

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

The 2417 N. Milwaukee Corp.)
d/b/a Boni's Sports Bar)
Licensee/Revocation)
for the premises located at) Case No. 12 LA 23
2417 North Milwaukee Avenue)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

The licensee received notice that a hearing was to be held with respect to license disciplinary proceedings regarding the City of Chicago Liquor License and all other City of Chicago licenses issued to it for the premises located at 2417 N. Milwaukee. This hearing was brought pursuant to 235 ILCS 5/7-5, and Title 4, Chapter 4, Section 280, of the Municipal Code of Chicago.

The charges alleged are as follows:

1. That since January 2008, the licensee failed to submit to the Department of Business Affairs and Consumer Protection an exterior safety plan meeting the requirements of Municipal Code of Chicago 4-60-130(f).
2. That on or about April 2009, a change occurred in the officers of the licensee corporation and the licensee:
 - (a) failed to report such change in writing to the Department of Business Affairs and Consumer Protection, within thirty days of that change, in violation of Municipal Code of Chicago, 4-60-060(c).

- (b) failed to notify by writing to the Department of Business Affairs and Consumer Protection of the City of Chicago of the change within ten days of the effective change, in violation of Municipal Code of Chicago, 4-60-040(k).
 - (c) failed to notify by writing the Illinois Liquor Control Commission within 30 days of the effective change, in violation of Title 11, Chapter 1, Section 100.100 of the Illinois Administrative Code.
- 3. That on or about October 2010, a change occurred in the beneficial ownership, and the licensee corporation:
 - (a) failed to notify by writing to the Department of Business Affairs and Consumer Protection of the City of Chicago within 30 days of the effective date of such change, in violation of Municipal Code of Chicago, 4-60-060(c).
 - (b) failed to notify by writing to the Department of Business Affairs and Consumer Protection of the City of Chicago of the change within ten days of the effective date of such date, in violation of Municipal Code of Chicago, 4-60-040(k).
- 4. That on or about October 2010, a change occurred in ownership, and the licensee corporation failed to notify by writing the Illinois Liquor Control Commission of a change within 30 days of the effective date of such change, in violation of Title 11, Chapter 1, Part 100, Section 100.100 of the Illinois Administrative Code.
- 5. That the licensee is not the beneficial owner of this business and is therefore ineligible to hold a City of Chicago Retail Liquor License pursuant to Municipal Code of Chicago, 4-60-030(r) and 235 ILCS 5/6-2(15).

This matter proceeded to hearing before Deputy Hearing Commissioner Raymond Prosser. Assistant Corporation Counsel Rachel Berger represented the City of Chicago. In an unusual situation, two sets of attorneys appeared for the licensee. Kevin Sterling represented Ten 2 Four Management, Ltd., shareholders of 2417 N. Milwaukee Corp., and Carlos Vasquez filed his appearance for 2417 N. Milwaukee Corp. Deputy Hearing Commissioner entered Findings of Fact that the City of Chicago met its burden of proof on all Counts, but Count 7

which alleged that an actual change of ownership occurred on or about October 20, 2010. He also found revocation to be the appropriate penalty on each of the sustained charges.

A summary of the evidence presented at the hearing will be helpful in understanding the decision in this case.

Prior to the start of testimony, the parties agreed to the introduction of City's Exhibit 3 signed by attorney Carlos Vazquez and Fernando Rodriguez as President of 2417 N. Milwaukee Corp. That stipulation was that on or about April 2009, Bonafacio Rodriguez, Secretary of Licensee Corporation passed away, and licensee did not notify the Department of Business Affairs and Consumer Protection within thirty (30) days of that change. It was also stipulated that the licensee failed to report to the Illinois Liquor Control Commission within 30 days of internal changes in the corporation.

Bryan Knipper has been a Business Consultant Supervisor for the Department of Business Affairs and Consumer Protection for a little over five years. In that position, he processes and reviews liquor license applications, and keeps records of businesses with current licenses. He reviewed the records of 2417 N. Milwaukee Corp. which holds business licenses at that address. That corporation is not in good standing and was dissolved by the State of Illinois. Its corporate officers listed are Fernando Rodriguez as President, and Bonafacio Rodriguez as Secretary. It holds a late hour license and a tavern license.

In 2008, the Municipal Code was changed to require licensees to submit a late hour safety plan. City's Exhibit 4, in evidence, is a March 14, 2008, letter from the then Acting Director of the Department of Business Affairs and Consumer Protection to the licensee informing them of the need to submit a plan. City's Exhibit 5, in evidence, is a late hour safety plan stamped as submitted on March 28, 2008. That plan was not approved. City's Exhibit 6, in evidence, is a letter from the Department rejecting the licensee's proposed plan. No late hour plan has ever been approved. Knipper had no knowledge of any subsequent exterior safety plan submitted after March 28, 2008.

Knipper also testified that he is not aware of the Department receiving a written notification when Mr. Bonafacio Rodriguez passed away with regard to corporate officers. The first time it received notice of a change on beneficial ownership was in May of 2011, when a change of officers was requested. The witness acknowledged he had interaction with an expeditor, Jenifer Godfrey, in the fall of 2010. On or about October 6, 2010, Godfrey submitted an application to add Andrew Gould and Alfred Grant as site managers for the account. Licensee's Exhibit 1, in evidence, is a copy of the application for Andrew Gould, and Licensee's Exhibit 2, in evidence, is a copy of the manager's application for Alfred Grant. Once these applications were received, the individuals would have been fingerprinted. Once the prints came back, they would have been added as managers on the account. Vetting a manager, as opposed to a change of ownership, does not require an investigation into finances or reviewing purchasing and sale agreements. Knipper was not aware if Ms. Godfrey delivered a copy of the management agreement to the City. Gould and Grant were approved as managers, but did not submit a change of ownership application in the fall of 2010.

Fernando Rodriguez was called as an adverse witness. He is the President of 2417 N. Milwaukee Corp., and Bonafacio Rodriguez was his father. He has passed away. He identified City's Exhibits 8 and 9, in evidence, as a management agreement between himself, Grant, and Gould dated October 27, 2010, and a purchase agreement. The witness did not submit these documents to the City in 2010, but he was aware they were appointed managers. He asked the Department to remove them as managers in 2011, and has never intended to reinstate them.

Russ Grant and Andrew Gould have been running the business since October of 2010, and Rodriguez has not received any profits.

Rodriguez has been the 50% licensee of 2417 N. Milwaukee Corp. since 2005 or 2002. His father owned the other 50%. His father passed away in April of 2009, and his estate has never been probated. He met Grant and Gould in the fall of 2010, and they had a discussion for the sale of 100% of the corporation. The witness signed the management agreement on behalf of the 2417 N. Milwaukee Corp. dated October 27, 2010, at the time that negotiations were ongoing for the sale of corporation stock. City's Exhibit 9, is an undated purchase agreement signed by the witness to sell 100% of the stock. There were other agreements proposed on the sale, but none were signed by his mother, sister, brother, or by the estate of his father. His mother who was the owner of the real estate did not sign a lease with the managers. None of the other documents in the purchase agreement were ever executed. In November 2010, they changed the terms of the deal with respect to payment terms and he decided he no longer wanted to sell the bar to Grant and Gould. Rent payments were made in October – December of 2010, but no payments were made towards the purchase or sale of the bar. Rodriguez stated his opinion is that

no sale in shares ever occurred between him, Grant, and Gould, and they should not be operating the bar and stealing the profits. His license should not be revoked since the root cause of the problem is the actions of Grant and Gould who are running a bar they do not own. The sale of the bar never occurred and there was no change of ownership in the fall of 2010. After that time, Rodriguez was not running the business, was not in charge of the book and records, did not take profits, and was not in charge of any policies with regard to running the actual business.

Jennifer Godfrey is a Liquor Licensing Consultant/Expeditor who is familiar with the license at 2417 N. Milwaukee since she was hired by Alfred Grant and Andrew Gould to file general manager statements and a change of officers application. She originally submitted the managers' statements in September or early October of 2010, but needed to resubmit them on Halloween of 2010. Included was an appointment of general manager signed by Fernando Rodriguez for each manager. She believes she included a copy of the management agreement but the City refused it. There was a transfer of stock on March 4, 2011, and the change of officers application was filed in August 2011.

Andrew Gould and his partner Russ Grant met Fernando Rodriguez as patrons of the bar at 2417 N. Milwaukee in the fall of 2010. They had discussions with Rodriguez about purchasing or managing the bar. Gould had seen the sales tax returns and the bar was not making money. He and Mr. Grant negotiated the management agreement, City's Exhibit 8, with Mr. Rodriguez. At the same time, City's Exhibit 9, the sales purchase agreement was being negotiated. That document specifically states that the terms of the purchase agreement, management agreement, and lease are all separate and are not contingent upon another. There

was an existing lease between 2417 N. Milwaukee Corp. and Rodriguez with a monthly rent of \$1,600. Under the management agreement, Fernando Rodriguez was paid \$4,000 a month. Rodriguez was keeping \$2,400 a month, on top of the \$1,600 rent from October of 2010 until March of 2011. Gould did not run the bar in 2010 in his mind, but he and Grant managed the bar. They paid Mr. Rodriguez \$20,000 while they managed the bar. The witness stated he did not believe he had any beneficial ownership of 2417 N. Milwaukee Corp. around October of 2010, or that there had been a change in beneficial ownership in the fall of 2010.

City's Exhibit 9 stated that a new lease for the property would be executed with rent of \$4,000 a month starting on the date Gould and Grant began management of Bonnie's Sports Bar. He did not take a salary. He counted the register at the end of the night, but he, his partner, and Fernando were all on the bank account. Fernando had no control over hiring or firing and had no input into how the business was operated. They also gave Rodriguez a check in February of 2011.

Alfred Grant has worked in the bar and restaurant industry about 35 years. An application for a change of officers for The 2417 N. Milwaukee Corp. was filed on his behalf, but is not aware if the application was denied or still pending. He knows filing for a change of officers is not the same as being a licensee. At the time of the management agreement with Fernando Rodriguez on behalf of 2417 N. Milwaukee Corp. he was not aware Fernando owned 50% of the shares of the company. His understanding was that Fernando controlled the corporation.

He believes Jenifer Godfrey notified the City he was running the bar. Andy Gould and the witness took a salary and Fernando Rodriguez was paid \$1,000 a week. There were no profits left over. There was also a bill to lawyers for \$140,000 which diminished any profits. In addition, Fernando Rodriguez stole \$30,000 out of the bank account. Fernando had nothing to do with the bar since October of 2010, but the agreement to purchase did not close in 2010, and to the best of his knowledge he did not become an owner of the bar in 2010.

Subsequent to the decision of revocation being issued, but before oral argument in this case, the attorneys for Mr. Gould and Mr. Grant who had filed an appeal on their behalf as the 58.33% shareholder, Ten 2 Four Management, Ltd., of The 2417 N. Milwaukee Corp. dismissed their appeal. This decision deals only with the appeal of 2417 N. Milwaukee Corp. with respect to Fernando Rodriguez and his family.

With respect to Count 1 relative to the late hour exterior safety plan, the evidence is uncontradicted that no such plan has ever been approved by the Department of Business Affairs and Consumer Protection. It is also uncontradicted that a letter dated July 29, 2008, was sent to Mr. Fernando Rodriguez and The 2417 N. Milwaukee Corp. advising him that the late hour license exterior safety plan proposed by 2417 N. Milwaukee Corp. was disapproved. That letter specifically listed the deficiencies in the proposed plan. No subsequent plan was ever sent to the Department of Business Affairs and Consumer Protection. This apparent intentional disregard for the requirements of the ordinance would clearly be a sufficient basis for revocation of the late hour license. In this case, with no evidence presented to mitigate this intentional disregard for

the requirements of the ordinance, there were adequate grounds for the revocation of all liquor licenses issued to 2417 N. Milwaukee Corp. on that count alone.

Charges 2 through 7, all allege a failure to notify the city and state of a change in the officers of the corporation as required by the Chicago Municipal Code, and the State of Illinois Liquor Control Act. This reporting requirement was triggered due to the death of Bonafacio Rodriguez in April of 2009. At the time of his death, Bonafacio Rodriguez was an officer of the corporation and owned 50% of the stock of the corporation. It is undisputed that the estate was never probated and no changes were ever reported to the city or the state. Since the record shows no evidence that would explain this failure to report so as to mitigate the failure, the decision to revoke based on these counts is affirmed.

Counts 5, 6, 8, and 9, all set out charges that allege a change in the beneficial ownership of the corporation and failure to report such change. Since there is no definition of beneficial ownership in the Municipal Code and apparently no cases defining that term, the decision in this case should not be considered as precedential for future cases. If the parties represented by Mr. Sterling had not withdrawn their appeal there would have been conflicting questions of fact on these issues. As this matter now stands, Mr. Vazquez has adopted a position that there was a change in the beneficial ownership of The 2417 N. Milwaukee Corp. as of the execution of the management agreement in October of 2010. His position would appear to be that his client should not be subject to discipline for these violations since there was a subsequent termination of the management argument. The decision of the Local Liquor Control Commission to not accept that agreement and to revoke on the charges was appropriate and is affirmed.

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: February 11, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member