

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Skyline Management, Inc.)
John Loumbardias, President)
Licensee/Suspension)
for the premises located at) Case No. 13 LA 42
303 West Erie)
)
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 would be held pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago, in connection with 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 303 West Erie, Chicago, Illinois. The allegation against the licensee was:

1. That on or about August 25, 2011, the Licensee, by and through its agent, failed to adequately implement or maintain an adequate exterior safety plan under Municipal Code of Chicago 4-60-130 (f), in violation of Municipal Code of Chicago 4-60-130 (f)(3).

This matter proceeded to hearing before Deputy Hearing Commissioner Robert Nolan who entered Findings of Fact that the licensee failed to adequately implement an adequate exterior safety plan under Section 4-60-130(f) of the Chicago Municipal Code in that a large crowd was congregating in an area around the establishment, which crowd interfered with traffic,

in violation of Municipal Code of Chicago 4-60-130 (f)(3). Deputy Hearing Commissioner Nolan also found that based on the totality of circumstances, the appropriate punishment was a 7-day suspension. These findings were accepted and adopted by Local Liquor Control Commissioner Gregory Steadman and Rosemary Krimbel, Commissioner of the Department of Business Affairs and Consumer Protection. The licensee filed a timely Notice of Appeal.

A copy of the Late Hour Exterior Safety Plan ordinance is attached to this decision as Addendum A. Of note is Paragraph 2(D), which required the exterior safety plan must prevent “the congregation of departing patrons in such numbers so as to unreasonably impede traffic flow.” Also of note in Paragraph 3, is the section stating the existence of any of the conditions specified in Paragraph 2 of this subsection (f) shall be prima facie proof that the plan has not been adequately implemented and maintained.

A synopsis of the relevant evidence will aid in an understanding of this decision.

Officer Wagner was a Chicago Police Officer for six years assigned to the 18th District on August 25, 2011. At approximately 2:45 a.m. he was dispatched to the Spy Bar at 303 West Erie to investigate a battery in progress. 303 West Erie is the location of Spy Bar and is part of a bar corridor. A large crowd had amassed on the sidewalk and in the street such that it was blocking pedestrian and vehicular traffic. He learned this crowd came from Spy Bar because of stories related, the statement related to him via the victim and offender. They related that their fight had started inside Spy Bar. Officer Wagner could not give an exact count of how many people were in the crowd but it was enough to block the sidewalk from any pedestrian traffic and vehicular

traffic was unable to go because of the individuals in the area. He was on the scene from half an hour to an hour.

Officer Wagner did not write in the narrative section of his police report that a large crowd come out of Spy Bar that he had to disperse. He did not write in his narrative section that eight squad cars had to come to disperse the crowd out of Spy Bar. He believes the crowd he observed was part of the altercation coming out of Spy Bar based on statements taken from Elizabeth Garcia and Destiny Perez. These were the two women involved in a scuffle inside Spy Bar. Officer Wagner did not know which one of these ladies told him the groups scuffling outside were from Spy Bar and related to their scuffle. He did not see these people scuffling outside Spy Bar exit from Spy Bar.

Sergeant Ralph Egan has been a Chicago Police Officer for 19 years and is assigned to the 18th District Entertainment Venue Team that polices the liquor license premises and areas around these locations. At or about 2:45 a.m. he responded to a battery in progress call at Spy Bar. On arrival, he observed a large crowd of people in the street that had traffic blocked up. He knew this crowd came from Spy Bar from the follow-up investigation and the persons were coming out of the club at that time. He issued a ticket for failure to comply with the late hour safety plan under the City of Chicago Municipal Code because there was a large scale disorder in the neighborhood that came out of the club. Traffic was backed up. It took 45 minutes to an hour to restore order in the area.

There were six to eight officers on the scene when Sergeant Egan arrived. There was commotion and officers were taking action to stop people from fighting. He saw some of those people that were scuffling exit Spy Bar and it was clear everybody came out of that bar because the location was open; it has an alley exit and people were coming out of that alley. It was clear to him all the persons involved in this melee came out of Spy Bar. The crowd he saw was patrons exiting Spy Bar.

The City rested its case.

Jathen Jones is employed as security for Spy Bar which usually has six to seven security personnel work every night. In the night in question, there was an altercation between two women customers in the bar. The police were called. One of the women was escorted out of the front and handed over to the police. The offender was taken out the back door. Other people were not allowed outside. He did not notice any melee or a large disturbance while he was outside.

James Jurewicz has been employed by Spy Bar for fourteen years and currently runs the front door. The front door is in the alley where barricades and ropes are set up to keep the flow of traffic on the sidewalk free from its patrons. He was working on August 25, 2011, when he noticed police cars pulling up. One patron was brought out the door leading to Franklin and another was brought out the alley door. While Jathen brought up the patron, people were allowed out of Spy Bar but there was not a mass of traffic leaving. There were people from other bars in the area in the alley. He was not allowing people into the club. He did not observe a

disturbance or melee in the alleyway. At no time that evening were people stopped from leaving the bar. He saw a crowd in the alley exiting the Spy Bar building.

Robert Bansley had worked the front door with Jimmy Jurewicz for over five years. The Spy Bar front door is in the alleyway 25 feet from the sidewalk. They have an entrance and exit. There was an altercation on August 25, 2011, that he did not see but later saw one girl bleeding and the other in handcuffs. He was in the alley the entire time and saw no disturbance outside caused by Spy Bar patrons. He does not recall people exiting at that time there was a line, but they were not blocking the sidewalk or traffic.

Martin Rivas has been employed by Spy Bar almost eight years and has been its General Manager for two years. He is aware of the 4:00 a.m. Safety Plan since he helped draft and implement it. He was on duty on August 25, 2011, when he was told of an altercation between two women. He called 911 for the police who responded. EMS also responded. The individuals involved in the altercation were taken out through separate doors. The offender was given to the police and the victim was handed over to EMS.

Mr. Rivas testified to other bars in the area. Some close at 4:00 a.m. and some close at 2:00 a.m. There is an ongoing problem with patrons of the 2:00 a.m. bars that are not allowed into Spy Bar. They refuse to leave the area. Other people are in the area because the parking lots are north of Spy Bar. The valet service for Sound Bar brings cars right outside the alley to Spy Bar on Franklin. On August 25, 2011, he did not observe any sort of melee outside Spy Bar from the time of the accident. Nothing happened outside that required police intervention. He

knows the Spy Bar patrons and did not see any Spy Bar patrons on Franklin on August 25, 2011. He knows this because they do not let anyone out. When there is an altercation outside patrons are not allowed to leave while the police are there. People were not allowed to leave until the bar closed at 3:00 a.m. No part of the battery that occurred in Spy Bar spilled outside onto the street.

Since this is an appeal of a suspension of a liquor license, the jurisdiction of this Commission is limited to these issues:

- (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.

The licensee has argued that this statute is unconstitutional. This Commission does not have the statutory power to rule on constitutional issues. The arguments of the licensee on these matters are of record and preserved for argument for a reviewing court.

The licensee also argued at oral argument that the decision of the Deputy Hearing Commissioner should be reversed because it was based on improperly admitted hearsay evidence. In support of this argument, the licensee cited the case of Boom Town Saloon v. City of Chicago, 384 Ill. App. 3d 27 892 N.E. 2d 1112 (2008). The factual scenario in this case is such that this case is not a precedent this Commission should follow. In Boom Town there were specific hearsay objections made to testimony. The Deputy Hearing Commissioner allowed the testimony based on the fact it was not introduced to prove the matter asserted. The case was

reversed because that evidence was relied on by the Deputy Hearing Commissioner as substantive evidence to prove the matter asserted. In this case, there was no objection made to the hearsay evidence. Without an objection on the record, any error arising from the use of that evidence has been waived.

There was conflicting evidence presented with respect to the Deputy Hearing Commissioner's finding that the licensee failed to adequately implement an adequate exterior safety plan in violation of the Municipal Code of Chicago 4-60-130 (f)(3). The police officer and the Sergeant testified to a large crowd from the establishment that was blocking pedestrian and vehicle traffic in the area. The licensee presented evidence that there was no such crowd obstructing the sidewalk and/or vehicular traffic and that any crowd was not composed of its patrons. There was conflicting testimony on whether the patrons were allowed to leave after the battery incident until such time as the police were involved. The Deputy Hearing Commissioner had the opportunity to observe the witnesses testify and was in a position to weigh the credibility of the witnesses. He made a specific finding that the testimony of Police Sergeant Egan and Officer Wagner was credible and believable. It is not the role of this Commission to reweigh specific findings of credibility. There is substantial evidence in the record to uphold the Deputy Hearing Commissioner's Findings of Fact that "a large crowd was congregating in an area around the establishment, which crowd interfered with traffic."

The final issue to be decided is whether that finding of fact supports the Deputy Hearing Commissioner's finding that there was a violation of 4-60-130 (f)(3) of the Chicago Municipal Code. In order for there to be such a finding, the City must prove that there was a "congregation of departing patrons in such numbers so as to unreasonably impede traffic flow." Despite the fact there may have been substantial evidence in the record to support a finding, the Deputy Hearing Commissioner opted to not make that finding.

The finding that a large crowd was congregating in an area around the establishment, which crowd interfered with traffic, is not a violation of 4-60-130 (f)(3) of the Municipal Code of Chicago.

The 7-day Suspension of the liquor licenses issued to Skyline Management, Inc., for the premises located at 303 West Erie is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending
the liquor license of the appellant for SEVEN (7) days is hereby REVERSED.

Pursuant to Section 54 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: January 21, 2014

Dennis M. Fleming
Chairman

Donald O'Connell
Member