

LINDEN BAR AND LIQUORS, INC.
a Maryland Corporation
904 West North Avenue
Baltimore, MD 21217

Plaintiff

v.

MAYOR AND CITY COUNCIL
OF BALTIMORE
SERVE ON:
GEORGE A. NILSON, City Solicitor
101 City Hall
100 North Holliday Street
Baltimore, MD 21202

and

FREDERICK H. BEALEFELD, III,
Police Commissioner
Baltimore City Police Department
601 East Fayette Street
Baltimore, MD 21202

Baltimore City Police Department
SERVE ON:
FREDERICK H. BEALEFELD, III,
Police Commissioner
601 East Fayette Street
Baltimore, MD 21202

SERVE ADDITIONAL COPY ON:
DOUGLAS F. GANSLER,
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202

Defendants

* * * * *

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Linden Bar and Liquors, Inc., by Peter A. Prevas, its attorney files this Complaint for Declaratory and Injunctive Relief against the Mayor and City Council of Baltimore and Frederick

H. Bealefeld, III, Police Commissioner of the Baltimore City Police Department and the Baltimore City Police Department seeking a declaration that the Baltimore City "Padlock Law," Baltimore City Code Article 19 §43-1 *et seq.* is facially unconstitutional and as grounds states: (1) Plaintiff, Linden Bar and Liquors, Inc. is a Maryland Corporation, active and in good standing that operates a liquor store/tavern at 904 West North Avenue, Baltimore, MD 21217.

2. By letter dated July 29, 2008, from Defendant, Frederick H. Bealefeld, III, Commissioner of Baltimore City Police Department to Mr. Chang Min and Ms. Mun Sik Haberkam, the Licensees under the license owned by Plaintiff, Linden Bar and Liquors, Inc., Plaintiff was given notice of a padlock hearing for "Linden Bar and Liquors," 904 West North Avenue, Baltimore, Maryland 21217. A copy of the notice is attached hereto as Exhibit No. 1. The notice advises of a hearing on Wednesday, August 13, 2008 before the Police Commissioner or his designee. The notice further alleges nine (9) incidents involving crimes of violence and possession/distribution of CDS at or near the premises and that the Police Commissioner has instituted administrative proceedings to determine whether plaintiff's establishment is a nuisance and as a result whether to padlock the business "for up to a period of one year." A copy of Baltimore City Code Article 19 §43-1 *et seq.* "The Padlock Law is attached hereto as Exhibit No. 2. A copy of the Police Commissioner's Rules and Regulations for padlock hearings is attached hereto as Exhibit No. 3.

3. Plaintiff is entitled to bring this action under the Maryland Uniform Declaratory Judgments Act, Courts and Judicial Proceedings Article §3-406 since it is a "person" whose rights, status or other legal relations are affected by a municipal ordinance. Pursuant to Maryland Courts and Judicial Proceedings Article §3-405(b) the Mayor and City Council of Baltimore is being made a party to this action that challenges the validity of an ordinance enacted by it. Furthermore, since

the Police Commissioner of the Baltimore City Police Department have been mandated to administer the ordinance, the Police Commissioner is also being named as defendant in his official capacity since the Police Commissioner is authorized to delegate authority to hear such administrative matters the Baltimore City Police Department is also being named as a defendant.

4. Baltimore City Code Article 19-3 §43-3 states:

“(a) Commissioner’s basic authority.

On determining that a public nuisance exists, the Commissioner may:

- (1) order the discontinuance of the public nuisance in the premises where the public nuisance exists; or
- (2) order the closing of the premises to the extent necessary to abate the nuisance.”

In determining whether a public nuisance exists, the Commissioner may: (1) order the discontinuance of the public nuisance in the premises where the public nuisance exists; or (2) order the closing of the premises to the extent necessary to abate the nuisance.” Baltimore City Code Article 19 §43-4 through 43-6 provide for a quasi judicial administrative hearing to be heard by the Police Commissioner or his designee.

5. The Baltimore City Police Commissioner and the Baltimore City Police Department are created by State Law and are not an agency of the City of Baltimore. The public local laws applicable to Baltimore City in Subtitle 16 create the Baltimore City Police Department. A copy of Subtitle 16 of the public local law are attached hereto as Exhibit No. 4. Section 16-7 provides for the powers and duties of the Police Commissioner. Nowhere in these powers and duties does the Police Commissioner have the legal authority to sit in a quasi judicial capacity to determine Padlock Law cases. Since the Police Commissioner and the Baltimore City Police Department are creations of state law, only the state legislature has the power to enact legislation enabling the Police Commissioner to hear and decide such administrative actions. Furthermore, even if the State

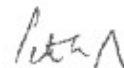
legislature had enacted enabling legislation, such a scheme wherein the Baltimore City Police Department serves as both the prosecutor and the judge denies procedural due process.

6. Additionally, the Baltimore City Padlock Law is facially unconstitutional in that the ordinance denies substantive due process and provides for a taking of property without due process of law and without just compensation in that there is no nexus between the conduct that is deemed a "public nuisance," and the business owner upon whose premises the conduct occurs. In other words, under the ordinance if on two occasions within a twenty-four (24) month period a third party commits a crime of violence on or near the premises or illegally distributes CDS on the premises, without any requirement that the business owner either engaged in the conduct or maintained the premises for the purpose of illegal conduct, the Police Commissioner can order the business closed for a period up to one year. Under the "Padlock Law" a business that is the victim of an armed robbery twice in a twenty-four (24) month period is deemed a public nuisance and subject to padlock for a period of one year.

7. Third, the padlock ordinance is unconstitutional in that is impliedly pre-empted by Maryland Real Property Article §14-120 "abatement of nuisance actions where property used for controlled dangerous substance offenses." Real Property Article §14-120 evidences an intent by the state legislature to occupy the entire field of abatement of nuisance action. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631 A.2d 77 (1993).

8. The Police Commissioner cannot provide a fair hearing in that there is no subpoena power to subpoena witnesses. The police department has provided a form to request police officers but this request does not extend to witnesses who are not within the police department such as Defendants and victims of alleged crimes.

City Council of Baltimore, the Police Commissioner of the Baltimore City Police Department from enforcing the Padlock Law and see that the court grant a temporary restraining order and temporary injunction in joining the Police Commissioner of the Baltimore City Police Department and the Baltimore City Police Department from having a hearing on the charges issued against the Plaintiff that is currently scheduled for August 13, 2008 and (c) for such other and further relief as the nature of Plaintiff's claim may require.



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