

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
CHARAFA D. SALIOU)	
d/b/a HOOKA LOUNGE CALI BOGALOO)	PERMIT NO. RR49-24057
3671 WEST 86TH STREET)	
INDIANAPOLIS, IN 46268)	
)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

Charafa D. Saliou d/b/a Hooka Lounge Cali Bogaloo, 3671 West 86th Street, Indianapolis, Indiana 46268, permit number RR49-24057 (Applicant), is the Applicant for transfer of a type 111¹ Alcohol and Tobacco Commission (ATC or Commission) permit. The application was assigned to the Alcoholic Beverage Board of Marion County (Local Board). The Local Board held a hearing on August 6, 2012, and voted 4-0 with respect to this application. On September 18, 2012, the Commission voted to deny the application at its regularly held meeting.

On October 9, 2012, the Applicant filed a request for appeal hearing, and the matter was assigned to the Hearing Officer Melissa Coxey (Hearing Officer). The matter was set for hearing on March 25, 2013, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Officer also took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and law at

¹ Beer and wine retailer in an unincorporated area

issue, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
 - 1. Charafa Saliou, Applicant.

- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 - 1. None.

- C. The following individuals testified before the Local Board against the Applicant in this cause:
 - 1. Chris Schneider, Proprietor of 86th Street Pub;
 - 2. Sergeant Bill Carter, IMPD;
 - 3. Susan Blair, President of the Pike Township Residents Association;
 - 4. Sherrill Shobe; Proprietor of Divine Hair Design;
 - 5. Bennie Shobe, Proprietor of Divine Hair Design; and,
 - 6. Nancy Beals, Drug Free Marion County.

- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 - 1. None.

IV. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 - 1. None.

- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
 - 1. None.

- C. The following individuals testified before the Commission against the Applicant in this cause:
 - 1. Sergeant Bill Carter, IMPD;

2. Nancy Beals, Drug Free Marion County; and,
 3. Mary Walker, MCANA.
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
1. Letter of opposition from Dr. Angelo M. Julovich;
 2. Letter received by neighboring property owners regarding application;
 3. Business entity report from Indiana Secretary of State; and,
 4. Email from property manager of permit premises.

V. FINDINGS OF FACT

1. Charafa D. Saliou, d/b/a Hooka Lounge Cali Bogaloo, 3671 West 86th Street, Indianapolis, Indiana 46268, permit number RR49-24057, is the Applicant for transfer of a Type 111 permit. (ATC File).
2. This permit was previously operated by Gladys Botina. Renewal of the permit was denied by the Commission on April 17, 2012. (ATC File).
3. Gladys Botina is not of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (ATC File).
4. Applicant filed a manager's questionnaire with the Commission on May 25, 2012. (ATC File).
5. Since May 25, 2012, Gladys Botina was still operating the business. (Local Board Hearing).
6. Patrons from permit premises create havoc in parking lot by engaging in conduct such as vandalism, loitering and fighting. (Local Board Hearing; ATC Hearing).
7. Patrons of businesses in close proximity to the permit premises are frightened and intimidated by patrons of the Applicant. (Local Board Hearing).

8. Six (6) persons appeared at the Local Board Hearing to remonstrate against the issuance of this permit. (Local Board Hearing).

9. The Local Board voted 4 to 0 to recommend denial of the Application. (Local Board Hearing).

10. Three (3) persons appeared at the ATC Hearing to remonstrate against the issuance of this permit. (ATC Hearing).

11. Remonstrators presented evidence to indicate that the Applicant is not of good moral character and of good repute in the community. (Local Board Hearing; ATC Hearing).

12. The Applicant failed to appear at the ATC Hearing; therefore, he failed to present any evidence to indicate he is of good moral character and of good repute in the community. (ATC Hearing).

13. The weight of the evidence indicates transfer of the Permit should be denied. (Local Board Hearing; ATC Hearing).

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

VI. CONCLUSIONS OF LAW

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

2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.

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

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

5. The Hearing Officer conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing and a review of the record and documents in the ATC file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

7. Remonstrators need not demonstrate that they would be personally aggrieved or adversely affected by the issuance of the permit to remonstrate at the Local Board Hearing or the ATC Hearing. A remonstrator is subject to the “aggrieved or adversely affected” requirement only if he or she wishes to become a “party” to seek administrative review of the Local Board’s decision. *Ind. Ass’n of Beverage Retailers, Inc.*, 836 N.E.2d at 258 (holding persons may remonstrate at a hearing even though they lack standing to pursue administrative or judicial review.)

8. The Commission shall not issue a permit if the Applicant is not of good moral character and of good repute in the community. 905 IAC 1-27-1.

9. The Commission shall follow the recommendation of a majority of the members of a local board to grant or deny an application unless, after the commission’s review, the commission determines that to follow the recommendation would be (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.

10. The recommendation of the Local Board was based on substantial and reliable evidence. Ind. Code § 7.1-3-19-11.

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

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Marion County Local Board resulting in a 4-0 vote concerning the application for the permit number RR49-24057 was supported by substantial evidence, was not arbitrary and capricious, or otherwise not in accordance with law and the Alcohol and Tobacco Commission should deny said application. The application of Charafa D. Saliou, d/b/a Hooka Lounge Cali Bogaloo, 3671 West 86th Street, Indianapolis, Indiana, 46268 for the Type 111 permit was insufficient and the permit applied for herein is DENIED.

DATE: April 12, 2013


Melissa L. Coxey, Hearing Officer