

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Rudolph Zurita)
d/b/a Latin Village Lounge)
Licensee/Revocation)
for the premises located at)
3737 West 26th Street) Case No. 11 LA 50
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 pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago, a hearing was to be held in connection with proceedings to revoke the City of Chicago Retail Liquor License and all other City of Chicago licenses issued for the premises at 3737 West 26th Street. The notice set forth 34 charges as the bases for the revocation. The essence of the charges is that on February 11, February 19, February 26, March 4, and March 6 of 2011 the licensee, by and through its agent, possessed and/or sold a controlled substance, cocaine, on the licensed premises. This action was alleged to violate the following state statutes or sections of the City of Chicago Municipal Code:

1. 720 ILCS 570/401(c)(2)
2. 720 ILCS 570/402(c)
3. 720 ILCS 5/37-1
4. 8-4-090(b) – Chicago Municipal Code
5. 4-60-141(a) – Chicago Municipal Code
6. 720 ILCS 570/407(b)(1)
7. 720 ILCS 570/405.1(a)

8. 720 ILCS 570/406.1
9. 720 ILCS 5/37-1

Testimony was heard on August 19, 2011, August 26, 2011 and October 14, 2011.

Deputy Hearing Commissioner Gary Chan entered Findings of Fact that the City failed to meet its burden of proof on Counts 1, 14, 21 and 28, and that it did meet its burden on all other counts. He further found that revocation was the appropriate disposition for each of the sustained charges. The licensee filed a timely appeal with this Commission.

A synopsis of the evidence presented at the hearing will be helpful in understanding the reasoning of this decision.

Prior to the start of testimony, the parties stipulated that City's Exhibit 4, be allowed in evidence, and that it is a Map Quest map which details the distance between 3737 West 26th Street to the Latin Village Public School at 2600 South Lawndale is .09 of a mile which is approximately 475.2 feet.

Officer Gonzalez has been a Chicago Police Officer for eight years and is assigned to conduct narcotics investigations, surveillances, and undercover purchases. On February 11, 2011, at approximately 11:00 p.m. he was working at the bar located at 3737 West 26th Street. He went there with a confidential informant to conduct a narcotics investigation. He described the premises as having a bar counter on the left side with tables on the right and a pool table in the middle. Past the pool table is a D.J. stage with a dancing area and in the far back are the male and female restrooms.

He and the confidential informant were searched by security. He observed a female, later identified as Carol, returning drink orders and accepting payment for drink orders. When Carol approached he asked Carol for cocaine. Carol stated the security guard had the product. Carol had a conversation with the security guard and then the security guard walked into a room in the back of the bar area. When the security person came back he walked towards Carol and they did what appeared to be a hand to hand transaction. Carol then came to their table and placed a bottle cap bent in half on the table and placed it and said the cocaine was inside the bottle cap. Inside the cap was a clear plastic bag containing white powder, suspect cocaine. He paid Carol \$20.00 in United States currency.

Later, Officer Gonzalez asked Carol for more cocaine. Carol had a conversation with the security guard who then returned to the back room. The security guard walked towards their table and dropped a bottle cap bent in half. Security guard walked away and Carol stated the cocaine was inside. The cap was opened and inside was a clear plastic bag containing white powder like substance containing cocaine. He paid Carol for the cocaine.

Gonzalez described the security guard as a Male Hispanic, medium build, mid-thirties with a mustache. He believes the security guard was an employee because he was searching customers and walking through the bar. He had a t-shirt that said *Security*. The room the security guard entered toward the back was for employees only.

Prior to inventorying the bags, a NIK test was done which came back positive for cocaine. The bags were inventoried under Inventory Numbers 122241053 and 102241059, and were deposited inside the narcotics vault.

They were sent to the crime lab where a report for these inventories showed the substance was positive for cocaine. The lab reports were admitted without objection.

Officer Gonzalez returned to 3737 West 26th Street on February 19, 2011, at approximately 11:00 p.m. He was alone on that visit. He entered past a security guard and sat down at a table. Employees were retrieving drinks for the customers. A Hispanic female, later identified as Adrianna, approached to retrieve his drink order. After she served the drink, he asked Adrianna for cocaine. Adrianna said no problem and she approached a male Hispanic later identified as Antonio. He was assisting the DJ. Antonio and Adrianna approached and told him to walk inside the washroom. In the washroom, Antonio gave the witness one clear plastic bag containing white powder, suspect cocaine, for a \$20 bill. Gonzalez then returned to the police facility at Homan Square. He did the NIK test which was positive for cocaine. The bag was inventoried under Number 12247615 and sent to Illinois State Police lab. The lab report, in evidence, was positive for cocaine.

The Officer returned to the bar at 3737 West 26th Street at 1:00 a.m. on February 26, 2011. He was searched by security as he entered and then sat at a table. He was approached by Carol who had serviced him on February 11, 2011. He ordered an alcoholic beverage and two bags of cocaine. She walked over to Antonio and Carol did a hand to hand transaction and Carol

handed the witness a black plastic bag. Inside the bag were two clear plastic baggies each containing a white powder-like substance, suspect cocaine. He paid Carol for the cocaine. He did the NIK test on the powder which was positive for cocaine. The bags were inventoried under Number 12252332, and it was sent to the Illinois State Police lab where it showed positive for cocaine. The lab report was allowed in evidence without objection.

The officer returned to the bar on March 4, 2011. As he entered, he observed Carol Hernandez who he previously saw on February 11 and 26, 2011. After she took his drink order, he asked for cocaine. She said yes and returned minutes later and gave him a plastic bag with a white powdery substance, suspect cocaine. He paid her money for that bag. He conducted the NIK test on the bag which was positive for cocaine. The cocaine was inventoried under Number 12558104. It was sent to the Illinois State Police lab where it was found to be positive for cocaine. The report was introduced into evidence without objection.

On March 6, 2011, he returned to the bar and saw Adrianna working. This was the same Adrianna that sold him cocaine on February 20, 2011. After she served him a drink, he asked for cocaine. Adrianna walked away and returned with a white napkin which enclosed three white plastic bags containing white powder, suspect cocaine. He paid her for the cocaine and left a \$20 tip. During this time he observed Adrianna getting drinks for other customers and accepting payment for the drinks. The NIK test was positive for cocaine. The bags were inventoried under Number 12258740. They were sent to the Illinois State Police lab where it was tested positive for cocaine. The lab report was allowed in evidence without objection.

Officer Gonzalez opined that Carol, Adrianna, and Antonio were employees of the bar because they were selling and accepting payment for alcoholic drinks from him and other customers in the bar. He believes Carol told him what nights he worked. None said they were employed by Mr. Zurita, the Licensee. Antonio was not selling drinks but the first time he saw Antonio he was assisting the DJ. None of the three ever actually said they worked for the Licensee. The security guard's shirt was dark colored and it said *Security*.

Thomas Ramos has been the owner of Ramos Security Analysts and Loss Prevention Control for five years and has worked in security the last 35 years. He also was a Chicago Police Officer for 32 years. He has an agreement with Mr. Zurita, the owner of the property and the Licensee of the Latin Village Lounge at 3737 W. 26th Street. He supplies security guards to check ID cards on Fridays, Saturdays, and Sundays from 8:00 p.m. until closing. It started with one guard but then moved to two guards as it got busier. The business can hold up to 80 people on Fridays and Saturdays. He is on the premises every weekend for about thirty minutes to check on the two guards and the premises. The guards are licensed by the State of Illinois after completing a 20 hour course through a security school. They have no criminal backgrounds or they would not be licensed by the state. He was at the premises on February 11, 2011, for approximately thirty minutes from 9:00 p.m. until 9:30 p.m. The guards wear an all-black uniform with a security label above the left breast pocket on the front, and a security label in large letters across the back. The black hat also has security on it. He is familiar with a lady named Adrianna from her approaching him to say hello when he came into the bar. She was present on February 11, 2011. On that date, the security guard did not indicate anything unusual was occurring. He was present at the bar on February 19 and March 4, and was probably there

on February 26 and March 4. On none of these dates, did the security guards indicate they saw any unusual activities. He never saw anything that would indicate something illegal was happening. He knows Adrianna is not an employee because he asked her and she said she was not an employee. Adrianna never served him a drink. He is not familiar with anyone named Carol or Antonio. He has never employed a security guard named Antonio Rodriguez. He does not know who was working security on February 11, 2011, but none had a mustache. His security guards would have had access to any backrooms at the premises if it was open.

Rudolph Zurita has been the Licensee of the Latin Village Lounge at 3737 West 26th Street for 37 years. He has five employees that are bartenders, barmaids and a porter to clean up. He has security through Mr. Ramos' agency and they patrol the inside of the bar, check the bathrooms, and check the door. He has an early shift and a late shift bartender. He is not familiar with Antonio Rodriguez, Carol, or with Adrianna and at no time have these individuals worked for him. He usually goes to the bar on Fridays and Saturdays for about four hours. On those times he saw people drinking and dancing to music provided by a disc jockey. The bartenders stay behind the bar and customers come to the bartender if they want a beer or wine. He did have a girl named Daniela who was hired to serve drinks. Persons would take drinks from the bar to tables for tips. He was not aware there were illegal activities at the premises and was not aware people were delivering or selling cocaine. He never authorized any of his employees to deal drugs.

Without objection, City's Exhibit 15, which is the previous disciplinary history of the licensee, was allowed in evidence.

PERTINENT SECTION OF STATE STATUTES AND MUNICIPAL ORDINANCES

235 ILCS 5/10-3 – Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Act, by any officer, director, manager or other agent or employee of any licensee, shall be deemed and held to be the act of such employer or licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.

720 ILCS 570(c)(2) – It shall be unlawful for any person knowingly to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance other than a methamphetamine, a counterfeit substance or a controlled substance:

1 gram or more or less than 15 grams of any substance containing cocaine or an analogue thereof;

720 ILCS 570/402(c) – It is unlawful for any person to knowingly possess a controlled substance.

720 ILCS 570/406(1) – Any person who controls any building and who performs the following act commits the offense of permitting an unlawful use of a building:

Knowingly grants, permits or makes the building available for use for the purpose of...delivering a controlled substance other than methamphetamine

720 ILCS 570/405.1(a) – A person commits criminal drug conspiracy when, with the intent that an offense set forth in Section 401, 402 or 407 of this act be committed, he agrees with another to the commission of that offense.

720 ILCS 5/37.1 – Any building used in the commission of offenses prohibited by the Illinois Controlled Substances Act is a public nuisance.

720 ILCS 570/407(b)(1) – Any person who violates Section 401 within 1000 feet of a school.

8-4-090(b) – Chicago Municipal Code – Any person who owns, controls, or manages any premises and who (i) encourages or permits an illegal activity to occur or continue on such premises...shall be subject to a fine.

4-60-141(a) – No licensee shall permit or allow any illegal activity on the licensed premises.

Since this is an appeal of a revocation the review of this Commission is limited to 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.

While there is no argument with respect to A, the licensee has raised questions B and C in its Notice of Appeal.

The first issue raised is whether the finding that a security guard was an agent of Latin Village Lounge was against the manifest weight of the evidence and an error in law. It must be pointed out that the standard of review in this forum is “substantial evidence” and not manifest weight of the evidence. This issue is relevant to the findings of the Deputy Hearing Commissioner with respect to February 11, with respect to Counts 2 through 7. (Count 1 resulted in a finding of the City failed to meet its burden of proof) Those findings do not identify who was the agent of the licensee that committed the violations of previously referenced statutes and ordinances. The facts in the record from the City’s perspective are that Carol, a waitress and employee of the licensee, received controlled substance from the security guard and that controlled substance was then delivered to the undercover officer. If there is substantial evidence in the record as a whole that either Carol or the security guard were agents of the licensee, that could be sufficient to uphold these charges. It was not necessary for the City to prove both were agents.

The licensee refers this Commission to case of Amigo's Inn, Inc. v. The License Appeal Commission of the City of Chicago, Case 1-03-1727 from the First District Appellate Court, December 30, 2004. In that case, an individual wearing what appeared to be a police officer uniform lacking police badges or insignia with a badge around his neck and hat displaying the word "Security" was found to be in possession of controlled substances of cocaine or cannabis. The owner of the premises testified that the arrestee was working his first and only day the day of the arrest. The owner neither hired nor compensated the arrestee directly, and the arrestee came from a security company, Aguila Security Consultants. The guards had worked on Fridays and Saturdays for one year. When on duty, they take direction from the tavern manager. The issue before the Appellate Court was whether the arrestee security guard was an independent contractor outside the preview of 235 ILCS 5/10-3. After a review of the record, the Appellate Court ruled that the arrestee security guard was not an agent of the licensee. Important on that decision was the fact that another party assigned, trained, equipped and paid the guards. The facts in this case reflect the security guard was never behind the bar and was provided by Ramos Security Analysts and Loss Prevention Control. That company supplied the security guards. That company does background checks on the guards. Mr. Ramos also testified he was present at the location on Fridays and Saturdays to check on the security guards. The security guards provided by Mr. Ramos' company wore all black uniforms with a security label in the front and a label in the back along with a black hat that says *Security*. Applying the ruling in the Amigo's case to the facts in the record, there is not substantial evidence in the record as a whole to affirm a finding that the security guard at the licensee's premises was an agent of the licensee.

The next issue to be reviewed can be combined since they deal with similar facts and similar questions of applying those facts to existing case law and statutes. These issues are whether the findings of the Commission that Carol and Adrianna were agents of the licensee were against the manifest weight of the evidence and in error in law. With respect to both individuals, Officer Gonzalez testified they were working as waitresses in that they took drink orders, brought drinks from the bar to the patrons and received payment for the drinks. Mr. Zurita, the licensee, stated he had hired one girl named Daniela to take drinks from the bar to the tables. In response to the question, "Did you hire persons to take drinks from the bar to the table?" Mr. Zurita stated "They would do it for like tips." It should be noted there were no videos from the nights in question introduced into evidence in this case. It should also be noted that Officer Gonzalez placed Carol behind the bar on February 11, 2011. The case law on what constitutes work sufficient for a person to be considered an agent in liquor license cases is broad and generally any work on behalf of the license is sufficient to establish an agency relationship. In this case, Officer Gonzalez places Carol behind the bar on one occasion and has testified to Carol and Adrianna getting drinks for him from his table. The licensee has testified an unknown "they" work for tips. While this is not stringent evidence of an employer-employee relationship, especially as to the dates Carol and Adrianna were not reported to be behind the bar, there is substantial evidence in this record to support the finding that Carol and Adrianna were agents of the licensee.

The final agency issue to be resolved is whether the individual identified as Antonio Rodriguez was an agent of the licensee on February 19, 2011 and February 26, 2011. It must again be pointed out that the findings of the Deputy Hearing Commissioner did not identify who

the agent or agents were that made the delivery of the controlled substance on this date. If Antonio Rodriguez was not an agent of the licensee, the findings relative to this date can be affirmed if there is substantial evidence that Adrianna was involved in these transactions.

The testimony from Officer Gonzalez with respect to the February 19, 2011, event was that after Adrianna retrieved a drink for him, he asked her for cocaine. Adrianna went to the man later identified as Antonio who was assisting the DJ on the equipment. Antonio made the delivery to him inside the washroom. With respect to February 26, 2011, the Officer asked Carol for cocaine after he ordered an alcoholic beverage. Carol had a hand to hand transaction with Antonio and Carol then delivered the cocaine to the officer. The licensee testified he had a contract with a disc jockey for Friday, Saturday, and sometimes Sunday night. At best the evidence with respect to February 19, 2011 is that Antonio may have been an employee of the disc jockey. There is no evidence as to an employee-employer relationship in the record for February 26, 2011. There is not substantial evidence in the record to support a finding that Antonio Rodriguez was an agent of the licensee on February 19 and 26 of 2011.

Based on these findings, there is substantial evidence in the record as a whole to uphold the following:

1. Counts 2 through 7 with respect to February 11, 2011
2. Counts 8 through 12 with respect to February 19, 2011
3. Counts 14 through 20 with respect to February 26, 2011
4. Counts 21 through 27 with respect to March 4, 2011
5. Counts 28 through 34 with respect to March 6, 2011

There is not substantial evidence in the record with respect to Count 13 since the actual delivery was made by a person not an agent. The finding on Count 8 that the agent was involved in a criminal drug conspiracy is proper since the actual agent dealt with another to set up the delivery. Those actions by the agent are sufficient to uphold the other counts dealing with February 19, 2011.

The final issue is whether the penalty of revocation was such an abuse of discretion as to require reversal. The licensee again refers this Commission to Amigo's Inn, Inc. as precedent. This Commission is established by state statute and only has such powers as set out in the state statute. It does not have the power to overrule a revocation and impose a suspension. It does not have the power to remand a case to the Local Liquor Control Commission to impose a less severe penalty. It can only review whether the order of revocation is supported by the findings.

While there is no direct evidence that the licensee had actual notice of the drug transactions, the record supports sales of narcotics at the licensed premises on four separate dates. This is not a one-time sale as in the Amigo's Inn case or in the case of Hanson vs. Illinois Liquor Control Commission, 201IllApp 3d974, 559N.E.2d1092. The imposition of revocation is supported by the findings that have been affirmed.

The decision of the Local Liquor Control Commission is reversed as to Count 13 and affirmed as to the remaining counts. The order of revocation is affirmed.

CONCURRING OPINION OF COMMISSIONER O'CONNELL

This is another case that has come before this Commission dealing with the issue of whether “agents” of the licensee are involved in sales of cocaine on the licensed premises. Each of these cases deal with Hispanic-owned bars and each deal with the issues of whether the girls obtaining drinks for customers are agents of the bar. This Commissioner believes each case must be looked at individually to ascertain if there is substantial evidence on the record as a whole to affirm the findings of the local liquor control commission that the girls were agents of the licensee. This particular case also addresses the issue of whether the security guards and whether the individual identified as Antonio were agents of the licensee.

I agree with the opinion of Chairman Fleming there was not substantial evidence in the record as a whole to affirm the findings of the local liquor control commissioner that the security guards and Antonio were agents of the licensee.

I also agree that there is substantial evidence in the record to affirm the decision of the local liquor control commission that Carol and Adriana were “agents” of the licensee. The evidence is not strong and the Commissioner might have made a different finding but the evidence in the record does rise to the substantial evidence standard.

This Commissioner acknowledges there were four separate dates on which drug transactions allegedly occurred but still feels more progressive discipline in the case to avoid a rush to the “death penalty” would have been appropriate. If this Commission could modify, I would have voted to do so. Since this Commission cannot modify and the penalty of revocation,

while severe, is not so arbitrary and capricious as to require reversal, I must concur with the decision of Chairman Fleming to affirm the revocation.

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 2, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member