

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Darrin's, LLC)
Darin Allen Sutton, Managing Member)
Licensee/Fine)
for the premises located at) Case No. 15 LA 3
1249 East 87th 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 an amended notice that a hearing was to be held in connection with license disciplinary proceedings regarding the City of Chicago liquor license and all other City of Chicago licenses issued for the premises located at 1249 East 87th Street. The charges were:

1. That on April 25, 2014, the licensee failed to keep current or report a change in activity or services provided at the licensed premises, in violation of Municipal Code of Chicago 4-4-050(a)(5) and (b).
2. That on or about July 14, 2014, the licensee, having been duly notified, failed to appear at a scheduled remediation conference with the Department of Business Affairs and Consumer Protection, in violation of Municipal Code of Chicago 4-4-265.

This matter proceeded to hearing before Deputy Hearing Commissioner Raymond Prosser. The Deputy Hearing Commissioner entered Findings of Fact that the City met its burden

of proof on Charges 1 and 2, and further found a \$2,500 fine concurrent on both charges was appropriate discipline.

The licensee filed a timely appeal with this Commission.

SUMMARY OF THE PROCEEDINGS

John Mariane has worked for the City of Chicago's Department of Business Affairs and Consumer Protection for twenty-two years and is currently Manager of Collections. In that position he conducts remediation conferences that take place in Room 805 at City Hall. Licensees are notified of these conferences by mail. The witness identified City's Exhibit 3, in evidence, as a Notice to Appear for a remediation conference. It was sent to Darrin Allen Sutton, Darrin's LLC, 1249 East 87th Street, Chicago, IL 60619, and it listed the date of the remediation conference as June 2, 2014. On June 2, 2014, the owner appeared but the conference was not completed and was continued until July 14, 2014, for the respondent to have an attorney. Neither Mr. Sutton nor an attorney appeared on July 14, 2014.

Mr. Mariane then identified City's Exhibit 4, in evidence, as Darrin's LLC's application for a business license. The business activity listed in this application was for a tavern with no food or entertainment. That license was issued by the City. The witness then identified City's Exhibit 5, in evidence, as a package showing various ads for the location that were posted on the internet from Darrin's Facebook page. There is an ad for DJ appearing Friday nights from 9:00 pm until 2:00 am, and an ad for live music on Mondays. There are other ads for DJs and music

at this location and an ad for open mic comedy every Sunday. These advertisements were posted on April 25, 2014.

Mr. Mariane opined that his review of the city's IRIS records show that Darrin's LLC never reported to the department a change in the description of their operation at the location. Mariane did not issue a citation to the respondent for failure to amend the description of activity. He did not witness any activity.

The City called Darrin Sutton as an adverse witness. He is the President of Darrin's LLC and has been for a couple of years. He runs the business at 1249 East 87th Street. He stated City's Exhibit 4 is his actual application of a tavern license and agreed on the second page as it describes the license applied for was tavern with no food or entertainment. He signed the application but did not insert tavern with no food or entertainment; that was typed in. Anything on the application not handwritten was put in by someone else. He applied only for a tavern license and described his activity as a bar. He did not type in or describe what type of activity. He did not apply for a food licensee. The evidence on City's Exhibit 5 are screen shots from Darrin's Facebook page. As of April 25, it was hosting DJs and open mic comedy. There was live music before April 25.

The City rested its case.

Darrin Sutton testified in his case. His initial application for a liquor license was denied. He appealed and the license was granted. He did not need to follow up with the Department of Business Affairs after the order granting the license. He does not have a PPA because the City's Zoning Department said it was not needed. Zoning classified occupancy as less than 100. He does not have a kitchen and it was never his intention to serve food. The music he provides is House, R&B, and Hip-Hop which is broadcast by satellite radio or computer.

Sutton was shown City's Exhibit 6, which is an occupancy card for Darrin's for 127 persons issued by the Department of Buildings on November 22, 2013. He did meet with a business consultant but does not recall a conversation with anyone regarding food. His only conversation with the Alderman was about a tavern liquor license.

The witness identified Licensee's Exhibit 1, as the liquor license issued on December 16, 2013. It says occupancy less than 100 and was issued after the occupancy card which was City's Exhibit 6. There is no proscription about food or music. Licensee's Exhibit 2 is a stamped zoning ordinance from the Department of Zoning dated May 8, 2014, which states no occupancy required, existing tavern. It is actually an application for occupancy.

RELEVANT ORDINANCES

Chicago Municipal Code 4-4-050(a)(5) – Every application for, and renewal of, a license under Title 4 shall, at a minimum, contain, or in the case of a license renewal confirm the following information:

(5) A description of the activities and services, as applicable, that the applicant will carry on or provide at the licensed premises...

(b) It is a condition of the license that all information in the license application be kept current. The licensee shall report to the department any change in the above required information within ten business days of said change.

Chicago Municipal Code 4-4-265 – Any city department that is responsible for enforcing any license requirement under this code shall have the authority to require a licensee to appear at a remediation conference at which the licensee shall be required to produce books or records or answer questions for the purpose of determining the licensee's compliance with any provision of the code that is within the department's or agency's enforcement authority.

(b) If a department or agency requires a licensee to appear at a remediation conference, the licensee shall be given no less than 30 calendar days notice, sent by first class mail to the licensee's address on file with the applicable department or agency, directing such licensee to appear at the offices of the department or agency for a remediation conference. If the licensee fails without just cause, as determined by the applicable department head, to appear at such remediation conference, the licensee shall not be eligible to renew the applicable license and failure to appear shall constitute grounds to suspend or revoke the license.

Since this is an appeal of a fine, the issues before this Commission are:

- 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 standard of review in this case is substantial evidence. That term has been defined by reviewing courts as “any evidence” which supports the findings of the Deputy Hearing Commissioner. In making this determination, this Commission is limited to matters in the record.

The license application in the record clearly states the business activity as “2010 Sq. Ft-TAVERN WITH NO FOOD OR ENTERTAINMENT.” The application was signed by Darrin Sutton in his position as President of the LLC. The evidence in the record from Mr. Sutton is that he applied for a tavern license and he did not insert the words “No Food or Entertainment” on the application. Since the application is typed, that statement seems to be true. There is no evidence in the record as to how this application was completed or how this phrase ended up in the application. The words themselves are unnecessary since one cannot serve food without a food license. The entertainment phrase is also unnecessary since there is not a license for entertainment. The question would become whether a Public Place of Amusement License would be needed for entertainment.

The fact in the record is that Mr. Sutton signed an application that included the term “No Food or Entertainment” in the Business Activity Section. Evidence in the record is that there was entertainment at the tavern. The entertainment might have such that a PPA license was not needed. That is not the issue in this case. There was entertainment at the tavern and that business activity was not listed in the application originally and no amendment was in the record. There is substantial evidence in the record to affirm the findings of the Deputy Hearing Commissioner on Charge 1.

Counsel for the licensee argued there was no written evidence supporting Mr. Mariane's testimony that the original remediation conference was continued so licensee could be represented by attorney. The ordinance cited in this charge does not address the manner in which the department is to notify a licensee of a continuance. The procedure under the ordinance for notice of the original remediation conference was followed. Mr. Sutton never denied not appearing for the continued remediation conference and never denied he was told of the continuance date. Under these facts, there is substantial evidence in the whole record to affirm the decision of the Deputy Hearing Commissioner on Charge 2.

The Local Liquor Control Commissioner has discretion in imposing penalties and that decision will not be reversed unless it is arbitrary and capricious. While this Commissioner feels that a \$2,500 fine concurrent on these charges is excessive and further feels that the Deputy Hearing Commissioner did not adequately state why such a fine was appropriate, the fine is not so excessive as to be arbitrary and capricious.

The imposition of the \$2,500 fine concurrent on the two charges is upheld and affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order to Fine the Appellant
the sum of \$2,500.00 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: August 11, 2015

Dennis M. Fleming
Chairman

Donald O'Connell
Member