

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

1770 W. Greenleaf Corp.)
Ignacio Estrada, President)
Licensee/Suspension)
for the premises located at)
1770 West Greenleaf) Case No. 13 LA 8
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING

The licensee received notice that a hearing would be held in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other City of Chicago licenses issued to it for the premises located at 1770 West Greenleaf. The charges at this hearing were:

1. That since on or about February, 2011, through April, 2012, the licensee by and through its agent, failed to adequately implement and maintain its Late Hour Exterior Safety Plan, to wit, failed to regularly attend CAPS meetings, in violation of Municipal Code of Chicago 4-60-130(f).
2. That on or about April 10, 2012, the licensee by and through its agent, failed to post, in the licensed establishment, in a conspicuous place directly next to the liquor license certificate, its exterior safety plan, in violation of Rule 10 of the Local Liquor Control Commission's Rules and Regulations for Late Hour Licenses as promulgated under Municipal Code of Chicago 4-60-025.

This matter proceeded to hearing before Deputy Hearing Commissioner Robert Emmett Nolan. He entered Findings of Fact that the City proved each of those charges and that, based on the totality of the circumstance, including the licensee's prior record, the appropriate punishment

was a 14-day suspension. The Local Liquor Control Commissioner adopted the Findings of Fact of the Deputy Hearing Commissioner. The licensee filed a timely appeal with this Commission.

A synopsis of the relevant trial testimony and of the exhibits in evidence will help in an understanding of this decision.

Sergeant Giambrone has been assigned to do liquor license inspections in Area North Patrol for ten years. On April 10, 2012, he went to Gallagher's Pub Bar at 1770 West Greenleaf to do a license investigation. This inspection was done at the request of the 24th District Commander. He arrived about 10:15 p.m. and the bar was open. There were two security officers in the front and a woman named Yolanda behind the bar. The witness spoke with Leticia Estrada, the owner. The license inspection revealed that the liquor licenses, including a late hour license, were posted on the wall behind the bar. The witness did not see any late hour exterior safety plan posted next to the licenses or posted in a conspicuous place. He asked the owner and the security officers to produce the plan but all that was produced was an unapproved copy of a late hour plan that was not retrieved from the wall where the licenses were posted.

Sergeant Giambrone explained the plan produced did not have the "approved" seal on it. He did no further investigation into whether there was an approved plan. He did not know where this unapproved plan came from.

Robert Kane is a Chicago Police Sergeant assigned to Community Policing/Administration in the 24th District. In that position, he maintains and attends the community policing meetings for the nine beats in the 24th District. These CAPS meetings allow the police and the community to address and try to solve issues related to that particular beat. Gallagher's Tavern at 1770 West Greenleaf is in Beat 2423. Attendance at beat meetings is recorded by sign-in sheets located where people first enter the location of the meeting. For this beat, the meetings are held in the cafeteria of the Chicago Math and Science Academy at 7212 N. Clark. The sheets are collected by the police after the meetings are completed and are created and maintained by a person having knowledge of the information contained therein and are kept in the ordinary course of business. The witness identified City's Group Exhibit 4 as 15 pages of sign-in sheets for Beat 2423 meetings from February 16, 2011 through April 26, 2012. No one from the licensee signed in or attended these meetings. Kane identified City's Exhibit 5, in evidence, as a signature sheet for the July 2012, Beat 2423 meeting, signed by Leticia Vargas for 1770 West Greenleaf. Sergeant Kane opined that with respect to the documents in Group Exhibit 4, in evidence, no one from 1770 West Greenleaf attended these monthly beat meetings.

Sergeant Kane admitted he was not at every CAPS meeting and his statement as to whether anyone from 1770 attended the meetings was based on the sheets. He did not bring the originals because he was subpoenaed for copies. On the days he did not attend the meetings, he cannot say the sign-in sheets were on the desk. He did not personally attend any of the 2011 meetings and does not know if anybody told the audience that people in a business with a safety plan must sign in on the logs. He did not have access to sign in sheets for 2008 through 2010 and does not know if the Estradas attended those meetings. He personally picked up the April

2012, sign-in sheet and either Officer Blair or Officer Moore picked up the other sheets. None of the sheets have ever been lost. He was at the April 2012 meeting and did make an announcement for businesses to sign-in if they are required to do so because the records might be requested by Business Affairs.

By agreement of the parties, City's Exhibit 6, which is the approved late hour safety plan for 1770 West Greenleaf was allowed in evidence. In response to Question 3, the licensee included these sentences:

The manager will attend local CAPS meetings at least once a month.
Other personnel will also be encouraged to attend CAPS meetings.

Leticia Vargas Estrada is the president of Greenleaf Corporation and she works there and runs the place. She was present when the police came to the establishment on April 10, 2012 at about 8:30 p.m. The police asked for the safety plan which was on the wall where the licenses are posted. The officer reviewed the plan and said it had not been approved by the City. The witness reviewed City's Exhibit 6 and identified it was the approved safety plan she gave to the police. The police then started to write a ticket for an unapproved safety plan. She has had the approved plan since 2008.

The witness stated she went to CAPS meetings from 2008 through 2010 but missed a couple of meetings in 2001, probably two meetings. She had family problems in Mexico. She did not sign in every time she went to CAPS meetings and in the past no one told business

owners should sign in. She now signs in because she received a paper telling her to sign in at every meeting.

City's Exhibit 7, which lists prior dispositions, was allowed in evidence over the objection of the licensee.

RELEVANT STATUTES, RULES, AND REGULATIONS

4-60-130(f) – Municipal Code of Chicago

Every application for a late- hour privilege must be accompanied by an exterior safety plan meeting the requirements of this subsection (f). In addition, any person who has obtained a late-hour privilege prior to this effective date of this amendatory ordinance must submit to the department of business affairs and licensing an exterior safety plan meeting the requirements of this subsection (f) no later than January, 2008... The failure to adequately implement or maintain an adequate exterior safety plan under this subsection (f) shall be grounds for suspension or revocation of the late-hour privilege under section (i), or for suspension or revocation of the license for the premises.

4-60-205 – Municipal Code of Chicago

The director of business affairs and licensing and the local liquor control commissioner shall have the authority to promulgate rules and regulations necessary to implement the requirements of this chapter.

RULES AND REGULATIONS FOR LATE HOUR LIQUOR LICENSE

Rule Number 3 – The exterior safety plan required by subsection (f) of Section 4-60-130 shall be implemented by the licensee between the hours of 1:00 a.m. and until one hour after the licensed establishment is closed for business.

Rule Number 9(e) – The licensee or at least one person authorized by the licensee to provide security at the licensed establishment attends each Chicago Alternative Policing Strategy (CAPS) beat community meetings held in the police district where the licensed establishment is located. The licensee shall maintain written records identifying the date and time of each such CAPS beat community meetings and the name of the person attending such CAPS beat community meeting; and

Rule Number 9(f) – The licensee maintains on file, for a period of at least two years, any proof of compliance, certification, log or records required under this rule. Such documents shall be

made available, upon request, for inspection by the police department, local liquor control commissioner or other authorized government personnel.

Since this case deals with an appeal of a suspension of a liquor license, this Commission is limited to the addressing these three questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in light of the whole record.

In answering those questions, it is not the function of this Commission to revisit the question of credibility of the witnesses. The Deputy Hearing Commissioner found specifically that the testimony of Sergeants Giambone and Kane was credible and believable. Based on those findings of credibility, the Deputy Hearing Commissioner made specific findings of fact that the licensee failed to regularly attend CAPS meetings. There is substantial evidence in the record as a whole for these findings to be affirmed.

The next issue is whether those findings support the decision that the licensee violated 4-60-130 (f) of the Municipal Code of Chicago by not regularly attending CAPS meetings and that the licensee violated Rule 10 of the Local Liquor Control Commission's Rules and Regulations for Late Hour Liquor Licenses.

4-60-130 (f) of the Chicago Municipal Code does not set out a requirement that late hour licensees regularly attend CAPS meetings or that the licensee attend CAPS meetings. The

licensee, in Section 3 of this Late Hour Exterior Safety Plan, stated that “the manager will attend local CAPS meetings at least once a month.” That statement in its own proposal imposes on the licensee the obligation for the manager to attend CAPS meetings and the failure to do so would be a failure to implement an obligation of the licensee’s exterior safety plan. The City has met its burden in that there is substantial evidence in the record as a whole to support the finding on this charge.

The Rules and Regulations in evidence apply to licensees who hold late hour privilege liquor licenses and in fact they define a “licensee” to mean any person holding a late hour privilege liquor license. Rule 3 specifically states that the exterior safety plan required by the 4-60-130 (f) of the Municipal Code shall be implemented between 1:00 a.m. and until one hour after the licensed establishment is closed for business. Rule 5 also sets out that timeframe in which a late hour licensee is required to perform certain duties. Rule 8 dealing with surveillance cameras sets out time frame of 1:00 a.m. and 6:00 a.m. Since all these rules have a 1:00 a.m. starting time for the implementation of the exterior safety plan, it is only logical that the posting requirement of Rule 10 as part of the exterior safety plan commences at 1:00 a.m. and is required until one hour after the premises closed. Since the failure to post the exterior safety plan occurred at 10:15 p.m., there would not be a violation of Rule 10 since its requirements were not in effect until 1:00 a.m. While there is substantial evidence to establish there was no posted exterior safety plan at 10:15 p.m. that does not violate Rule 10. The decision of the Deputy Hearing Commissioner on this count is reversed.

The next issue to be addressed is whether the 14-day suspension is supported by the findings. At the outset, it must be point out that the Deputy Hearing Commissioner's recommendation of the 14-day suspension was "based on the totality of the circumstances." For whatever reason, he did not indicate that the 14-day suspension was concurrent on each charge. Since this Commission has reversed one of the findings that made up the "totality of the circumstances", it is difficult for this Commission to try to interpret whether the Deputy Hearing Commissioner meant for his recommendation to be concurrent on both counts. This is now another case that shows why this Commission should have the power to remand for at least clarification purposes.

Another issue not addressed by the Deputy Hearing Commissioner is whether the fourteen day suspension should be only for the late hour license. While the Municipal Code and Rule 10 seem to give the Local Liquor Control Commissioner the ability to suspend all liquor licenses, it can be argued the Municipal Code allows for only a suspension of the late hour privilege. If this interpretation is correct, the Deputy Hearing Commissioner should address those questions in his recommendation to the Local Liquor Control Commissioner. This is another reason this matter should be remanded for clarification.

Without the power to remand, this Commission is faced with the option of outright reversal of the fourteen day suspension or affirming it despite the fact that it is unclear whether the fourteen day suspension was concurrent on each charge. Since this Commission can only reverse outright if the discipline imposed by the Local Liquor Control Commission is so arbitrary and capricious that it cannot stand and since this establishment has past discipline not related to

its late hour license, this Commissioner cannot say the fourteen day suspension can be reversed. This Commissioner would not have imposed a fourteen day suspension of the licenses for the failure to attend beat meetings and further believes any such discipline should be only on the late hour license under the facts of this case. A reviewing court may agree and it can enter appropriate orders.

The fourteen day suspension is affirmed.

COMMISSIONER SCHNORF'S CONCURRING OPINION

After reviewing the material, I concur with Chairman Fleming, and add only that not only should the LAC have the authority to remand, it should have, as does the State Commission, the authority to modify. This penalty is excessive, though not so egregiously that it demands reversal, and I would not impose it if the decision was mine. Again, especially in those situations where the hearing officer had not made clear the decision on a penalty as it relates to multi-offense charges and where LAC reverses one or more of those charges, LAC is left with only two inadequate choices: affirm an excessive penalty for reduced charges, or reverse even though some charges are affirmed and warrant some, but lesser, penalty.

COMMISSIONER O'CONNELL'S DISSENTING OPINION

This Commissioner agrees with the Chairman that this case is yet another example of the need on the part of this Commission for the authority to remand. The Deputy Hearing Commissioner clearly did not clarify that this penalty was concurrent on all charges. There is also a serious question for this Commissioner whether or not this penalty should only apply to

the late hour license. Often when expressing the need for authority to remand, this Commissioner will reluctantly affirm the local commissioner. However, the questions remaining in this case leads this Commissioner to find a 14-day suspension is arbitrary and capricious and should be reversed.

Donald O'Connell, Member

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the Appellant for FOURTEEN (14) days is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court the Petition for Rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: July 10, 2014

Dennis M. Fleming
Chairman

Stephen Schnorf
Member