

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Saar, Inc.)
Margaret Volosko, President)
Licensee/Fine) Case No. 09 LA 43
for the premises located at)
5109 North Lincoln Avenue)
)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The licensee received notice from the Local Liquor Control Commission that a disciplinary hearing was to be held with respect to the liquor license and all other licenses issued for the premises located at 5109 N. Lincoln. It was alleged:

1. That on or about April 26, 2008, the licensee, by and through its agent, failed to submit an exterior safety plan in violation of Title 4, Chapter 60, Section 130(f) of the Municipal Code.

Deputy Hearing Commissioner Lyke conducted a hearing on this charge on December 8, 2008, January 12, 2009, February 9, 2009, and February 29, 2009. Assistant Corporation Counsels Noel Quanbeck and Gwen Harris represented the City and attorney's David Daudell and Jarret Niese represented the licensee. Deputy Hearing Commissioner Lyke entered findings of fact that the licensee failed to submit an exterior safety plan and further found that the licensee should be fined \$1,500.00. Norma Reyes in her position as Local Liquor Control Commissioner

adopted those findings. The licensee filed a timely notice of appeal and oral argument on the appeal was heard on September 16, 2009.

Chapter 4-60-130(f) of the Municipal Code required that any person who had a late-hour privilege prior to the effective date of the ordinance must submit to the Department of Business Affairs and Licensing no later than January 1, 2008, an exterior safety plan addressing the requirements set out in subsection (f). Since the issue in this case deals with whether a plan was timely filed, the requirements of subsection (f) need not be set out in detail. Since the appeal deals with the imposition of a fine, review by this Commission is 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 light of the whole record.

Shawn Burnett-Whitaker is the Deputy Director of the License Adjudication Division for the Department of Business Affairs and Licensing. Her division keeps all records regarding the issuance of liquor licenses. The licensee for the premises at 5109 N. Lincoln is Saar, Inc., d/b/a St. Pauli Bar. It holds a tavern license and a late hour license. In approximately October of 2007, a new ordinance was passed that required late hour liquor license holders to submit an exterior safety plan of operation. DBA notified the late hour license holders of this new requirement by letter on approximately December 19, 2007. This letter stated the plan was due by March 1, 2008. City's Exhibit 3, in evidence, is a letter dated March 14, 2008, addressed to the licensee informing the licensee that the late hour plan had not been filed and it needed to be

received by close of business on March 21, 2008. No plan of operation was submitted by March 21, 2008. A plan of operation was received late on May 30, 2008. That plan was approved on July 16, 2008. On April 26, 2008, no late hour safety plan had been submitted. Based on her review of the records only one plan, that was dated May 30, 2008, was submitted to the City of Chicago. The witness explained that if a person mistakenly went to deliver documents in room 800, they would be sent to the offices of the DBA in room 805. When documents are received in room 805 they are date-stamped and forwarded to the appropriate party.

Ronald Volosko is familiar with the licensee since it is his mother's tavern which she has had since 1979. He did receive City's Exhibit 3, in evidence, which called for a plan of operation to be submitted by March 21, 2008. He then prepared a plan on behalf of his mother who was recuperating from a broken leg. The bar was closed at that time and had been closed from mid-November of 2007 until mid-April of 2008. Respondent's Exhibit 3 was identified as the exterior safety plan the witness prepared for his mother and was signed by his mother. The required cameras and lighting had been installed in February 2008. He prepared this plan on March 15, 2008, and mailed a copy to the City. On March 19, 2008, he decided to submit the plan in person. He delivered the safety plan to a clerk in room 800 of City Hall. The clerk accepted the plan and said the City would contact him if there was a problem. He never received any correspondence from the City and was never told the plan had not been approved. The clerk in room 800 did not stamp the plan and he did not obtain a receipt. A revised plan was submitted because the licensee was issued a ticket on April 26, 2008. He then assumed the first plan had not been received. His mother's friend Bonnie Brown submitted the revised plan on May 20,

2008.

Bonnie Brown has been a friend of Margaret Volosko for twenty something years. After Margaret received a ticket Bonnie helped Margaret put together a plan. Licensee's Exhibit 4 was identified as the plan she prepared and gave to Margaret. Ronald had said he would submit a plan in March, 2008, but the witness did not know if one was submitted. She did not talk to Ron in May because Ron was not there. Neither Margaret or Ron ever showed her what was identified as the plan Ron says he submitted on March 19, 2009.

Margaret Volosko received a letter from the City about the need to submit an after hour safety plan in November, 2007. In response to the letter she had cameras installed and her son Ron made the plan. She signed the plan of operation identified as Licensee's Exhibit 3. She received no letters from the City after March 15, 2008, but received a ticket on April 26, 2008. She called Bonnie for help after receiving the ticket. She brought the plan prepared by Bonnie to City Hall on May 30, 2008. The ticket she received on April 26, 2008, alleged a violation for not submitting a late hour plan. The camera was inside instead of outside. She delivered the plan prepared by Bonnie to room 805, City Hall, and a girl there signed or stamped it.

The substantial evidence standard is met if there is any evidence which supports the findings of the Deputy Hearing Commissioner. This case comes down to a question of credibility on the question of whether an exterior safety plan was mailed and then delivered to the DBA on March of 2008 by Ron Volosko. The Deputy Hearing Commissioner made a

specific finding that he found Ron Volosko less credible than Burnett-Whitaker. Since the Deputy Hearing Commissioner Lyke presided over the hearing and had the opportunity to personally observe the witnesses testify he was in the best position to weigh their credibility. There is substantial evidence in light of the whole record to support this finding.

There was no argument made that the imposition of a \$1,500.00 fine was not provided for in this statute. Under these facts the plan that was due on March 21, 2008, was not submitted until May 30, 2008, and taking into account a disciplinary history of a) three day closing for gambling in 2000 and b) seven day closing for failure to notify the police in 2007, a fine of \$1,500.00 was not arbitrary or capricious.

The decision of the Local Liquor Control Commission is upheld.

IT IS THEREFORE ORDERED AND ADJUDGED That the order to Fine the Appellant

the sum of \$1,500.00 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: November 19, 2009

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member