Responsible Service of Alcohol Policy" that each employee must review and sign. (ATC Hearing; Exhibit 3).

19. Mr. Cristobal testified that he is involved in the local community and his businesses, including the one under the above-mentioned permit number, frequently sponsor youth athletics and other community programs. In addition, his restaurants provide food to a program that supports homeless and food insecure youth. (ATC Hearing).

20. Mr. Cristobal testified that since the resolution of the identical violations issued on eight (8) of the permits held by his businesses involving this same issue, multiple permits held by his businesses have been renewed after local board hearings, including the following determined from ATC records:

- a. El Ranchero- Liberty Dr., Bloomington (Permit RR53-32765; renewed 08/15/23);
- b. Viva Mas- 3rd St., Bloomington (Permit RR53-33416; renewed 11/19/23);
- c. El Ranchero- S.R. 46, Bloomington (Permit RR53-32764; renewed 12/20/23);
- d. La Una Cantina- Walnut St., Bloomington (Permit RR53-35905; renewed 12/20/23);

- e. Vivencia, E. Buick Cadillac Blvd., Bloomington (Permit RR53-40634; renewed 12/20/23); and
- f. Cloverleaf West, 3rd St., Bloomington (Permit RR53-40091; transfer of owner and location approved 9/19/23). (ATC Hearing)

21. Thomas Orman, Cowden Enterprises, testified that he has known Mr. Cristobal for at least seventeen (17) years. He has been the landlord to a couple of Mr. Cristobal's restaurants and interacts with Mr. Cristobal frequently. He attested that Mr. Cristobal is of good moral character, including stating that Mr. Cristobal is a "kind person" and "great man" who treats his employees very well.

22. Mr. Orman also testified that Mr. Cristobal has a positive reputation in the community and that he donates to charitable causes and sponsors local teams and activities through his businesses. (ATC Hearing).

23. Han Chong testified that he has known Mr. Cristobal for over ten (10) years. He likewise testified in favor of Mr. Cristobal's good moral character. Mr. Chong stated that Mr. Cristobal works very hard, provides many jobs in the community where he has permits and has an upstanding reputation. (ATC Hearing).

24. Mr. Chong also stated the Mr. Cristobal does "good things" for the community including providing sponsorships through his businesses. (ATC Hearing). The Permittee was not afforded a full opportunity to be heard at the Local Board. Mr. Cristobal was interrupted and asked leading questions, as well as questions about his grasp of the English language. Mr. Cristobal repeatedly asked for clarification. It was within the Local Board's discretion to continue the hearing to allow Mr. Cristobal to be represented by counsel, but when a Local Board member suggested that be done, he was told it was not an option.

25. Toward the end of the Local Board hearing, a Local Board Member proposed a one-year renewal of the Permit, but that pending proposal was not called for a vote by the presiding Local Board member.

26. The Local Board members did not all provide reasons for denial of the renewal Application. In particular, one Local Board member stated only, "My reason is that it's a majority." Another Local Board Member stated his denial was "based on your violations." These are not one of the three (3) permissible reasons for denial of a permit renewal. See 905 IAC 1-27-1 et seq.

27. ATC records indicate that the Permittee did disclose Mr. Cristobal's past convictions explicitly on the Renewal Application and attached the relevant records. (Exhibit 2). However, the record does not show that the Local Board members were aware of this disclosure.

28. Mr. Cristobal testified about his involvement in the local community through his businesses at various locations, including offering sponsorships and providing food to a program supporting local homeless and food insecure youth, in support of his reputation and character all supported by the testimony referred to on paragraphs 21 through 25 above.

29. Specifically, Thomas Orman and Han Chong each testified regarding their positive long-standing relationships with Mr. Cristobal, his extensive community involvement and that Mr. Cristobal is held in high esteem and is of good moral character. 905 IAC 1-27-1.

30. Throughout the hearing on December 18, 2023, it was clear that the Permittee was not skilled in the use of the English language by virtue of not understanding questions and statements and his halting and confused communication. In addition, Permittee exercised good business judgment by working with an advisor to help prepare the documents for the Commission.

32. Experience with the Commission indicates that disclosing the criminal history of Permittee on the application would not have been cause for a denial under the original permit application. The Commission expects full, complete answers to all questions in the applications for a permit and or renewal of a permit but a review of the records in this permit does not lead to the conclusion that a denial of the renewal is appropriate,

31. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code §7.1-1-2-2; §7.1-2-3-9.

2. The Renewal Application was properly submitted pursuant to Ind. Code §7.1-3-1-4 and §7.1-3-19-1 et seq.

3. The Commission is authorized to act upon proper application. Id.

4. The Hearing Judge may take judicial notice of the Commission's file relevant to a case, including the transcript of proceedings and any exhibits before the local board. 905 IAC 1-36-7(a).

5. The Hearing Judge conducted a de novo review of the appeal on behalf of the

Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7; see also Ind. Code § 4-21.5-3-27(d). In a hearing de novo, new evidence may be submitted by the Applicant and remonstrators.

6. The findings herein are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. Id.

7. The Commission may reverse a Local Board's action in denying an application for renewal of a permit only if it finds that the Local Board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code §7.1-3-19-11.

8. In determining whether to renew a permit, the Commission may only consider the Permittee's reputation and character, whether the permit premises has become a public nuisance, or whether criminal offenses have taken place at the permit premises. 905 IAC 1-27-1; 905 IAC 1-27-2; 905 IAC 1-27-3; 905 IAC 1-27-5.

9. There is no evidence that the Permit Premises has become a public nuisance or that criminal offenses have taken place at the Permit Premises.

10. In determining whether to award a permit renewal as to the Permittee's reputation and character, the Commission may "consider the esteem in which the person is held by members of his community." 905 IAC 1-27-1.

11. A renewal application may not be denied without affording the Permittee the opportunity to be heard by the Local Board. Local Board Handbook (Rev. August 2023) at p.8.

12. If the application is denied, the Local Board must note the reasons for denial on the record. The Commission will reject a Local Board recommendation if the reasons for denial are not in accordance with the law. Local Board Handbook (Rev. August 2023) at p.7.

13. The Hearing Judge finds, and recommends to the full Commission, that the findings and recommendation to deny the renewal application of the Permittee is an abuse of discretion because it is not supported by substantial evidence.

14. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

VI. RECOMMENDATION

A permit renewal can be denied for only three (3) reasons, as set out above. As applied to the Permit at issue, the Local Board did not all state permissible reasons for the denial. Moreover, because of his obvious limitations on communication of the English language the Local Board hearing was not conducted in a manner to afford Mr. Cristobal a full opportunity to be heard. First, a proposal that Mr. Cristobal be allowed a continuance to seek representation by counsel was refused when that option was within the Local Board's discretion and, second, a Local Board member's proposal for the one-year renewal was disregarded and not called for vote. Finally, the record does not show that the fact that the Applicant had disclosed Mr. Cristobal's past convictions and provided those records with the Renewal Application was made known to the Local Board members.

As to Mr. Cristobal's reputation and character, Applicant presented convincing evidence through the testimony of witnesses Thomas Orman and Han Chong, each of whom have known Mr. Cristobal for many years, that Mr. Cristobal is held in high esteem by members of his business communities and is of good moral character. Mr. Cristobal also testified under oath that any failure to disclose the past convictions was a mistake, the result of a misunderstanding and not intentional. He likewise testified about his community involvement and support. No witnesses testified in contravention to this evidence.

While the basis for the Local Board's decision to deny the permit renewal are not entirely clear because the permissible reasons for denial were not clearly and specifically stated on the record, the denial was arguably based on a determination regarding Mr. Cristobal's reputation and character for failure to disclose information about his criminal record. Substantial evidence of reputation and character at the Appeal hearing was presented by the Permittee and in favor of Mr. Cristobal's reputation and character. For the reasons stated above, the denial of the Renewal Application was not supported by substantial evidence or not in accordance with the law.

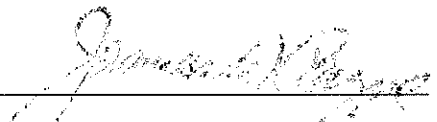
To clarify the issues presented in this permit renewal and hearing, the Commission expects and requires that all questions on the original permit application, subsequent renewals and all documents

submitted to the Commission be answered fully, completely and truthfully. The failure to do that may in every situation result, per se, in a denial of the original application and any subsequent renewals.

This requirement for complete and honest answering of all questions applies to all applicant's attorneys, assistants of attorneys, or preparers who hold themselves out as able and qualified to assist in the preparation of Commission applications and documents. Everyone holding themselves out as a professional capable assisting in the filling out the Commission forms must fully and completely explore the questions and proposed answers to the questions so the Commission may rely on the thoroughness and truthfulness of all information on the documents.

THEREFORE, IT IS RECOMMENDED that the decision of the Owen County Local Board and the Commission to deny the renewal application for Toremac LLC dba Papi Chulos Restaurant and Cantina, under Permit Number RR60-39184, is reversed and the application of Toremac LLC for the renewal of a beer, wine, and liquor retail permit in an incorporated area, be APPROVED.

All of which is stated this 31st day of January, 2024


James W. Payne, Hearing Judge, ATC

Approved this 20th day of February, 2024.



JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



MARJORIE MAGINN, COMMISSIONER



MARK A. JONES, COMMISSIONER