

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

El Poblano Restaurant & Bar, Inc. )  
Clotilde Zacatenco, President )  
Licensee/Revocation )  
for the premises located at )  
3700 West Lawrence Avenue )  
 ) Case No. 16 LA 1  
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 a Notice of Hearing from the City of Chicago that pursuant to 235 ILCS 5/7-5 and Title 4, Section 280 of the Municipal Code of the City of Chicago, a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago retail liquor license issued to it for the premises located at 3700 West Lawrence Avenue, Chicago, Illinois.

The licensee was charged with the following:

1. That on August 18, 2014, the licensee became ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2 because the President, Clotilde Zacatenco, was convicted of a felony and is thus ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2 (a)(4) and (a)(10).
2. That on or about August 18, 2014, the licensee became ineligible to hold a liquor license pursuant to Municipal Code of Chicago 4-66-030, because its President, Clotilde Zacatenco, was convicted of a felony and is thus ineligible to hold a liquor license pursuant to Municipal Code of Chicago 4-60-030 (e)(k).

3. That on or about November 14, 2014, the licensee, by and through its agent, sold alcoholic liquor as its primary activity, and not as an activity incidental or secondary to the primary activity at the premises, at a time when the licensee held a “consumption on premises - incidental activity” license and did not hold a “tavern” license, in violation of Municipal Code of Chicago 4-60-020 (a) and 4-60-10.
4. That on November 14, 2014, the licensee, by and through its agent, as a purported restaurant with a “consumption on premises - incidental activity” license, sold alcoholic liquor at a time when it did not provide food service, in violation of 235 ILCS 5/6-25.
5. That on or about November 14, 2014, the licensee, by and through its agent, solicited, induced or request any patron of the licensed establishment to purchase any alcoholic or nonalcoholic beverage for himself or any other employee of the licensed establishment, in violation of Municipal Code of Chicago 4-60-140 (b).
6. That on or about March 5, 2015, the licensee, by and through its agent, sold alcoholic liquor as its primary activity, and not as an activity incidental or secondary to the primary activity at the premises, at a time when the licensee held a “consumption on premises - incidental activity” license and did not hold a “tavern” license, in violation of Municipal Code of Chicago 4-60-020 (a) and 4-60-10.
7. That on or about March 5, 2015, the licensee, by and through its agent, as a purported restaurant with a “consumption on premises - incidental activity” license, sold alcoholic liquor at a time when it did not also provide food service, in violation of 235 ILCS 5/6-25.
8. That on or about April 23, 2015, the licensee, by and through its agent, sold alcoholic liquor as its primary activity, and not as an activity incidental or secondary to the primary at the premises, at a time when the licensee held a “consumption on premises - incidental activity” license, and did not hold a “tavern” license, in violation of Municipal Code of Chicago 4-60-020 (a) and 4-60-10.
9. That on or about April 23, 2015, the licensee, by and through its agent, as a purported restaurant with a “consumption on premises - incidental activity” license, sold alcoholic liquor at a time when it did not also provide food service, in violation of 235 ILCS 5/6-25.

This case proceeded to hearing on December 7, 2015 and January 25, 2016 with Deputy Hearing Commissioner Raymond Prosser presiding. Assistant Corporation Counsel David Hartmann represented the City and Richard Kaplan represented the licensee. After the close of evidence, the Deputy Hearing Commissioner entered Findings of Fact that the City failed to meet its burden of proof on Charges 5, 6 and 7, and further found the City met its burden of proof on Charges 1, 2, 3, 4, 8 and 9. The Deputy Hearing Commissioner found that based on the individual and collective findings revocation was the appropriate discipline.

Gregory Steadman as the Local Liquor Control Commissioner and Maria Guerra Lapacek as Commissioner of the Department of Business Affairs and Consumer Protection adopted the Findings of Fact of the Deputy Hearing Commissioner and an Order of Revocation of the City of Chicago retail liquor license and all city licenses issued to the licensee was entered on February 1, 2016. The licensee filed a timely appeal of the revocation of the liquor license with this Commission.

#### SUMMARY OF PROCEEDINGS

Prior to the start of testimony, the parties stipulated to the admission of City's Exhibit 3, which is a certified copy of the conviction of Clotilde Zacatenco on a felony charge of aggravated driving under the influence. The date of the conviction was August 18, 2014, and Mr. Zacatenco was sentenced to twenty-four months probation. Mr. Clotilde Zacatenco was and is the President of El Poblano Restaurant & Bar, an Illinois corporation.

Clotilde Zacatenco has been the President of El Poblano Restaurant & Bar which operates a restaurant at 3700 West Lawrence since August of 2005. He pled guilty to a felony driving under the influence charge on August 18, 2014. He took full responsibility for his wrongful conduct. He no longer drinks and has not drank any alcoholic beverages since the accident in 2013. He also attends Alcoholic Anonymous meetings six days a week on Montrose and Kinsey. His girlfriend gives him a ride to the meetings and he takes a bus to work after the meetings to run the restaurant. He takes a taxi home. He has not driven a car since the accident in 2013.

Mr. Zacatenco identified Licensee Group Exhibit 1, as books and records regarding his sale of food and alcohol that he submitted to the Chicago Police Department. These records were submitted in response to the request of the Chicago Police Department that the licensee show the records of the sale of food and alcohol from January 2015 until the time the documents were produced. These documents are not complete since the licensee did not have enough time to make copies. There are still plenty other documents.

On cross, Mr. Zacatenco admitted he pled guilty to a felony on August 18, 2014, and was sentenced to two years probation. His license was revoked but he will be able to get his license back in 2018.

The parties stipulated that if Amnida Job were called to testify she would testify that she is Mr. Zacatenco's girlfriend and that she drops him off at the AA meetings six days a week.

Steven Lugo has been a Chicago Police Officer for almost seventeen years and has been assigned to the License Enforcement and Investigation Unit of the Vice Section since December of 2010. In that unit he investigates liquor establishments within the city of Chicago to see if they are in compliance and are operating within the scope of their business.

Lugo was working that unit on November 14, 2014 in plain clothes with Officer Regina Reyes. They went to 3700 West Lawrence in an undercover capacity to investigate El Poblano Restaurant & Bar, Inc. The investigation was to determine if the licensee was in compliance with its incidental liquor license. They arrived at the location about 9:30 pm. The premises are at a corner location with blackened windows and a few beer neon advertisements in the window. The place was open and music was playing, and a security guard was at the door. The security guard checked their identification and then did a pat down of the witnesses. The inside was a small location with about eight seats at the bar and a few tables. There were eight to ten patrons drinking. There were buckets of ice with beer on the tables. No one was eating. Lugo ordered drinks for himself and his partner from the bartender. He asked the bartender for a menu and the bartender stated the cook was not in yet. The bartender may have dropped off some chips and a bottle of hot sauce.

Officer Lugo and Officer Golucki returned to the premises on March 5, 2015. They were in street clothes and took a seat at the bar about 8:00 pm. They ordered beers and received a menu. There were various food items listed on the menu such as tacos, burritos and chicken wings. They were the basic items of a Mexican restaurant. He tried to order food but was told

only tacos were available. They did not order tacos. He observed another patron drinking beer and saw no food available while he was there.

Lugo returned to the establishment a third time on April 23, 2015. He was again accompanied by Officer Golucki and they arrived after 7:00 pm. There were two patrons present. One was leaving and the other was drinking beer at the bar. That patron was not eating food. They went to the bar, ordered a beer and asked if food was available. The bartender said no food was available.

Officer Lugo did not observe any sort of food preparation area in the bar on those three occasions. A grill was behind the bar but it was not being utilized for cooking just for additional counter space for dispensing beverages. On the three occasions he was present, Officer Lugo did not observe any patrons order or receive food from this establishment. He observed consumption of alcohol on all three occasions.

On cross, Officer Lugo acknowledged on November 14, 2014 he was given a basket of tortilla chips and a bottle of hot sauce. He agreed that on March 5, 2015, a second female behind the bar said she could prepare steak tacos for him and he chose not to order.

The City rested its case.

Officer Lugo was recalled to stand as a witness in the licensee's case. He and Officers Golucki and Gallagher went to the establishment on May 20 to request records of the licensee.

Lugo identified Licensee's Group Exhibit 1, in evidence, as documents he received from Mr. Zacatenco. These were two-sided documents that were various sales slips showing items sold like tostadas and Coronas. They go back to 2015.

Based on this information, the witness prepared a police report in which he stated he was unable to determine the overall sales of food versus alcohol. It added that the investigation was inconclusive based on the business records.

#### RELEVANT PORTIONS--STATUES AND ORDINANCES

##### **235 ILCS 5/6-2(a)(4)**

Except as otherwise provided in subsection (b) of this Section and in paragraph (1) of subsection (a) of Section 3-12, no license of any kind issued by the State Commission or any local commission shall be issued to:

(4) A person who has been convicted of a felony under any Federal or State law, unless the Commission determines that such person has been sufficiently rehabilitated to warrant the public trust after considering matters set forth in such person's application and the Commission's investigation. The burden of proof of sufficient rehabilitation shall be on the applicant.

##### **235 ILCS 5/6-2(a)(10)**

Except as otherwise provided in subsection (b) of this Section and in paragraph (1) of subsection (a) of Section 3-12, no license of any kind issued by the State Commission or any local commission shall be issued to:

(10) A corporation or limited liability company, if any member, officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than citizenship and residence within the political subdivision.

##### **235 ILCS 5/6-25**

No person shall receive a local license to sell alcoholic liquor upon any premises as a restaurant nor as a club unless it has the gratifications respectively described in Sections 1-3.23 and 1-3.24. No restaurant, licensed as such, shall sell alcoholic liquor except with meals.

### **235 ILCS 5/7-5**

The local liquor control commissioner may revoke or suspend any license issued by him if he determines that the licensee has violated any of the provisions of this act or of any valid ordinance enacted by the particular city council...or any applicable rule or regulations established by the local liquor control commissioner...

### **235 ILCS 5/1-3.23**

"Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests.

### **4-4-280 License revocation.**

(a) The mayor shall have the power to fine a licensee, and/or to suspend or revoke any license for good and sufficient cause or if the issuing department determines that the licensee or its employee or agent has violated any provision of this Code or any rule or regulation promulgated thereunder or any applicable state or federal law...

(b) In the event the mayor designates a local liquor control commissioner, said local liquor control commissioner shall exercise the power of the mayor set forth in subsection (a) of this section with respect to liquor licenses.

### **4-60-010 Definitions**

"City retailer's license for the sale of alcoholic liquor" or "city liquor dealer's license" or "city's retailer's license" or "liquor license" means each liquor license category or classification described in this chapter unless otherwise expressly provided.

"Tavern license" means a city license for the retail sale of alcoholic liquor in an enclosed place of business kept, used, maintained, advertised and held out to the public as a place that primarily serves alcoholic liquor for consumption on the premises and in which providing entertainment or the serving of food is only incidental or secondary to the sale of alcoholic beverages for immediate consumption.

"Consumption on premises – incidental activity license" means a city license for the retail sale of alcoholic liquor for consumption on the premises at a place of business where the sale of alcoholic liquor is incidental or secondary to the primary activity of such place of business. Places of business within this license classification include, but are not limited to, restaurants, hotels, theaters providing live stage performances and bowling alleys.

**4-60-20(a) License required - Restricted areas.**

No person shall sell at retail any alcoholic liquor without first having obtained a city retailer's license for each premises where the retailer is located to sell the same.

**4-60-030 License issuance prohibited when.**

No license for the sale of alcoholic liquor shall be issued to:

(e) A person who has been convicted of a felony under any federal or state law, if the local liquor control commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust.

(k) ... a corporation, if any officer, manager or director thereof or any stockholder owning in the aggregate more than five percent of the stock of such corporation would not be eligible to receive a license hereunder for any reason other than residence within the city.

**RELEVANT RULES FOR REHABILITATION OF EX-OFFENDER RULES ADOPTED  
BY COMMISSIONER MARIA GUERRA LAPACEK ON JULY 29, 2015--PUBLISHED  
AND EFFECTIVE ON DECEMBER 1, 2008.**

**Rule No. 5.** *Rehabilitation prohibited when.* Rehabilitation is not available:

- (3) ...unless two years have passed since the date of imposition of the penalty imposed for commission of the disqualifying act or the date of completion of the terms of the sentence, conditions or payment of any fine imposed for commission of the disqualifying act, whichever comes later.

Since this case deals with revocation of a liquor license, the jurisdiction of this

Commission is limited by state statute to the following 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 first issue raised by the counsel for the licensee would be within the scope of whether the local liquor commissioner proceeded in the manner provided by law. This argument is usually made in the concept of whether the licensee received procedural due process with respect to the charges on which discipline is sought by the City. In those cases, this Commission on a case by case basis would review each of the charges to determine if that charge gave due and adequate notice to the licensee.

Counsel for the licensee presents different arguments with respect to the issue of whether the local liquor control commissioner proceeded in the manner provided by law. Counsel argues that the sections of the Municipal Code and State Statute cited in the statement of Charges 1 and 2 address on the question of eligibility to receive a liquor license. This case does not deal with issuance since the license has issued. This case deals with revocation and the cited section of the Municipal Code and State Statute are not specifically referenced as a basis for revocation. In essence, counsel for the licensee is arguing that no liquor license can be revoked on the basis that one or more than one of the disqualifying events for the issuance of the license has occurred after the issuance of the license. He suggests the proper procedure would have been to allow the president of the corporation who was convicted of a felony to withdraw from the corporation.

The Illinois Liquor Control Act in Section 5/7-5 allows the local liquor control commissioner to revoke or suspend any license issued by him if it is determined that the licensee has violated any of the provisions of this act or of any valid ordinance enacted by the city council or rules or regulations established by the local liquor control commissioner. Section 4-4-280

specifically allows for the suspension or revocation of a liquor license if the licensee has violated any applicable state or federal law.

The issue in administrative hearings is whether the charges alleged as the bases for the revocation are sufficient to provide the licensee with due process. That issue is satisfied if the charges are drafted in such a way as to apprise the licensee why disciplinary action is being taken and to allow the licensee to be able to present a defense.

Charges 1 and 2 allege that disciplinary proceedings should proceed because the licensee is ineligible to hold a liquor license pursuant to the Municipal Code and State Statute. These charges are sufficient to come within the scope of authority for discipline under 4-4-280 of the Chicago Municipal Code and 5/7-5 of the Illinois Liquor Control Act. They sufficiently advised the licensee of why disciplinary proceedings had been commenced and were clear enough to allow the licensee to prepare a defense.

The Local Liquor Control Commissioner did proceed in this case in the manner provided by law.

The next issue is whether the findings of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record. Substantial evidence has been defined broadly by Illinois courts and any evidence supporting a finding of the Deputy Hearing Commissioner is sufficient to affirm the finding.

There is no issue as to the fact that Clotilde Zacatenco, the President of the license corporation, was convicted of a felony on August 18, 2014. The conviction was for felony Driving Under the Influence and there was a sentence of 24 months probation. Pursuant to State Statute and the Chicago Municipal Code, a convicted felon is ineligible to be issued a liquor license unless such person has been determined to have been sufficiently rehabilitated. Both the State Statute and the Municipal Code reference the issue of rehabilitation in the application process. They are silent on the issue of rehabilitation in the context of a revocation of a liquor license due to a felony conviction after a liquor license has been issued. This point is relevant to this case because the Deputy Hearing Commissioner referenced in Paragraph 8 of his findings, Rule 5(3) of the Rules and Regulations for Rehabilitation of Ex-Offenders of the Department of Business Affairs and Consumer Protection. These rules were not referenced during the hearing and were not placed in evidence. The Deputy Hearing Commissioner did set out that he was taking judicial notice of these rules. For the purpose of the decision and pursuant to the Illinois Rules of Evidence, the License Appeal Commission will take judicial notice of these rules. Having done so, this Commissioner finds these rules and regulations are not applicable to the facts of this case. The Deputy Hearing Commissioner did not need to address the issue of rehabilitation in general or rehabilitation pursuant to the referenced rules in this case.

In the event that a reviewing court should feel that the issue of rehabilitation was relevant in this case, the decision of the Deputy Hearing Commissioner that Mr. Zacatenco has not been sufficiently rehabilitated is supported by substantial evidence in the record as a whole. This determination is made separate and apart from the City's Rehabilitation of Ex-Offenders Rules. The case of Ryan v. Verbic 97 Ill. App. 3d 739 upheld the revocation of a liquor license based on

a licensee's felony conviction and the fact that there was a short period of time from the sentence of probation to the initiation of the proceedings and the dearth of evidence presented by the plaintiff to show he was "sufficiently rehabilitated." The one year period from the date of the sentence till the start of this case and the limited amount of evidence presented by the licensee to show sufficient evidence supports the finding by the Deputy Hearing Commissioner.

With respect to the remaining sustained charges, there is substantial evidence in the record to support the findings of the Deputy Hearing Commissioner.

The final issue is whether the order of revocation is supported by the findings. The findings on Charges 1 and 2 address the question of qualification to hold a liquor license. Since the findings of the Deputy Hearing Commissioner that the licensee is not qualified to have a liquor license have been affirmed, the revocation of the liquor license based on those findings is sustained.

The Deputy Hearing Commissioner also found revocation as the appropriate discipline for his findings on Charges 3, 4, 8 and 9. Revocation was based on the proof of each individual charge and other sustained charges. Since revocation was required on Charges 1 and 2, revocation on these charges is actually cumulative. Revocation on these charges in conjunction with the revocation on Charge 1 and 2 is appropriate and will be sustained. The issue of whether revocation would be proper if Charges 1 and 2 are reversed is not before this Commission.

The revocation of the liquor license issued to El Poblano Restaurant and Bar, Inc. is sustained.

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: August 25, 2016

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member