

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

George Person)
d/b/a Ms. Eva's Grocery/Deli)
Licensee/Revocation)
for the premises located at) Case No. 10 LA 33
807 North Monticello)
)
vs.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF COMMISSIONER O'CONNELL JOINED BY COMMISSIONER SCHNORF

I have reviewed the recitation of facts in this case as set forth by Chairman Fleming and agree with that recitation. However, I think that it is important for this decision to point out certain matters that are not in the record in this case.

While Officer Murphy testified to a conversation with George Person, in which the licensee made an admission to living in Oak Park the last four years, there was no evidence of Officer Murphy or any other City of Chicago investigator conducting a follow-up investigation of this admission. There is no evidence of any surveillance in which George Person was seen entering and leaving the Oak Park address. There is no evidence that Officer Murphy interviewed neighbors at the Oak Park address to confirm that George Person lived there.

The record of this hearing reflects that Officer Murphy made no attempt to find facts that would have confirmed Mr. Person's testimony about 843 N. Monticello. Officer Murphy believed the second floor had apartments but he did not go up to the second or third floor. Specifically, he did not try to investigate Mr. Person's assertion that he lived on the third floor which had two bedrooms, a living room, and a kitchen. The record shows no investigation by Murphy or other city investigators to confirm Person's assertion that he is at 807 N. Monticello everyday and that it is his home to be close to his businesses. No surveillance was done of 807 N. Monticello to determine if Mr. Person stayed at that location.

It is not disputed in the record that Mr. Person was registered to vote from the Monticello address and did vote from that address on the 1996, 2000, 2002, 2004 and 2008 elections. It was not disputed in the record that Person is active in a block club and is an Assistant Pastor at a church a short distance from 807 N. Monticello.

It seems to this Commissioner that the record shows that George Person was a resident of the city of Chicago at all times relevant to this case. He may have had cars registered in Oak Park and may have spent time in Oak Park, but those facts do not seem enough to say Mr. Person was no longer a resident of Chicago.

I do not view this decision as imposing my version of the facts over the factual findings of the hearing officer. I do not disagree with those findings, but feel legally those findings do not support the decision that Mr. Person was not a resident of the city of

Chicago, particularly in light of his undisputed and lengthy voting record in the city of Chicago.

CHAIRMAN FLEMING'S DISSENTING OPINION

The licensee received notice that pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 280, Municipal Code of Chicago, that a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago Liquor license issued to George Person for the premises located at 807 N. Monticello, Chicago, Illinois. The charge against the licensee was that he was ineligible to hold a City of Chicago liquor license pursuant to Title 4, Chapter 60, Section 030 (c) of the Municipal Code of Chicago, to wit: the licensee is not a resident of the City of Chicago.

This matter proceeded to hearing before Deputy Hearing Commissioner John F. Lyke, Jr. He entered Findings of Fact that the licensee is ineligible to hold a City of Chicago liquor license pursuant to Title 4, Chapter 60, Section 030 (c) of the Municipal Code of Chicago, to wit: the licensee is not a resident of Chicago, and further found that the licensee's license should be revoked. The City of Chicago was represented at this hearing by Assistant Corporation Counsel Noel Quanbeck and the licensee was represented by attorney Robert Sharp, Jr. The licensee filed a timely Notice of Appeal with this Commission and oral argument was heard.

Since this is an appeal of a liquor license revocation review by this Commission is limited to the following questions:

- a. Whether the local liquor control commissioner has proceeded in the manner proved 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.

A summary of the evidence presented at the hearing will help to resolve those questions.

Police Officer Robert Murphy has been a Chicago Police Officer for fourteen years and has been assigned to the Organized Crime, Vice Control, Licensing Enforcement Unit for two and a half years. In that capacity he enforces the licensing provisions within the City of Chicago. He was assigned by his supervisor to investigate the possibility that the owner of Ms. Eva's Grocery Store located at 807 N. Monticello was living outside the city of Chicago which would be a residency violation. Eva's Grocery had City of Chicago retail food, packaged goods and over the counter tobacco licenses.

On February 19, 2009, at about 3:35 p.m. Murphy and his partner Officer Cavanaugh went to 807 N. Monticello. The location is a small grocery store. He announced his office and had a conversation with a woman who identified herself as Eva Person, the wife of the owner George Person. In response to his request, she produced a

State of Illinois Identification Card that listed her address at 426 North Ridgeland, Oak Park, Illinois. She called her husband George Person who came to the store.

When Mr. Person arrived he identified himself by showing Officer Murphy an Illinois State ID with the same address as Eva's. That address was 423 N. Ridgeland, Oak Park, Illinois. Murphy and his partner then had a conversation with George Person. In that conversation George Person stated he had owned the establishment for about 15 years. Person also stated the information on his State ID was correct and that he had lived at the Oak Park location for about four years. Person also stated he owned the building the store was in at 807 N. Monticello and that he is at the store everyday.

Murphy reported that as part of his residency investigation he ran the address of 423 North Ridgeland, Oak Park, Illinois through the Assessor's Office. He obtained the pin number which allowed him to obtain information that showed George Person owned the Oak Park property.

Murphy described the 807 N. Monticello building as a brick two or three story flat with Eva's Grocery/Deli on the first floor. He believes the second floor had apartments but he did not go up the second or third floor.

George Person was called as an adverse witness by the City. He has been the owner of Ms. Eva's Grocery and Deli at 807 N. Monticello for 18 to 20 years. He holds a packaged goods liquor license and other licenses as a sole proprietor. He recalled having

a conversation with a police officer on February 19, 2009, and recalled showing that police officer a State ID that he believed had the address of 423 N. Ridgeland, Oak Park, Illinois. Person asserted he does not live at that address but lives on the third floor at 807 N. Monticello. The third floor has two bedrooms, a living room and a kitchen. He has lived there for eighteen years. Person admitted he owned the 423 North Ridgeland, Oak Park, Illinois for about 15 to 18 years as well as several investment properties. His wife Eva and his five children live at the Oak Park property. He does not live with her but does stay and visit the property. He does not recall telling Officer Murphy that he had lived in Oak Park for four years.

Mr. Person admitted that City's Exhibit 3, in evidence, was the registration of his purchase of a 1986 Chevy Capri station wagon. It lists the 423 N. Ridgewood, Oak Park, Illinois as his residence. It also contains language that the person signing, George Person, affirmed that information was correct but Mr. Person stated he did not read that language before signing. Mr. Person also admitted he bought a 1999 Chevy Van and registered that vehicle at the Oak Park address. He bought that vehicle for his wife so that the Oak Park address was in some way correct. Person also admitted that he registered a Chevy Pickup Truck at the Oak Park address in 2007, 2008 and 2009, but he did not live there. Mr. Person stated he owned several vehicles and they were registered in Oak Park for the insurance prices. He added all his vehicles could not be parked in Oak Park.

George Person also testified as a witness in his case in chief. He stated he has resided at 807 N. Monticello for 15 to 18 years. He has been a registered voter for 15 to 18 years and his current registration card shows an address at 807 N. Monticello. The Deputy Hearing Commissioner allowed in evidence Licensee's Exhibit 2, which was a certification from the City of Chicago Board of Elections that as of April 19, 2010, George Person was registered to vote at 807 N. Monticello, Chicago, Illinois. The second page of the exhibit entitled Voter View which reflects voter VRN 019087Z voted in elections in 1996, 2000, 2002, 2004 and 2008. Mr. Person testified he did in fact vote from the 807 N. Monticello address in 1996, 1999, 2000, 2002, 2004 and 2008. He is not registered to vote any place else in the state of Illinois. He has made the 807 N. Monticello location his home because he wants to be close to his businesses in case something happened. He is also an ordained minister and is assistant pastor of New Way of Life Church. He runs a block club and has been part of the community for over 25 years. He repeated that his vehicles are registered at the Oak Park address because of insurance and because his wife and five children live there. He buys his kids cars and insures their cars. He and his wife Eva have been separated for some time but are still friends.

On cross, Person repeated he is not registered at any address other than Monticello. He is an assistant pastor at the New Way of Life Baptist Church located at 5353 W. North Avenue. He preaches every third Sunday, teaches Sunday School and his youth services. His five children live in Oak Park with his wife and are ages 17, 18, 19, 20 and 21.

Eva Person has been separated from George for about 18 or 19 years. Mr. Person comes by the Oak Park residence to visit the children but he does not live at that address. She assists George in running the liquor store but she has several businesses of her own. She runs a daycare center at 7012 W. North Avenue. George specifically purchased the 2005 Chevy for their son who had done well in football. George bought her a car because she has bad credit.

Counsel for licensee has stated that the Local Liquor Control Commission did not proceed in the manner provided by law but has not presented any specific facts on which it bases that argument. The licensee received due and adequate notice of the charges and the date of the hearings. He was given the opportunity to confront the City's witnesses and to present evidence on his own behalf. He was represented by counsel of his own choosing. While there might have been an argument that the Deputy Hearing Commissioner's original ruling on the admission of pages 2 and 3 of Licensee's Exhibit 2 was improper, any such argument fell when the Deputy Hearing Commissioner allowed the entire exhibit at the second hearing date. The Local Liquor Control Commission did proceed in the manner provided by law.

The issue of whether the findings of the Deputy Hearing Commissioner are supported by substantial evidence in the record as a whole requires a recitation of the standard of proof required for the City to meet the substantial evidence threshold. This Commission does not have the power to reweigh the testimony and to ignore specific findings of credibility of the Deputy Hearing Commissioner. This Commission does not

have the authority to reverse a decision of the Local Liquor Control Commission because a majority of the Commissioners would have made a different decision. Substantial evidence as used in the statute has been defined very broadly to mean any evidence that would support the decision of the Local Liquor Control Commission.

Questions of residency and domicile can be confusing and could be considered a mixed question of law and fact. If so, that fact might be relevant in argument before the Circuit Court but does not change the standard of evidence before this Commission. The Deputy Hearing Commissioner heard the conflicting evidence on the issue of where George Person was a resident and determined that the City met its burden of proof that George Person was ineligible. The evidence in the record consisting of his possessing a State ID with the Oak Park address; his statement to Officer Murphy that he had lived in Oak Park for four years; the fact that George Person owned the Oak Park residence; the fact that several cars listed in George Person's name were registered in Oak Park provide substantial evidence in the record as a whole to affirm the decision of the Local Liquor Control Commission.

Since Mr. Person was found not to be a resident of Chicago and ineligible to hold a City of Chicago liquor license, the order of revocation is supported by the findings.

I would have affirmed the order of revocation of the City of Chicago liquor license issued to George Person for the premises located at 807 N. Monticello.

Dennis M. Fleming
Chairman

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT is REVERSED.

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: March 23, 2011

Donald O'Connell
Member

Stephen B. Schnorf
Member