

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

2362, Inc.)
Domingo Macedo, President)
Licensee/Revocation)
for the premises located at)
2360-62 North Clybourn) Case No. 09 LA 23
)
v.)
)
Department of Business Affairs & Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The licensee received notice that a hearing was to be held with respect to disciplinary proceedings regarding the City of Chicago retail liquor license and all other City of Chicago licenses issued to the licensee for the premises located at 2360-62 N. Clybourn, Chicago, Illinois. It was alleged that on April 6, 2008, the licensee, by and through its agents, sold, permitted to be sold or gave away alcoholic liquor between the hours of 3:00 a.m. and 11:00 a.m. on a Sunday in violation of Section 4-60-130(a), of the Municipal Code of Chicago.

This matter proceeded to hearing at the Local Liquor Control Commission before Deputy Hearing Commissioner John F. Lyke on October 6, 2008, and January 12, 2009. The licensee was represented by attorney Michael Buckley Bolan and the Local Liquor Control Commission was represented by the Corporation Counsel's office.

Subsequent to the completion of the hearing, Deputy Hearing Commissioner Lyke

entered Findings of Fact that the City proved the charge and recommended the licensee's licenses be revoked. Norma Reyes, the Commissioner of the Department of Business Affairs and Consumer Protection/Local Liquor Control Commission, adopted those findings of fact. The licensee filed a timely Notice of Appeal and this matter proceeded to oral argument before this Commission on May 21, 2009. The licensee was represented by attorney Francis Ostian at oral argument.

Section 4-60-130(a) of the Municipal Code states in pertinent part that:

no person licensed hereunder as a retailer of alcoholic liquor shall sell, permit to be sold, or give away any alcoholic liquor between the hours of 3:00 a.m. and 11:00 a.m. on Sundays.

Since this case deals with a review of an order of revocation by the Local Liquor Control Commissioner it is the function of this Commission to review the propriety of the order of the local liquor control commissioner and to consider these 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;

This Commissioner may only consider evidence in the record of proceedings before the local liquor control commissioner and no new evidence may be admitted or considered.

Sergeant Ralph Egan testified in the City's case in chief and was then later called as a

witness by the licensee. In substance, Sergeant Egan testified he is the entertainment venue sergeant in the 18th District with an assignment to patrol the nightclub and restaurant districts of the 18th District. On April 6, 2008, he was working and visited the location of 2360-62 N. Clybourn to do a license check. It was approximately 3:15 a.m. He had checked his watch for the time prior to entering the premises. He observed on the premises approximately 15 patrons drinking alcoholic drinks and he observed two or three patrons directly receive drinks from the bartender.

The establishment had a food license and a consumption on premises alcohol license. Sergeant Egan did not write down the names of the 15 persons he observed at the location and did not identify what specific person was drinking what specific type of alcohol. He determined the drinks were alcoholic based on the fact the patrons were consuming bottles of beer. The bartender was actively working behind the bar pouring and serving drinks. The police report does not list the type of alcohol being served. While he saw all the persons inside were drinking he could not recall if anyone paid money. His report does not reflect the bartender served alcoholic beverages to any of the persons described as patrons.

The City also introduced its Exhibit #3, which is the past disciplinary history of the licensee. This history included a voluntary fine of \$1,000 for two incidents which occurred on October 13 and 27 of 2006 with respective case numbers L-06-0555 and L-06-0605. In both of these cases the licensee was charged with operating without a city liquor license, failure to display consumption on premises license and failure to display retail food license. The history

also included a 30-day suspension on August 11, 2007, in case 07-LR-0219 for failure to display consumption on premises license, failure to display retail food license, operating with expired PPA license and keeper of a disorderly house. It was noted that suspension was appealed to the License Appeal Commission in case 08 LA 40. No disposition of that appeal is in this record.

The licensee called Gil Sapir as an expert witness. The gist of this testimony was that one cannot definitely state a substance is alcoholic unless chemical tests are done on the substance.

Counsel for the licensee made argument based on Mr. Sapir's testimony. Since the substances that Sergeant Egan saw the patrons drinking were never inventoried and tested there is insufficient evidence to establish alcohol was served. If this was some type of felony that required proof beyond a reasonable doubt and required strict proof of a chain of custody of the evidence the argument might have merit. In cases of ordinance violations dealing with proof of alcohol the case law does not require such evidence. People v. Isonhart, 259 Ill.App9(1930), People vs. Rhodes, 243 Ill.App3d 201, 612 N.E. 2d536.

Sergeant Egan testified he saw fifteen patrons drinking alcohol after 3:00 a.m. He specifically saw the bartender pouring and serving two or three patrons. Patrons were in possession of beer bottles of Miller Lite. The ordinance does not require proof of a sale of alcoholic beverage. Giving away alcohol after 3:00 a.m. is a violation of the ordinance.

There has been no argument that the Local Liquor Control Commission did not proceed in the manner provided by law. The uncontradicted testimony of Sergeant Egan provided sufficient basis. This Commission found that the findings are supported by substantial evidence in light of the whole record. The order of revocation is supported by the findings.

The revocation of this liquor license issued to 2362, Inc. for the premises at 2360-62 N. Clybourn is affirmed. This Commissioner makes no ruling on the revocation of any other licenses issued to 2362, Inc. by the City of Chicago since it does not have jurisdiction over those licenses.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT 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: October 6, 2009

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member