

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Bottled Blonde Chicago, LLC )  
Licensee/Revocation )  
for the premises located at )  
504 North Wells Street )  
 )  
v. ) Case No. 17 LA 18  
 )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Shannon Trotter, Commissioner )

**ORDER**

**DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER CRONIN  
CAHILL**

**NATURE OF THE CASE**

The Licensee received notice pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago, that a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago license issued to Bottled Blonde Chicago, LLC for the premises located at 504 North Wells Street, Chicago, Illinois. That notice listed twenty-five (25) separate charges which all arose out of allegations that the Licensee operated in violation of its Revised Liquor License Plan of Operation in violation of Municipal Code of Chicago 4-60-040(h), 4-60-020(a), and 4-60-010. These are the charges:

1. From March 2016, through August 2016, the Licensee operated in a manner where the sale of alcoholic beverages was the primary business activity.
2. From September 2016, through February 2017, Licensee operated in a manner where the sale of alcohol was the primary business activity.

3. From March 2016, through February 2017, the Licensee sold alcoholic liquor as its primary activity at a time Licensee held a Consumption on Premises-Incidental Activity license.
4. On or about December 2, 2016, the Licensee failed to regularly monitor the exterior area around the premises...which resulted in vomit in an adjacent doorway.
5. On or about December 30, 2016, the Licensee failed to terminate use of the line to enter and to disperse those waiting for entry at 12:00 a.m. on Sunday morning and 11:00 p.m. on all other days.
6. On or about January 15, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours in order to address and abate...littering, and/or failed to prevent the accumulation of litter by making an employee responsible for outside cleaning duties throughout the day.
7. On or about January 16, 2017, the Licensee failed to ensure patrons depart in a quiet and orderly fashion.
8. On or about January 21, 2017, the Licensee failed to maintain a single line of no more than 25 people on the exterior of the premises for patrons awaiting entry to the premises.
9. On or about February 24, 2017, the Licensee sold alcoholic liquor as its primary activity...at a time when the Licensee held a Consumption on Premises-Incidental Activity license.
10. On or about March 2, 2017, the Licensee sold alcoholic liquor as its primary activity...at a time when the Licensee held a Consumption on Premises-Incidental Activity license.
11. On or about March 5, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours to address and abate noise, loitering, obtrusive customer behavior, loitering at the front door, [and] smoking.
12. On or about March 7, 2017, the Licensee sold alcoholic liquor as its primary activity at a time when it held a Consumption on Premises-Incidental Activity license.
13. On or about March 11, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours to address and abate noise, loitering, obtrusive customer behavior, loitering at the front door, [and] smoking.
14. On or about March 18, 2017, the Licensee failed to only offer “bottle service” with bottle locks.

15. On or about March 18, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all its business hours in order to address and abate noise, [and] loitering, and/or failed to maintain a single file only line of no more than 25 people on the exterior of the premises for patrons awaiting entry to the premises.
16. On or about March 18, 2017, the Licensee failed to regularly monitor the exterior area around the premises, and/or failed to prevent the accumulation of litter, and/or failed to, after closing, sweep the sidewalks from corner to corner, which resulted in vomit being left in an adjacent doorway.
17. On or about March 24, 2017, the Licensee failed to regularly monitor the exterior area around the premises, and/or failed to prevent the accumulation of litter, and/or failed to, after closing, sweep the sidewalks from corner to corner, which resulted in vomit being left in an adjacent doorway.
18. On or about March 25, 2017, the Licensee failed to regularly monitor the exterior area around the premises, and/or failed to prevent the accumulation of litter, and/or failed to, after closing, sweep the sidewalks from corner to corner, which resulted in vomit being left in an adjacent doorway.
19. On or about April 9, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours in order to address and abate noise, [and] loitering, and/or failed to maintain a single file only line of no more than 25 people on the exterior of the premises for patrons awaiting entry to the premises.
20. On or about April 22, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours in order to address and abate...obtrusive customer behavior, ...and littering, and/or failed to prevent...public intoxication, unruly behavior, or any other criminal activity, which resulted in urination in an adjacent garage entrance.
21. On or about April 23, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours in order to address and abate...obtrusive customer behavior, ...and littering, and/or failed to prevent...public intoxication, unruly behavior, or any other criminal activity, which resulted in urination in an adjacent doorway.
22. On or about April 23, 2017, the Licensee failed to regularly monitor the exterior area around the premises, and/or failed to prevent the accumulation of litter, and/or failed to, after closing, sweep the sidewalks from corner to corner, which resulted in vomit being left in an adjacent doorway.

23. On or about May 6, 2017, the Licensee failed to regularly monitor the exterior area around the premises during all of its business hours in order to address and abate noise, [and] loitering, and/or failed to maintain a single file only line of no more than 25 people on the exterior of the premises for patrons awaiting entry to the premises.
24. On or about May 7, 2017, the Licensee failed to regularly monitor the exterior area around the premises, and/or failed to prevent the accumulation of litter, and/or failed to, after closing, sweep the sidewalks from corner to corner, which resulted in vomit being left on the sidewalk on Wells Street in front of the adjacent building to the north.
25. That on or about May 8, 2017, the Licensee failed to regularly monitor the exterior area around the premises, and/or failed to prevent the accumulation of litter and/or failed to, after closing, sweep the sidewalks from corner to corner, which resulted in vomit being left in an adjacent garage entrance on Wells Street.

Testimony was taken in this case on September 5, 2017, September 13, 2017, and October 24, 2017. The City was represented by Assistant Corporation Counsels Matthew Allee and Rachel Berger. The Licensee was represented originally by attorney Timothy Fitzgerald and later by Nick Ftikas from the Law Offices of Samuel V.P. Banks.

The Hearing Officer made 94 Findings of Fact and found the City of Chicago proved all charges with the exception of Charge 22 and recommended revocation of all licenses on Charges #1-3, and #7-21. He recommended a \$500.00 Fine on Charge 4, a \$1,000 Fine on Charge 5, and a \$1,500 Fine on Charge 6.

An Order of Revocation on Charges #1-3 and #7-21, and a Fine of \$500.00 on Charge 4, \$1,000 on Charge 5, and \$1,500 on Charge 6 was entered by the Department of Business Affairs and Consumer Protection on November 21, 2017.

The Licensee filed a timely appeal of this order with the License Appeal Commission of the City of Chicago.

### **SUMMARY OF THE PROCEEDINGS**

Barbara Gressel is currently the Deputy Commissioner for the Prosecution and Adjudication Division of the City of Chicago's Department of Business Affairs and Consumer Protection. That division handles prosecution of businesses licensed by the City and recommends businesses the Law Department businesses for license discipline.

She is familiar with Bottled Blonde Chicago, LLC located at 504 N. Wells Street from a series of phone calls and emails from neighbors complaining of quality of life issues. These complaints started in approximately November of 2015 at which time the Licensee was open and operating a Retail Food License, a Public Place of Amusement License, and a Consumption on Premises-Incidental Activity License. She then spoke with the business consultant who assisted with the issuance of the licenses and learned a plan of operation had been entered into prior to the issuance of the license. The witness explained under the Liquor Code, Chapter 4-60 of the Municipal Code, a business can, in order to assuage concerns from the police or the Alderman or the community, have a plan of operation with restrictions on how a business can operate. It might have a section requiring security guards or cameras or lighting. The Licensee obtained a Consumption on Premises-Incidental Activity license which allowed the business to sell alcoholic beverages incidental to its primary activity which for Bottled Blonde was to be the retail sale of food.

Ms. Gressel identified City's Exhibit 5 as the pre-license Plan of Operation entered into by Bottled Blonde Chicago, LLC and the City prior to receiving its city licenses. It was signed on October 20, 2015, by Les Corieri as the Managing Member of Bottled Blonde Chicago, LLC and Gregory Steadman who was then the Local Liquor Control Commissioner of the City of Chicago. This document restricted liquor sales and stated:

The licensee shall operate as a restaurant where the primary business activity will be the sale and service of food and where the sale of alcoholic beverages will only be incidental to the food service. For purposes of this plan, the sale of alcoholic liquor shall be considered primary if, during any consecutive six (6) month period, the sale of alcoholic beverages exceeds 50% of gross sales.

After Bottled Blonde Chicago, LLC opened under the terms of this plan, the Department learned of concerns about the ongoing operations and it initiated community meetings to address these concerns. After four meetings, Ms. Gressel terminated the meetings as unsuccessful. The Department of Business Affairs and Consumer Protection sent to the Law Department a request for a license discipline case under the Public Nuisance Ordinance. The witness identified City's Exhibit 6, as a Revised Plan of Operation signed by Les Corieri, Managing Member of Bottled Blonde Chicago, LLC, and Maria Guerra Lapacek, who was then Commissioner of the Department of Business Affairs and Consumer Protection, on September 29, 2016. On that date of execution, the office of the Local Liquor Control Commissioner was not filled and Commissioner Lapacek acted in the capacity of Local Liquor Control Commissioner by authority of the Mayor of the City of Chicago. The revised Plan of Operation contained a similar limit of alcohol sales to food sales stating:

The licensee shall operate as a restaurant where the primary business activity will be the sale and service of food and where the sale of alcoholic beverages will only be incidental to the food

service. For purposes of this plan, the sale of all alcoholic liquor shall be considered primary activity if, during any consecutive six (6) month period, the sale of alcoholic beverages exceeds 50% of gross sales.

In the course of a Chicago Police Department investigation into Bottled Blonde's operation, a request for the Licensee to submit books and records to the City was issued. City's Exhibit 7 was identified as a document containing a summary of Food Purchases, Liquor Purchases, Food Sales, Liquor Sales, Total Sales, Food Percentage, and Liquor Percentage for Bottled Blonde from March 2016 - February 2017. These figures are broken down monthly. All the total sales and food percentages are in the 30% range. All the liquor percentages are from 62% to 69 %. Ms. Gressel opined these figures would violate paragraph one of both plans of operation signed and entered into by the Licensee.

Since the implementation of the revised plan of operation, the witness became aware of continued concerns that the revised plan of operation attempted to address. The revised plan of operation required Bottled Blonde to have three security guards Thursday through Saturday to clean up litter debris in front of and adjacent to the property; to employ someone who is responsible for picking up trash in front of and adjacent to the property; to allow only a single line with no more than 25 persons. It also required that the Licensee shall make all efforts to prevent fighting, disturbance of the peace, public intoxication, unruly behavior, or any other criminal activity by the presence of adequate exterior lighting and the presence of security personnel to deter patrons from participating in those types of activity.

The plan does allow bottle service but the Licensee is required to put bottle locks on the bottle and only servers would be able to unlock those bottle locks to pour drinks to patrons to prevent self-service and over intoxication.

The plan also requires that the Licensee shall ensure patrons depart in a quiet and orderly fashion implementing the closing procedure that includes the light being progressively turned up and the music being progressively turned down during the last 30 minutes of operation. The Licensee shall have security staff posted at the front door to monitor patrons and respectfully but firmly request departing patrons to leave quietly.

On cross, Ms. Gressel stated she is generally familiar with the provisions of 4-60-40(h) but was not the author. She is familiar with specific provisions that allow the creation of plans of operation but could not paraphrase them. She has received phone calls and messages before and after the revised plan of operation. She received them from a Miriam and five or six others. Some of these people called before and after the revised plan. She has not visited Bottled Blonde during the time period security was required.

She stated COP-IA licenses are not limited to restaurants and that the ordinance does not require the sale of alcohol be equal or less than the primary activity. It only says incidental to the primary activity. The ordinance does not define primary or incidental but the original and revised plan of operation both use the term 50 percent. Ms. Gressel was not part of the meeting in which the revised plan was prepared or when the original plan was prepared. The revised plan of operation was entered into between the Licensee and the Department of Business Affairs and



Consumer Protection. She was not involved in preparing the Notice of Hearing as all license discipline cases are processed by the Law Department.

Ms. Gressel testified there were four meetings between Bottled Blonde and the community. These were held on January 28, 2016, March 23, 2016, May 13, 2016, and June 15, 2016.

The witness agreed that Paragraph 2 of the Revised Plan of Operation contains this provision:

“Licensee agrees that if any investigation by the LLCC, the Local Liquor Control Commission, reveals that alcohol sales are the primary activity of the business the licensee along with counsel shall meet with LLCC within 30 days of a request to meet.”

She does not know if such a notice was sent out and never saw such a provision before. She does not know if there is any provision in the state act or city ordinance that requires an incidental license to sell less than 50% alcohol.

On cross, Ms. Gressel restated the plans of operation put an additional requirement on the Licensee to limit its alcohol sales to below 50%. The percentages of liquor sales were between 62 to 69 percent.

On re-cross, Ms. Gressel admitted revenue sales is not the sole basis to determine if a premises is operating as a restaurant or a tavern. It also includes what is happening in and outside the establishment. When she was present one time at the licensed premises between approximately 11:00 am to 1:00 pm, there were people eating and it looked like a restaurant with a big, big bar. She was concerned about photos and videos that showed sparklers in bottles of alcohol,

overcrowded conditions, drunks falling on the ground, urinating, defecating and vomiting at the entryway of neighbors' garages.

Michelle Schwartz has lived at 201 West Grand for ten years with her husband and her dog. Bottled Blonde Chicago, LLC is located in the building next door. She is familiar with Bottled Blonde located at 504 North Wells due to obtrusive behavior with its patrons which she has documented by photographs and emails. On December 3, 2016, she was walking her dog around 8:00 am to 10:00 am along the 500 N. Wells block when she noticed vomit outside the door of her building. On January 15, 2017, she had occasion again to walk along the 500 block of North Wells in the early morning hours when she noticed the sidewalk was covered with cigarette butts from the door of Bottled Blonde to the Toto store. She noticed people smoking in front of Bottled Blonde's front door as well as the vestibule by Toto and the vestibule of the store south of that, so along the whole strip. Toto is located at the corner of Illinois and Wells. She did not take a picture because she did not have her phone. Later that evening around 12:30, she was awakened by loud screaming and yelling and honking by people leaving Bottled Blonde. She did not photograph this incident but did send an email to Joanna at the 42<sup>nd</sup> Ward and to Barbara Gressel. On Sunday, March 5, 2017, she was again walking her dog on Wells Street in front of Bottled Blonde where Wells Street was packed with people that were very rowdy. She did not see any security guards. She did not document this with a photo but did by email to the 42<sup>nd</sup> Ward and Barbara Gressel. On March 11, 2017, she was walking along the 500 block of North Wells where she noticed a horribly crowded sidewalk so bad security could not control the crowd and so bad she needed to walk into the street. She documented this incident in an email. On April 9, 2017, she was again walking along the 500 block of North Wells when she noted an

impassable sidewalk with people smoking all over the sidewalk and by the entrances. Security was trying to control it but the patrons were not cooperative. This event was reported by email. The witness also was at 500 N. Wells on May 6, 2017, where she encountered an impassable sidewalk, City's Exhibit 9, in evidence, was described as a picture she took of that area on May 6.

On cross, the witness admitted she did not see anyone vomit the morning of December 3. It is her conclusion the patron that vomited came from Bottled Blonde. There are other licensed establishments in the area and she does not know where the vomit came from.

The cigarette butts she observed on January 15 were between Bottled Blonde and Toto's. Toto is at Illinois and Wells. She saw people smoking and flicking cigarette butts. On January 16, she was woken up by yelling and screaming by people leaving Bottled Blonde but she could not see the actual entrance to Bottled Blonde.

On redirect, Ms. Schwartz explained it was her impression that a patron from Bottled Blonde vomited in the doorway because in her ten years of living in that building she never had an incident of vomit or urination until Bottled Blonde opened.

Nick Jordan lives at 501 N. Wells which is across 30 or 40 feet from Bottled Blonde. He moved into his residence prior to the opening of Bottled Blonde. He is familiar with Bottled Blonde from noise and people yelling and cars honking by patrons of Bottled Blonde. He has also been inside the establishment a few times. He identified City's Exhibit 10, in evidence, as a picture he

took on December 30, 2016, of patrons lined up to enter the establishment. City's Exhibit 11, in evidence, was identified as a picture he took on January 21, 2017, at 11:09 pm showing approximately 75 people lined up outside Bottled Blonde all the way down to the street corner. On cross-examination, the witness stated the people pictured in line in City's Exhibit 10, were waiting to get in Bottled Blonde.

Joanna Angarone has been the Director of Business Affairs for 42<sup>nd</sup> Ward Alderman Brendan Reilly since June of 2016. In that role, she helps with licensing and with constituents who have a complaint or issue with a business in the 42<sup>nd</sup> Ward. She is familiar with Bottled Blonde as a chronic source of complaints with her office since it opened a year ago. Alderman Reilly's office still receives complaints. She has attended each of the status hearings in this case for the Alderman's office.

She personally visited Bottled Blonde for a cousin's birthday celebration on March 18, 2017. She was not part of the decision making as to where her friends were going that evening. She and her friends arrived about 10 o'clock and there was already a line formed to enter the premises. They waited in a shorter portion of the line because they had a reservation for bottle service; they reserved a table to order bottles of liquor. The hostess led them to a table and they were given a drink menu to order liquor. No food menu was given and no one from Bottled Blonde mentioned that food service was available.

It was busy with loud music for dancing and strobe lights. She did not observe anyone eating food during the course of her visit. The waitresses were wearing one-piece swimsuits. The

group ordered a bottle of vodka, a bottle of champagne, and a few bottles of wine. The waitress brought over the bottles which were carrying sparklers. They brought a bin with ice and champagne flutes, wine glasses, shot and rocks glasses, as well as, a carafe of various mixers. There were no water bottles to rehydrate. The waitress poured the first round of drinks and they then served themselves. The waitress did not put a bottle lock on the bottle of vodka. The witness identified City's Exhibit 12, in evidence, as a picture of the bottle of vodka she and her friends ordered on March 18. There is no bottle lock on the bottle. None of the other bottle service offerings had bottle locks. When she left at about 2:00 am people were still waiting to get into the bar and they were loud and not orderly. City's Exhibit 13, in evidence, is a photo the witness took outside of Bottled Blonde that evening at about 2:00 am. The witness opined Bottled Blonde was operating as a nightclub that evening.

On cross, Ms. Angarone repeated she worked for the Alderman. She agreed City's Exhibit 13 did not show which people in line were rowdy. It appeared to her that people were entering the bar at 2:00 in the morning but she did not follow them. She was aware the Plan of Operation required bottle locks. She did not ask for a food menu that evening and did not intend to eat there.

Declan Coen has been a Chicago Police Officer for 20 years and was previously assigned to the Vice Control Section of the Licensing Division. In that capacity, he investigated improprieties of city businesses holding a City of Chicago license. He was assigned by Commander Kono to conduct an investigation of Bottled Blonde LLC located at 540 N. Wells in February of 2017.

On February 24, 2017, at approximately 8:00 pm he and his partner, Officer Liboy, visited Bottled Blonde. They were in plain clothes and went to conduct a covert license investigation. When they arrived the business was open and there were patrons and service staff. They requested to be seated and upon being seated were told that they would need to vacate their seats at 9:00 because it was reserved for bottle service. The interior is a large open area with two bars surrounded by couches and lounge seating. There was a display on the table with utensils but no specific place settings. The waitress brought menus, took food and drink order, and then served the food and drink in a timely manner. There were approximately 200 patrons and he counted 22 people eating. He walked around the restaurant and counted the people eating and walked the circumference of the restaurant to establish the number. The other 180 patrons were sitting at various tables and the bar area drinking alcohol and socializing. He asked about bottle service reservation and was told it would be \$500 to remain after 9:00 pm. Food could be ordered but with a limited menu to pizza after 10:00 pm.

The officer described a change in the environment that started between 9:30 and 10:00. A new floor crew came out dressed in a lingerie type bustier outfit as opposed to the jeans and tank tops worn earlier by the waitresses. The lighting dimmed and the music volume increased. The focus was more liquor service. It was getting busier but he did not document the exact numbers. The officer opined that during this visit on February 24, 2017, this establishment was acting more as a tavern than a restaurant.

Officer Coen and a partner returned to Bottled Blonde on March 2, 2017, in plain clothes to establish if the restaurant was acting as a tavern or as an actual restaurant. They arrived about

7:00 pm and were seated. There were no formal utensils on the table. Food and drinks were ordered and that proceeded without incident. There were 40 people in the establishment with seven eating and the other 33 socializing and drinking alcohol. It is his opinion that the establishment was operating more as a bar than a restaurant. Officer Coen and his partner, Officer Leboy, returned to Bottled Blonde on March 7, 2017, at approximately 8:30 pm to conduct an undercover assessment of the establishment. The place was open with patrons availing themselves of the bar, food, and drink. They sat at a table with no place settings but with communal silverware in the middle. They ordered food and drink. There were a little over 20 patrons and about six were eating. The others were drinking. The witness opined the establishment was operating as a tavern, not a restaurant, on that third visit.

Officer Coen identified City's Exhibit 14, in evidence, as a letter sent to Bottled Blonde Chicago, LLC on March 13, 2017, requesting it provide two copies of all sales transactions of all food and liquor sales, including beer and wine, for the past 12 months from March 2016 through February 2017.

On cross-examination, Officer Coen stated he did not actually mail this letter and did not know when it was mailed. He does not know if there was any production of documents. Coen described his training in making a determination as to whether the tavern is a restaurant was to document how much activity is alcohol based versus food based. It would be the proportion of visible alcohol consumption toward food consumption. He does not review any documents.

Officer Coen stated there was no way of knowing how many of the 178 patrons he observed not eating on February 24, 2017, ate before he arrived. That was true of the 33 people not eating on March 2 and the 28 people not eating on March 7. He stated he was aware of the plan of operation for the location and it appeared to be in compliance with the plan of operation on February 24 and March 2.

On redirect, Officer Coen opined Bottled Blonde LLC was not in compliance with the plan of operation in that incidental license was primarily a bar.

Nathan David Shiba has lived at 201 W. Grand Ave., Apartment 903 for over 13 years. This is a condominium building and he has been President of the condo association for approximately nine years. The condo has two security cameras and he has access to the security camera footage in his position as president. He is familiar with Bottled Blonde Chicago, LLC located at 504 N. Wells which is directly adjacent to the south of his building. He has been involved in five community meetings with Bottled Blonde and has been a primary negotiator in the October 2015 Plan of Operation.

The witness surveyed the exterior of his building on March 19, 2017. He noticed vomit by the garage entry on Wells Street and noticed in Bottled Blonde's doorway uncleaned gang graffiti as well as remnants of vomit and blood. He texted Marcus Cook to clean these up. The witness identified City's Exhibit 15 as a photo of these conditions on March 19, 2017. To the witness, it shows vomit remaining. He also surveyed the exterior of the building on March 24, 2017. He found fresh vomit in front of their garage doorway on Wells which is directly adjacent to Bottled



Blonde. He identified City's Exhibit 16, in evidence, as a picture of that fresh vomit taken on March 24, 2017, at 6:59 am. Mr. Sheba also found vomit in front of the loading dock/garage door on March 26, 2017. He described City's Exhibit 17, in evidence, as portraying the vomit he saw at 6:54 am on March 26, 2017. The witness identified City's Exhibit 18 as a video dated April 22, 2017, at 11:57 pm showing a man urinating in the corner of the condo garage. He also identified City's Exhibit 19, as a video from April 23, 2017, at 12:23 am showing a young man urinating at the front door. He identified City's Exhibit 20 as a video dated April 23, 2017, at 12:30 am showing a woman vomiting in the corner of the garage entrance. She then returns with two friends towards Bottled Blonde. City's Exhibit 21 was described as a video taken on May 7, 2017, in the morning showing multiple remnants of vomit. Exhibit 21B is a video showing pictures of vomit taken on the morning of May 8, 2017.

Mr. Shiba testified in the first eleven years he lived in this building he could not remember a single incident of vomit or urination at his doorstep. In the two years since Bottled Blonde has been in operation, it is a weekly occurrence.

On cross-examination, the witness admitted he did not know where the vomit seen in City's Exhibit 17 taken on March 24 came from. He could not say with 100% certainty the person seen urinating came from Bottled Blonde but he came from the sidewalk in front of Bottled Blonde.

Bryan Knipper has been a Business Consultant Supervisor for the Department of Business Affairs and Consumer Protection for nine and a half years. In the course of his duties, he reviewed with Local Liquor Control Commissioner Gregory Steadman in mid-2015, an

incidental activity liquor license submitted by Bottled Blonde Chicago, LLC located at 504 N. Wells. The Commissioner initially denied the application based on deleterious impact. The denial was stayed for 20 days from the date of the letter to submit a plan of operation to see if they can address the concerns that led to the deleterious impact. A plan of operation was proposed and agreed to and the incidental activity liquor license was issued subsequent to the plan of operation.

The City rested its case.

Walter Shuberg has been an Office Manager for Bottled Blonde Chicago, LLC since April 2015. He controls the money and makes payments and confirms payroll. He serves as the human resource guy on site. He controls the financial records for this entity. He identified City's Exhibit 7, as a breakdown of gross revenue from March 2016 through February 2017. Since this document was prepared he modified it to contain a breakdown of food sales, liquor sales along with table service fees sales. Licensee's Exhibit 2 is the revised gross revenue. This report is different from the original report in that table fee is in the report. This was done because table service fees are not particularly alcohol sales. Table service fees are done by the corporate office in Scottsdale but he believes they tripled the price of liquor and whatever is over is the table service fee. The fee changes based on the food and liquor service as well as the size of the party. If a table is reserved for \$500 and you ordered \$50 of pizza and \$50 for a bottle, you triple the liquor to \$150 and add \$50 for pizza leaving \$300 for table service. Bottled Blonde generated a gross revenue of \$9,215,698 with 33% attributable to food, 18% to table service fees, and 49% to liquor. During the 12-month term, he was asked to report the sale of liquor did not exceed 50%

of gross revenue. The witness was not aware of any meeting required by the City of Chicago to discuss the revenue report submitted.

On cross, the witness stated he created the table fee percentage listed on Licensee Exhibit 2 from data obtained through the accounting system. He mined the figures with assistance from his supervisor in Scottsdale, Arizona. The cost of liquor depends on how expensive the bottle is with the most expensive being over \$100 a bottle. The highest number he recalls is \$250 a bottle. In each of the months listed in the revised report, 10 to 20% has been allocated to a table service fee. The wholesale price for liquor totaled \$1,306,084.67. The witness stated the table fee was calculated only on reserved tables and Bottled Blonde's operative teams keeps track of reserved tables. The event coordinator would give him information on private parties where tables are rented out.

The witness explained that in creating Licensee's Exhibit 2 he took gross revenues and figured out which had table service. The daily was reviewed which has a total for table fees. Some of the numbers come from Chicago and some from Scottsdale.

When calculated the first time he had seven days to turn over gross revenue and he broke it down out of accounting as food and liquor sales. He added to the table service fees in the second report by subtracting out a percentage after you three times the amount for alcohol and deducted the food.

On redirect, the witness stated the food, liquor and table fees show up on Bottled Blonde's point of service system. This POS system is a centralized reporting system for the restaurant. He took the information reported by operations into the categories in Licensee's Exhibit 2. Bottled Blonde has always charged a table fee. A table fee is not category originated or created for this proceeding.

On re-cross, the witness stated the POS system keeps track of some of the table fees. The other table fees are negotiated by the event coordinator and entered into a different system than the POS system.

For purposes of summarizing the record as a whole, in this case, it is instructive to review evidence in the record from Licensee's Exhibit 1. This exhibit consists of fifteen pages of notes taken by BACP Deputy Commissioner at a series of community meetings held concerning Bottled Blonde. The first meeting was on January 28, 2016, and the fourth and final meeting was on June 15, 2016.

The notes from the first meeting held on January 28, 2016, reflect 63 calls for service to the Chicago Police Department since Bottled Blonde opened on November 5, 2015. These include 31 complaints of loud music; 2 complaints of strobe lights; 5 complaints related to traffic; 2 complaints about overcrowding; 3 calls related to lines of patrons and congregating on the public way; and 1 call about an over intoxicated patron. Commander Devereaux stated this was the highest number of complaints against an establishment. The notes from that meeting listed 16 nuisance issues identified by the community and testimony from neighbors that were removed

from eating to allow bottle service; counsel for Bottled Blonde acknowledged what occurred in the past but will not in the future.

The second community meeting was on March 23, 2016. The Chicago Police Department reported 70 calls for service from January 28, 2016, through March 23, 2016, including 47 disturbance calls for loud music, crowds, lines, double parking, loud horns, strobe lights, people in the street and drunkenness. Community members related these problems started with the opening of Bottled Blonde. The attorney for the License indicated concern with disruption and disappointment and asserted the Licensee would take whatever steps needed to address the complaints.

The third meeting was held on May 13, 2016. Chicago Police reported 62 calls for service from March 23 to May 13, 2016, which were clustered on weekends. These calls were primarily for loud music, overcrowding, and loitering. Members of the community alleged the Licensee is not operating as a restaurant. The attorney for the Licensee indicated the highest sales are from 12:00 pm to 1:00 am and asserted changes were being made and the Licensee will address what needs to be addressed.

The fourth and final meeting was on June 15, 2016. The Chicago Police reported 41 calls for service from May 13, 2016, through June 13, 2016. Twenty-seven calls came from the Licensee and there were 8 calls for loud music and noise. Community members again complained of nuisance issues outside and the operation of the Licensee as a tavern inside. The origin of the nuisance complaints related back to the start of operation of Bottled Blonde.

## **RELEVANT ORDINANCES**

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

**“Consumption on Premises-Incidental Activity”** license means a city license for the retail sale of alcoholic liquor for consumption on the premises where the sale of alcoholic liquor is incidental or secondary to the primary activity of such places of business. Places of business within this classification include, but are not limited to restaurants, hotels, theatres providing live stage performances, and bowling alleys. The holder of a consumption on premises - incidental activity license may sell packaged goods in the licensed premises if such sales are incidental or secondary to the primary activity of such business.

**“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. The holder of a tavern license may sell package goods in the licensed premises if such sales are incidental to the sale of alcoholic liquor for consumption on the premises as the principal activity. Places of business within the tavern license classification include, but are not limited to, cocktail lounges, saloons, and bars.

**“Restaurant”** means any other 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 pursuant to the required licenses and 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 sustainable meals for its guests.

#### **4-60-040(h) - License - Application and Issuance Procedures**

...The Local Liquor Control Commissioner shall deny an application if the applicant fails to satisfy the requirements of this chapter, and may deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located.

...In any case in which the local liquor commissioner finds that an application must be denied under this paragraph, he shall notify the applicant of that finding and afford the applicant 20 days in which to submit a plan of operation and the time for a final ruling on the application shall be stayed until 35 days after the period in which the plan may be submitted has expired.

...An applicant's failure to adhere to a written plan of operation approved by the commissioner pursuant to this section shall constitute a basis to impose a fine or to suspend or revoke any liquor license subsequently issued, as appropriate.

#### **4-60-020(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.

#### **4-4-280 - 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. Provided, however, that no license shall be suspended or revoked unless the licensee is first given five days' written notice of a public hearing, which shall provide the licensee with an opportunity to appear and defend. Such public hearing shall be held before a hearing officer, who shall report his or her findings to the mayor.

(c) 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 subsections (a) and (b) of this section with respect to liquor licenses.

#### **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 or resolution enacted by the particular city council, president, or board of trustees or county board (as the case may be) or any applicable rule or regulations established by the local liquor control commissioner or the State commission which is not inconsistent with law...

#### **235 ILCS 5/7-9**

Appeals from the Order of the Local Commission...the review by the License Appeal Commission shall be limited to these 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 light of the whole record.

### **235 ILCS 5/4-2**

The mayor or president of the board of trustees of each city, village or incorporated town or his or her designee, and the president or chairman of the county board or his or her designee, shall be the local liquor control commissioner for their respective cities, villages, incorporated towns and counties, and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted; but the authority of the president or chairman of the county board or his or her designee shall extend only to that area in any county which lies outside the corporate limits of the cities, villages and incorporated towns therein and those areas which are owned by the county and are within the corporate limits of the cities, villages and incorporated towns with a population of less than 1,000,000, however, such county shall comply with the operating rules of the municipal ordinances affected when issuing their own licenses.

However, such mayor, president of the board of trustees or president or chairman of the county board or his or her designee may appoint a person or persons to assist him in the exercise of the powers and the performance of the duties herein provided for such local liquor control commissioner.

Notwithstanding any other provision of this Section to the contrary, the mayor of a city with a population of 55,000 or less or the president of a village with a population of 55,000 or less that has an interest in the manufacture, sale, or distribution of alcoholic liquor must direct the council or board over which he or she presides to appoint, by majority vote, a person other than him or her to serve as the local liquor control commissioner. The appointment must be made within 30 days from the day on which the mayor or president takes office, and the mayor or president cannot make nominations or serve any other role in the appointment. To prevent any conflict of interest, the mayor or president with the interest in the manufacture, sale, or distribution of alcoholic liquor shall not participate in any meetings, hearings, or decisions on matters impacting the manufacture, sale, or distribution of alcoholic liquor. Further, the appointee (i) shall be an attorney with an active license to practice law in the State of Illinois, (ii) shall not legally represent liquor license applicants or holders before the jurisdiction over which he or she presides as local liquor control commissioner or before an adjacent jurisdiction, (iii) shall not have an interest in the manufacture, sale, or distribution of alcoholic liquor, and (iv) shall not be appointed to a term to exceed the term of the mayor, president, or members of the council or board.

#### **2-25-050 - Powers and duties of the department**

(a) General powers and duties. The commissioner and department shall have powers and duties related to business affairs and consumer protection as set forth in this section and elsewhere in this chapter and Code.

(b) Powers and duties of the commissioner and the department. The powers and duties of the commissioner and department shall be as follows:

- (1) To provide a gateway to assist businesses in obtaining city licenses;

- (2) To advocate on behalf of businesses and consumers to facilitate their interaction with city departments;
- (3) To provide ongoing assistance to start-up and existing businesses;
- (4) To serve as the mayor's designee and to exercise the powers and perform the duties and responsibilities of the mayor regarding all matters pertaining to city business licenses, including but not limited to:
  - (i) processing and reviewing license applications;
  - (ii) investigating applicants and licensed businesses for compliance with the requirements of this Code or any other applicable law related to licensing;
  - (iii) enforcing ordinances and statutes related to licensing and all applicable rules and regulations promulgated thereunder;
  - (iv) conducting license disciplinary hearings and proceedings; and
  - (v) issuing orders to rescind, revoke or suspend licenses and to impose fines for violation of the requirements of this Code or any other applicable law related to licensing.

Provided, however, that in the event the mayor designates a local liquor control commissioner, said local liquor control commissioner shall exercise the license-related powers, duties, and responsibilities as are vested in the local liquor control commissioner pursuant to the Local Liquor Control Act of 1934, as amended, and this Code;

- (5) To exercise all powers and perform all duties relating to the issuance, suspension, and revocation of licenses and the investigation and discipline of licensees previously given to the department of business affairs and licensing pursuant to this Code, the Liquor Control Act of 1934 or any other law. Provided, however, that in the event the mayor designates a local liquor control commissioner, said local liquor control commissioner shall exercise the license-related powers, duties, and responsibilities as are vested in the local liquor control commissioner pursuant to the Local Liquor Control Act of 1934, as amended, and this Code.

## ANALYSIS

Since this is an appeal of a revocation pursuant to the Illinois Liquor Control Act the jurisdiction of this License Appeal Commission is limited to these three 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 the light of the whole record.

The question of whether the Local Liquor Control Commissioner has proceeded in the manner provided by law has been limited to the issue of whether a licensee received the due process set forth by ordinance and/or statute at the revocation proceedings. WISAM I, Inc. v. Illinois Liquor Control Commission. In this case, this Commission must look at the procedures set out in the Chicago Municipal Code with respect to this type of revocation proceeding. Section 4-4-280 states that “no license shall be suspended or revoked unless the licensee is first given five days written notice of a public hearing with an opportunity to appear and defend. Such public hearing shall be held before a hearing officer who shall report his or her findings to the mayor.”

The record, in this case, shows a Notice of Hearing was sent to Bottled Blonde Chicago, LLC at 540 N. Wells, Chicago, Illinois on May 12, 2017, advising the Licensee that a disciplinary proceeding regarding the City of Chicago licenses issued to Bottled Blonde Chicago, LLC would be held on Tuesday, June 6, 2017 at 9:30 am in Room 805 of City Hall, 121 N. La Salle, Chicago, Illinois 60602. This mailing satisfied the notice provision of Section 4-4-280.

The record, in this case, shows that the Licensee appeared and defended on the following dates:

- September 5, 2017 - Attorney Timothy Fitzgerald
- September 13, 2017 - Attorney Timothy Fitzgerald
- September 19, 2017 - Attorney Nicholas Ftikas
- October 24, 2017 - Attorney Nicholas Ftikas

At the September 19, 2017, hearing, the Deputy Hearing Commissioner was advised that Mr. Fitzgerald was no longer able to continue his representation of Bottled Blonde Chicago, LLC and that it had terminated Mr. Fitzgerald. Over the objection of attorney Ftikas and one of the equity partners of the Licensee, this case was continued until September 26, 2017, for a new lawyer to be present and prepared for hearing.

Counsel for the Licensee argues that the Hearing Officer's denial of their request for additional continuances and the denial of the Motion for a Mistrial denied the Licensee substantive and procedural due process. The grounds in the Motion for Mistrial were the City's failure to timely provide a copy of the transcript (morning session) of the hearing conducted on September 5, 2017, and the refusal to grant reasonable continuance time for new counsel to prepare.

The Deputy Hearing Commissioner made these specific findings with respect to those issues:

- Finding 4 - I find the Licensee failed to present anything that evidenced prejudice in their not getting a written transcript of the morning proceedings of September 5, 2017, until 4 days before they had to present their case.

- Finding 6 - I find the Licensee failed to name any witness they were unable to produce at trial or at least the subject matter about which such a witness, who could not be present, would have testified.
- Finding 7 - I find the Licensee's motion for a mistrial and continuance should be denied.

The Licensee, in this case, did receive proper notice of the changes and an opportunity to respond and defend. As such, this Commissioner finds that the Local Liquor Control Commissioner did proceed in the manner prescribed by law under the State of Illinois Liquor Control Act and the Chicago Municipal Code. The issue of whether the Licensee received proper procedural due process raises constitutional issues that are not within the jurisdiction of this License Appeal Commission.

Charge 1 alleged that from March 2016 through August 2016, the Licensee operated in a manner where the sale of alcohol was the primary business in violation of the Revised Plan of Operation. As pointed out by Chairman Fleming at oral argument, the charge should have alleged these actions violated the original Plan of Operation since the Revised Plan of Operation was not signed until September 29, 2016. No issue was raised with respect to the error in this charge at the hearing and it is clear from the record that the Licensee would have been aware of the dates in which the two plans were operating. Counsel for the Licensee acknowledged at oral argument that the original Plan of Operation was promulgated pursuant to the Municipal Code. The original Plan of Operation was signed by the parties on October 20, 2015. The Licensee agreed it would operate as a restaurant where the primary business will be the sale and service of food and where the sale of alcoholic beverages will only be incidental to the food service. It also contained the proviso that the sale of alcoholic liquor shall be considered primary activity if

during any consecutive six month period the sale of alcoholic beverages exceeds 50% of gross sales.

While Charge 1 does contain an error in alleging a violation of the Revised Plan of Operation, the record does not show the Licensee was prejudiced by that error to the point that it was denied due process on that charge.

The next issue to be addressed is whether the findings are supported by substantial evidence in light of the whole record. The “substantial evidence standard” has been defined by Illinois courts as a very low threshold that is more than a mere scintilla but less than a preponderance of the standard. All the evidence in the record must be analyzed which in this case includes the testimony of the witnesses and the exhibits in evidence which includes the notes taken by Barbara Gressel at the community meetings.

Since several of the charges allege violations of the Revised Plan of Operation the question of the validity of that plan needs to be addressed. Entwined with this issue is a question of the validity of the Order of Revocation. Counsel for the Licensee asserts that since both the Revised Plan of Operation and the Order of Revocation was signed by Rosa Escareno, in her position as the Commissioner of Business Affairs and Consumer Protection, the orders are invalid as they were not signed by the Local Liquor Control Commissioner. At the time of the execution of the Revised Plan of Operation and the entry of the Order of Revocation, the position of the Local Liquor Control Commissioner of the City of Chicago was vacant.

Section 5/4-2 of the Illinois Liquor Control Act designates the mayor of each city to be the local liquor control commissioner but it also stated a mayor “may appoint a person or persons to assist him in the exercise of the powers and the performance of the duties herein provided for such local liquor control commissioner.” That statute does not mandate that a mayor designate a local liquor control commissioner. Section 2-25-050 of the Chicago Municipal Code sets out the power and duties of the Commissioner of the Department of Business Affairs and Consumer Protection. These powers include liquor-related suspension and revocations unless the mayor has designated a local liquor control commissioner. Since the mayor was not required to name a local liquor control commissioner and since the office of the local liquor control commissioner was vacant on the date of the execution of the Revised Plan of Operation and on the date of the Order of Revocation, Commissioner Escareno had the power and authority to execute those documents.

In evaluating whether the findings of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record the finding of credibility cannot be revisited or rejected. The Deputy Hearing Commissioner observed the witnesses testify and he had the opportunity to observe to and evaluate their demeanors while testifying.

The Deputy Hearing Commissioner issued 94 separate Findings of Fact and 73 of those dealt with specific factual findings. The issue before this Commission is not whether the Commissioners would have made the same Findings of Fact but whether there is substantial evidence in light of the whole record to support the findings.



Counsel for Licensee has argued in their brief and at the hearing that there was no specific testimony linking the matters alleged in Charges 4, 5, 6, 7, 8, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 to Bottled Blonde Chicago, LLC. For example, the argument was that no one could testify conclusively that the litter or vomit was connected to Bottled Blonde's operation. We are dealing with the substantial evidence standard and cannot reweigh the evidence. When one reviews the whole record which includes the notes of Barbara Gressel, in evidence, as an exhibit for the Licensee there is circumstantial and direct evidence that these types of nuisance problems started at the time of the opening of Bottled Blonde and continued through the dates of testimony from the neighborhood witnesses. The record as a whole supports the position that those nuisance problems did not exist before Bottled Blonde opened despite the fact that several other liquor establishments had been operating in the neighborhood.

The remaining charges alleged violations of the original and revised plan of operation in that Bottled Blonde operated as a tavern as opposed to a restaurant and allowed table service without bottle locks. There is more than substantial evidence in the record through the testimony of the witnesses, the notes of Barbara Gressel, and the records of the Licensee's sales to support the findings of the Deputy Hearing Commissioner on these charges.

The third prong to be analyzed is whether the Order of Revocation on eighteen counts and the entry of fines on three counts are supported by the findings. It must be noted that this License Appeal Commission does not have the authority to remand this matter to the Local Liquor Control Commission if some of the Commissioners feel that revocation is too harsh a penalty. Section 4-4-280 of the Municipal Code gives the mayor the power to fine a licensee and 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. Since the Plan of Operation and the Revised Plan of Operation were implemented pursuant to the Municipal Code any violations of the original or revised Plan of Operation would be bases for fine, suspension or revocation of the liquor license.

Charges 9, 10, and 12 alleged that on February 24, 2017; March 2, 2017; and March 7, 2017, the Licensee sold alcoholic liquor as its primary activity and not as an activity incidental or secondary to the primary activity in violation of the Municipal Code of Chicago 4-60-020(a) and 4-60-010. In essence, these counts alleged the Licensee was operating as a tavern and not as a restaurant. The evidence on these charges is from the observations of Officer Coen on these three days. This evidence is insufficient to support a finding that the Licensee operated as a tavern as opposed to a restaurant as to justify a revocation. The testimony of Officer Coen is credible and is relevant and material of other charges concerning the actual operation of the Licensee's business but these three snapshots does not support a finding that the City proved the matters alleged in counts 9, 10, and 12.

Section 4-4-280 of the Municipal Code allows the mayor to fine or suspend or revoke any license for good and sufficient cause if a licensee has violated any provision of the Municipal Code. This power has been broadly interpreted in case law and in the cases in which revocation has been reversed as being too harsh there is a common thread that the licensee did not have actual knowledge of the actions that led to the revocation. That is not the factual basis in this case as

the record shows that the Licensee was aware of complaints about the nuisances in the neighborhood and complaints it was operating as a tavern as early as the first community meeting on January 28, 2016. While it is unclear why the Deputy Hearing Commissioner entered fines only on three counts, the Order of Revocation based on the remaining counts that the City did prove is supported by the finding of the Deputy Hearing Commissioner.

#### **COMMISSIONER O'CONNELL'S CONCURRING OPINION**

While this Commissioner believes revocation in this case is very harsh, reversal on all charges would result in no discipline and that is inappropriate in light of the multiple serious charges in this case. The inability of this Commission to alter the discipline or remand to the local hearing officer for his/her reconsideration of the disciplinary level leaves this Commissioner no other option than to concur with Chairman Fleming's opinion.

#### **DECISION**

The Order of Revocation on Charges #9, #10 and #12 are Reversed. The imposition of Fines on Charges #4, #5 and #6 is Affirmed. The Order of Revocation on the remaining charges is Affirmed.

**THEREFORE, IT IS HEREBY ORDERED That the Order of Revocation on Charges #9, #10 and #12 are REVERSED. The imposition of Fines on Charges #4, #5 and #6 is AFFIRMED, and the Order of Revocation on the remaining charges 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: March 9, 2018

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member

Cynthia Cronin Cahill  
Member