

THE LICENSE APPEAL COMMISSION
CITY OF CHICAGO

59th & State Street Corp.)
Jose Vazquez, President)
Licensee/Revocation and Fine)
for the premises located at) Case No. 12 LA 71
5901 South State Street)
)
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 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 disciplinary proceedings regarding the City of Chicago liquor license and all other licenses issued to it for the premises located at 5901 S. State Street, Chicago, Illinois.

The charges were that:

1. On or about January 21, 2011, the licensee, by and through its agent, carried or possessed a firearm on the licensed premises, which is licensed to sell intoxicating beverages, in violation of 720 ILCS 5/24(a)(8).
- 2 & 3. On or about January 21, 2011, the licensee, by and through its agent, permitted or allowed an illegal activity on the licensed premises in violation of Municipal Code of Chicago 4-60-141 (a), to wit:
 - (2) possession of a firearm on a premises licensed to sell intoxicating beverages, in violation of 720 ILCS 5/24 (a)(8).
 - (3) possession of handguns on the licensed premises, in violation of Municipal Code of Chicago 8-20-020 (a).

- 4, 6, & 8. That on January 21, 2011, the licensee by and through its agent, possessed a handgun, to wit:
- (4) Iver Johnson's Arm .30 cal. firearm with an 8" barrel and blue finish, serial number BA03098;
 - (6) Dan Wesson Arms 357 Magnum CT.T.G. firearm with a 4" barrel and blue finish, serial number 43231;
 - (8) A.A Arms Model AP9 9mm Luger with blue finish, serial number 042656, on the licensed premises, in violation of Municipal Code of Chicago 8-20-020 (a).
- 5, 7, & 9. That on January 21, 2011, the licensee, by and through its agent, acquired or possessed a firearm, to wit:
- (5) Iver Johnson's Arms .30 cal firearm with an 8" barrel and blue finish, serial number BA03098;
 - (7) Dan Wesson Arms 357 Magnum C.T.G. firearm with a 4" barrel and blue finish, serial number 43231;
 - (9) A.A. Arms Model AP9 cal. 9mm Luger with a blue finish, serial number 042656, while on the licensed premises and was not a holder of a valid Illinois Firearm Owners Identification Card, in violation of 430 ILCS 65/2.
10. That on or about January 21, 2011, the licensee, by and through its agent, possessed a firearm on the licensed premises, to wit: Remington 870 Express Magnum shotgun with a 26" barrel and blue finish, serial number A285486U, without a firearm registration certificate, in violation of Municipal Code of Chicago 8-20-140(a).
11. That on or about January 21, 2011, the licensee, by and through its agent, acquired or possessed a firearm, to wit: Remington 870 Express Magnum shotgun with a 26" barrel and blue finish, serial number A285486U, while on the licensed premises and was not the holder of a valid Illinois Firearm Owners Identification Card, in violation of 430 ILCS 65/2.
12. That on or about January 21, 2011, the licensee, by and through its agent, possessed ammunition on the licensed premises in violation of Municipal Code of Chicago 8-20-080.

This case proceeded to hearing before Deputy Hearing Commissioner Gary Chan. Assistant Corporation Counsel Maggie Shiels represented the City. William Cooley and Michael Monico represented the licensee. The Deputy Hearing Commissioner entered Findings of Fact that the City sustained its burden on Counts 1 through 12. He further found in light of the facts of this case and the licensee's prior dispositions, that the appropriate disposition for Counts 1 and 2 was revocation; for Counts 3, 4, 6, 8, 10, and 12 a fine of \$2500; for Counts 5, 7, 9, and 11 a fine of \$500. These findings were adopted by Gregory Steadman and Rosemary Krimbel in their positions as City of Chicago Local Liquor Control Commission and Commissioner of Business Affairs and Consumer Protection. The licensee filed a timely appeal with the License Appeal Commission.

A synopsis of the relevant evidence will help in following this decision.

Brian Kavanaugh has been a Chicago Police Officer for seventeen years and has worked in the License Investigation Section for the last seven years. He was on duty on January 21, 2011, at approximately 4:30 p.m., when he went to a liquor store at 5901 S. State Street. The liquor store is called Mr. Jack's Food and Liquor and the legal entity is 59th and State Street Corporation owned by Carlos and Jose Vazquez. He and other officers from his unit were accompanied by representatives from the Department of Business Affairs and Consumer Protection, a fire chief, and the health department.

Kavanaugh entered the open store and identified himself to Carlos Vazquez. He told Vazquez they were to conduct an investigation of the entire store. There were two floors on the

premises with a set of stairs going up to the second floor. The first floor had a large sales area and a rear storage area. In the storage area there was a safe as well as alcohol and other items. The second floor had a number of rooms, a large open space, and an office area. His partner, Officer Golucki showed Kavanaugh a bullet Golucki had found on the second floor. Kavanaugh and Golucki then asked Carlos Vazquez if there were any guns in the store and he replied no. Carlos Vazquez opened the safe where the police found two assault type weapons which were inventoried. Additional ammunition was also found in the safe and throughout the store but Kavanaugh could not specify how much was found in the safe. One of the inventoried weapons found in the first floor safe was an Iver Johnson Arms .30 caliber, eight inch barrel, blue finish with serial number BA03098, and the second weapon was an AA Arms Model AP caliber .9 mm luger, blue finish with serial number 042656. Two other weapons were recovered from the licensed premises; a Dan Wesson Arms, .357 Magnum CTG four inch barrel with blue steel finish serial number 43231, which was recovered by Officer Golucki from the upstairs second floor office area, and a Remington 870 Express Magnum twenty-six inch barrel with blue finish serial number 8285486U, which was recovered from the first floor office area.

City Exhibits 8, 9, and 10 were allowed in evidence. Exhibit 8 is a certification that Carlos Vazquez did not have a FOID card as of October 19, 2011; Exhibit 9 is a certification that Jose Vazquez had an FOID card from December 15, 2005, with an expiration date of December 1, 2010, and previously an FOID card had been issued with an expiration date as of April 1, 2001. Exhibit 10 is a certification from the Chicago Police Department that Carlos Vazquez had not been issued a current and valid City of Chicago Firearms Registration for the four weapons seized by Officers Kavanaugh and Golucki.

The area in the second floor did not have retail sales and no items were stored in the second floor. There were vacant rooms and an office that contained items from the store and there was a tube going from the safe to the first floor. After Vazquez said there were no guns in the store, Vazquez was asked to open the safe. The safe was not located in the retail section of the store. When asked to open the safe, Vazquez said he did not know the combination. He called his brother and then opened the safe. After the safe was opened, Vazquez never admitted knowing the two firearms were in that safe and Carlos Vazquez was never seen with those weapons.

Gregory Golucki has been a license investigator for the Chicago Police Department for two years. On January 21, 2011, he and other officers went to a food and liquor store at 5901 S. State to conduct an investigation. The premises were open for business and Carlos Vazquez was standing behind the counter. The police and other City agencies inspected the entire premises which consisted of two floors. The witness personally went to both floors. The first floor consisted of an area with a payment counter, shelves of food items, and coolers for beer and pop. There was a doorway that led to access to the second floor, the basement, and a large storage area which was off limits to customers. The second floor had a large open room and about six doorways. Four of those rooms had mattresses and one was a bathroom.

Golucki found ammunition in the first bedroom on the second floor, in an office in the second floor, and office on the first floor, and in the safe on the first floor. He found a shotgun in the first floor office and a .357 Magnum handgun in the second floor office. The serial number for the shotgun was A2854866. The shotgun was in a small office that was visible upon entering

the office. Golucki also found a .357 Magnum handgun, serial number 43231, which was found in the second floor in the office next to the desk in plain view if one was behind the desk facing the door.

The first floor office had file cabinets and papers, and a computer with surveillance to the store. The second floor office had a safe which contained a gutter like spout that led to the registers in the first floor. Officer Kavanaugh recovered firearms from the safe in the storage room in the first floor.

The bullet Golucki first found on the second floor was a live ammunition round and was a .38 caliber bullet. He has no idea how long that bullet was there. There were personal effects in that room but nothing like an ID to link the bullet to a person. Carlos Vazquez denied ownership of the bullet. Ammunition was found in the upstairs office in a burlap sack lying underneath the handgun.

Since this case deals with an appeal of a revocation of a liquor license this Commission is limited to a determination of the following 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 the record as a whole.

The issue of whether the local liquor control commissioner proceeded in the manner provided by law usually deals with the issues of adequate notice of the charges and an opportunity to be heard in response to the charges. The defense in this case made arguments concerning the validity of the search of the premises and the scope of the search of the premises. The Deputy Hearing Commissioner addressed those matters in his Findings of Fact. This Commissioner does not believe it is within the scope of this Commission's jurisdiction to review these findings of law. The arguments have been made of record and would appear to be ripe for argument in the proper forum. With that matter addressed, the record reflects the Local Liquor Control Commissioner did proceed in the manner provided by law.

There is substantial evidence in light of the whole record to support the factual findings of the Deputy Hearing Commissioner. The testimony of the police officers as to the firearms and ammunition and the evidence showing Vazquez had no FOID provide substantial evidence. Whether this Commissioner or one of the other Commissioners might have questions as to the accessibility of some of the weapons and the ammunition that concern does not change the fact there is substantial evidence to support the factual findings.

The order of revocation and fine is supported by the findings. The decision of the Local Liquor Control Commissioner is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Order Revoking the liquor license of the APPELLANT is AFFIRMED **and** the Order to Fine the APPELLANT the sum of \$17,000.00 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: May 29, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member