

**CITY OF MINNEAPOLIS
CITY COUNCIL
PUBLIC SAFETY & REGULATORY SERVICES COMMITTEE**

In the Matter of the Application for a Class A On-Sale
Liquor License with Sunday Sales Submitted by
JenRich, Inc. d/b/a Whispers

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION FOR
ADVERSE LICENSE ACTION**

This matter came on for a license hearing on Wednesday September 12, 2007 at the regularly-scheduled meeting of the Public Safety & Regulatory Services Committee of the Minneapolis City Council. The license hearing was called to consider the Findings of Fact, Conclusions of Law and Recommendation submitted by Administrative Law Judge Kathleen D. Sheehy on August 15, 2007 relevant to the application for a Class A On-Sale Liquor License with Sunday Sales submitted by JenRich, Inc. d/b/a Whispers, to be located at 418 3rd Avenue North in Minneapolis, Minnesota. The License Applicant, JenRich, Inc. and Jennifer Ann Wise, was represented at hearing by attorney Mark J. Kallenbach, Esq. of 2260 Ridge Drive, Suite 13, Minneapolis, MN 55416. Assistant Minneapolis City Attorney Joel Fussy appeared on and behalf of the City of Minneapolis Business Licensing Division.

Based upon the record as forwarded to the Committee by the State of Minnesota Office of Administrative Hearings as well as the arguments presented to the Committee in hearing, the Committee hereby makes the following:

FINDINGS OF FACT

1. At the April 18, 2007 meeting of the Public Safety & Regulatory Services Committee this matter was referred to the State of Minnesota Office of Administrative Hearings for purposes of convening an administrative hearing regarding the submitted license application. On April 27, 2007 the full Minneapolis City Council approved the referral.

2. The administrative hearing process was initiated pursuant to a Notice of and Order for Hearing dated May 25, 2007. Administrative Law Judge (hereinafter “ALJ”) Kathleen D. Sheehy was assigned to preside over the matter, OAH Docket No. 3-6010-18054-6.

3. The Notice of and Order for Hearing alleged that good cause exists to deny the liquor license application submitted by JenRich, Inc. and Jennifer Ann Wise and recommended denial of such application. The Notice further alleged that the public interest would not be served by granting the requested liquor license.

4. An extensive administrative hearing was held in this matter in front of ALJ Sheehy on July 16, 2007. The License Applicant—JenRich, Inc. and Jennifer Ann Wise—was present at the administrative hearing and represented by attorney Mark Kallenbach. Joel Fussy, Assistant Minneapolis City Attorney, appeared for and behalf of the Business Licensing Division of the City of Minneapolis.

5. ALJ Sheehy issued her Findings of Fact, Conclusions of Law and Recommendation (hereinafter “report”) on August 15, 2007.

6. ALJ Sheehy correctly found and concluded that License Applicant Jennifer Wise is and remains married to Richard Wise and that the married couple share integrated business interests in the operation of the currently-existing 418 Club (a/k/a Whispers). The 418 Club currently operates at the site as an adult entertainment facility with food and tobacco licenses but without any class of liquor, beer or wine license. The establishment has, over the past number of years, been operated under the auspices and control of both Richard Wise and his wife Jennifer Wise through two corporate structures—MGA Susu, Inc. and JenRich, Inc.—which both spouses have at varying times acted as officers of and held business interests therein. Although Jennifer Wise and JenRich, Inc. currently hold no paper interest in

MGA Susu, Inc. (which currently holds the various business licenses under which the 418 Club operates), ALJ Sheehy reasonably determined that the Applicant's contention that she and JenRich, Inc. should be considered a separate entity from the 418 Club and MGA Susu "unpersuasive." Jennifer and Richard Wise are spouses with shared financial and personal interests—direct and indirect—in the operation and success of the 418 Club and its application for upgraded license status to include beverage alcohol service. Both have been involved for multiple years in the operation of the establishment to varying degrees, inclusive of managerial services, bookkeeping services, kitchen work and physical presence. Although Richard Wise may have been more directly quantitatively and qualitatively responsible for the history of operations at the 418 Club, it is indisputable that his wife was also heavily involved throughout multiple years of operation at the establishment in addition to possessing an inherently-integrated interest in the past, present and future operation of the club. Furthermore, Mr. Wise has participated in the current license upgrade application process inclusive of attending several meetings with city staff and hearings in the matter. The record indicates and supports the reasonable conclusion of the ALJ that the 418 Club's past history of operations is entirely relevant to the consideration of the instant license application.

7. ALJ Sheehy concluded that the City of Minneapolis **did establish** the existence of the following business license violations and factual assertions during the period in which the establishment was operated by Richard Wise, his wife Jennifer Wise and/or their corporations MGA Susu, Inc. and JenRich, Inc., and therefore recommended that the City **DENY** the license application:

- Significant, although not unanimous, neighborhood and community opposition as reflected in the public hearing which expressed concerns that the addition of liquor service to the existing facility

would exacerbate already heightened levels of criminal and nuisance activity associated with the establishment and the surrounding area.

- Repeated violations of the Minneapolis smoking ban ordinance as upheld through the administrative enforcement and hearing process. The first upheld citation was never appealed and therefore its determination is vested and final while the second citation has been duly appealed to the Minnesota Court of Appeals. Although Mrs. Wise was not a direct party to the second citation, it remains clear that Mr. and Mrs. Wise operated the establishment with a coordinated and shared purpose acting as a single business unit and it is clear that their purpose is to continue to operate the business as a married couple regardless of any corporate veils. Furthermore, Mrs. Wise's liquor license application notes that the proposed establishment will do business under the name Whispers as opposed to the 418 Club. Evidence in the record indicates that the establishment already was holding itself out as Whispers and advertised Whispers as operating an "indoor smoking lounge." The operation of such a smoking lounge is clearly violative of Minneapolis ordinance and is attributable, at least in part, to Mrs. Wise and her proposed operation of Whispers. The overlapping and commingling of the existing 418 Club facility and the proposed Whispers licensed liquor establishment is additional evidence of the shared and integrated business practices of the two spouses.
- An extensive history of a disproportionate amount of criminal and nuisance activity occurring at or with a direct nexus to the operation of the establishment, including numerous instances of assaults and criminal activity between dancers and management of the club. Poor managerial practices contributed to this high volume of police incidents, inclusive of the employment of a Level One convicted sex offender as a manager of the club for a period of time. Although the applicant disputes the recency of this individual's employment with the club, it is undisputed that he was actively managing the club for a significant period of time and that he was involved in multiple incidents at the club necessitating police intervention.
- February and March 2007 investigations which indicated an inappropriate level of sexual contact occurring between patrons and dancers at the club in violation of Minnesota statutes. Although the applicant claims that in-house surveillance cameras did not capture these incidents, the testimony and documentation of the investigators was found to be credible by the ALJ. Although criminal charges were not filed as a result of this investigation, the evidentiary burden applicable to this license action as contrasted with the burden applicable to a criminal proceeding is lessened and this activity

reasonably evidences a lack of overall managerial oversight at the establishment.

8. Pursuant to applicable law and procedure, and as described on page 11 of the ALJ report:

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council.

9. The City of Minneapolis served a proper Notice of Committee Hearing upon the License Applicant and its attorney of record dated August 17, 2007 which notified the parties of the September 12th License Hearing and additionally provided notification of the right to file written exceptions to the ALJ report by filing such with the City Clerk's Office.

10. The License Applicant and its counsel received all notifications regarding the license hearing and their right to file written exceptions to the Findings and Conclusions of the ALJ report. The License Applicant, through its counsel, properly filed written exceptions with the City Clerk on August 27, 2007. This Committee, in hearing, heard argument from the License Applicant's counsel regarding such exceptions and hereby finds that the meticulous, detailed and well-reasoned report of the ALJ is accurate, prudent and balanced. Specifically, this Committee finds that the exceptions noted by the License Applicant generally do not allege factual errors by the ALJ but rather make argument regarding the Applicant's overriding theory that the prior and current operations of the establishment should not be considered in relation to the current license application. For the reasons enumerated by the ALJ and noted above, this Committee agrees with ALJ Sheehy that it is "reasonable and

appropriate” to consider the history of the establishment as Mrs. Wise has had an ongoing direct and indirect interest and level of participation in the operation of the club.

11. The quantity, severity, scope and repeated nature of the established license violations and operational history of the 418 Club are indicative of a poorly-managed licensed business which has had a deleterious impact upon its community while consuming a disproportionate and unreasonable amount of City enforcement and regulatory resources. This Committee, as with ALJ Sheehy, is persuaded that the granting of a liquor license for this establishment at this time—even if technically in the name of Mrs. Wise and not her husband—would not serve the public interest and is satisfied that the extensive record amply supports such a conclusion for the numerous, compounding and alternative reasons discussed in the ALJ report.

CONCLUSION

1. The Committee hereby **ADOPTS** and **INCORPORATES** the Findings of Fact, Conclusions of Law and Recommendation as issued by Administrative Law Judge Kathleen D. Sheehy and thereby determines that good cause exists to deny the application of JenRich, Inc. for a Class A On-Sale Liquor License with Sunday Sales. Good cause exists based on the ordinances, charter provisions, statutes and case law cited to in the Notice and Order for Hearing and the ALJ report.

RECOMMENDATION

That the Minneapolis City Council **DENY** the application for a Class A On-Sale Liquor License with Sunday Sales submitted by JenRich, Inc. d/b/a Whispers, to be located at 418 3rd Avenue North in Minneapolis, Minnesota.