

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Jorge L. Vega)
d/b/a Sacramento Food Mart)
Licensee/Revocation)
for the premises located at) Case No. 10 LA 35
2458 South Sacramento)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND O'CONNELL

The Licensee received a Second Amended Notice of Hearing advising a hearing was to be held in connection with license disciplinary proceedings regarding the City of Chicago Liquor License and all other City of Chicago licenses issued for the premises located at 2458 S. Sacramento. The charges listed in the Second Amended Notice of Hearing were:

1. The Licensee is not a resident of the City of Chicago and is therefore ineligible to hold a City of Chicago Retail Liquor license pursuant to Title 4, Chapter 60, Section 030 (c), Municipal Code of Chicago.
2. The Licensee is not a resident of the City of Chicago and is therefore ineligible to hold a City of Chicago Retail Liquor license pursuant to 235 ILCS 5/6-2(a)(1).
3. That on October 30, 2007, the Licensee became ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030, because its owner Jorge L. Vega, was convicted of a felony for the violation of 625-5/11-501 (A), and is thus ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030 (e) and (i), Municipal Code of Chicago.

4. That on October 30, 2007, the Licensee became ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2, because its owner, Jorge L. Vega, was convicted of a felony for the violation of 625-5/11-501 (A), and is thus ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2 (a)(4) and (a)(8).
5. That on October 30, 2007, the Licensee became ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030, because its owner, Jorge L. Vega, was convicted of a felony for the violation of 720-5/12-4.6(A), and is thus ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030 (e) and (i), Municipal Code of Chicago.
6. That on October 30, 2007, the Licensee became ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2, because its owner, Jorge L. Vega, was convicted of a felony for the violation of 720-5/12-4.6(A), and is thus ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2 (a)(4) and (a)(8).
7. That on or about November 9, 2007, the Licensee failed to file a written statement with the Department of Business Affairs and Consumer Protection notifying of the felony conviction as required by Title 4, Chapter 60, Section 040 (b)(8) within 10 days of the effective date of such change, in violation of Title 4, Chapter 60, Section 040 (k), Municipal Code of Chicago.
8. That since October, 2007, the Licensee, by and through its agent, knowingly included false or incomplete information required by Title 4, Chapter 4, Section 050, Municipal Code of Chicago.

This case proceeded to hearing on March 18 and April 22, 2010, before Deputy Hearing Commissioner Prosser. The City was represented by Assistant Corporation Counsels Noel Quanbeck and Rachel Berger. Jeffery Deer represented the Licensee. Deputy Hearing Commissioner entered Findings of Fact that the City sustained its burden of proof on all charges. He also found that based on the facts of this case and the Licensee's prior disciplinary history that revocation would be the appropriate disposition. These findings were adopted by Gregory Steadman, and Norma Reyes and the Order of

Revocation was entered on June 18, 2010. The Licensee filed a timely Notice of Appeal with this Commission.

Prior to the start of testimony City Exhibits 3 and 4 were admitted over the Licensee's objection. City's Exhibit 3, is a Certified Statement of Conviction/Disposition from the office of the Clerk of the Circuit Court showing a plea of guilty and a finding of guilty on October 30, 2007, to the charge of 625-5/11-501(A). City's Exhibit 4, is a Certified Statement of Conviction/Disposition showing plea of guilty and a finding of guilty on June 2, 2004, to a charge of 720-5/12-4.6(A). It also reflects a conviction on a violation of probation entered on October 30, 2007.

Sophia Carey testified she is a Business Consultant Supervisor for the City of Chicago Department of Business Affairs and Consumer Protection. Her department regulates and licenses businesses and keeps records of license applications and renewal applications. She checked the records for all licenses issued for 2458 S. Sacramento. There is a license for packaged liquor goods. The licenses are held by Jorge Vega as a sole proprietor. His address is listed at 3936 S. Ridgeland in Stickney, Illinois. The records do not reflect that Mr. Vega reported to the Department two felony convictions that he received in October, 2007. She identified City's Exhibit 5, in evidence without objection, as the renewal for the Licensee for the renewal period of August 16, 2008, through August 15, 2010. It was signed by Mr. Vega and it does not list a felony.

After the City rested its case this matter was continued for the Licensee to testify. He did not appear on that date and the Licensee rested without introducing evidence.

235 ILCS 5/6-2 (a)(4) prohibits the issuance of a license of any kind by the State Commission or any local commission to:

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)(1) denies issuance of a license to:

A person who is not a resident of any city, village or county in which the premises covered by the license are located; except in case of railroad or boat licenses.

Section 4-60-030 (e)(i) and (c) of the Chicago Municipal Code bars the issuance of any license of alcoholic liquor 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.
- (i) A person who at the time of application or renewal of any license issued pursuant to this chapter would not be eligible for such license upon a first application.
- (c) A person who is not a resident of the City of Chicago.

Title 4, Chapter 60, Section 40 (k) of the Municipal Code of Chicago require a licensee to file a statement if there is a change in any information required to subsection (b) of this section within ten days after the changes take effect. (Included in that section is providing a statement as to whether the applicant has ever been convicted of a felony).

Title 4, Chapter 4, Section 050 of the Chicago Municipal Code states it shall be grounds for revocation of any license issued under the provisions of this code whenever the license applicant shall give false or incomplete information on the license application.

Since this is an appeal of a revocation of a liquor license review by this Commission is limited to these questions:

- a. Whether the local liquor control commissioner has proceeded in the manner proved 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.

Counsel for Licensee has argued that the fact that Mr. Vegas has been convicted of two felonies is not relevant to the statutory provisions in the notice of hearing because those statutes and ordinances refer to qualifications for eligibility to obtain a license. He adds to that argument that the proper remedy would be to wait until the license is due for renewal and then deny the renewal based on the felony convictions. Common sense would dictate that if a licensee is no longer eligible to have a license that license can be revoked if the revocation procedure comports with due process. That is the gist of the

court's ruling in City of Wyoming v. Illinois Liquor Control Commission, 48 Ill.App.3d 404.

An additional argument from the Licensee is that the fact that a person has been convicted of a felony is insufficient for revocation of the liquor license since the State Statute and Chicago Municipal Ordinance require a determination of such person has not been sufficiently rehabilitated. The burden of proof of sufficient rehabilitation under the State Statute is on the applicant. The Chicago ordinance does not set forth who has the burden of proof on this issue.

The case of Ryan v. Verbic, 97 Ill.App.3d 739, stands for the proposition that the conviction of a felony is not sufficient in itself to prohibit the continued holding of a liquor license. The State Statute requires a determination after investigation by the Local Commission that "such person has been sufficiently rehabilitated to warrant the public trust." The question now becomes what type of investigation by the Local Commission is needed to comport with the State Statute. The Ryan court did not elaborate on what type of hearing was necessary in general since the facts in Ryan were such that a full investigation was not warranted. The hearing on the Ryan case took place only two months into a 3 year probation sentence and this was a significant factor in the decision of the Local Commission. In the Ryan case, Ryan did appear and present testimony at the hearing but the Local Commission found such evidence insufficient to establish rehabilitation.

The evidence presented to the Deputy Hearing Commissioner consisted of certified copies of a felony conviction on October 30, 2007, with a sentence of three years in the Illinois Department of Corrections. A second felony conviction took place on June 2, 2004, with 36 months probation and 100 days in the Cook County Department of Corrections. A violation of probation was filed on this case and it appears Mr. Vega pled guilty to the violation of probation on October 30, 2007, with a sentence of three years in the Illinois Department of Corrections. The Licensee did not attend the revocation hearing personally and did not call any witnesses on his behalf. While it would have been preferable for the Deputy Hearing Commissioner to have addressed the issue of rehabilitation in his findings that failure to do so under these facts is not fatal error. Without any evidence from the Licensee on the issue of rehabilitation the Licensee would not meet its burden of proof under the State Statute and would be ineligible for a license under the State Statute. While the Municipal Code is silent on who has the burden on the rehabilitation issue, when no evidence is presented by the Licensee, it appears the City met its burden of proof on the issue.

Whether the issue of rehabilitation has been properly decided is not an essential issue in this case. There is nothing to contradict the City's evidence that Mr. Vega lives in Stickney and is ineligible for a liquor license on that basis alone. There is nothing in the record to contradict the City's evidence that Mr. Vega included false and or incomplete information on his renewal form and failed to notify the City of his felony convictions within 10 days as required by ordinance. The revocation of the liquor license on these bases alone was appropriate.

The Local Liquor Control Commission of the City of Chicago did proceed in the manner provided by law; the order of revocation is supported by the findings; the findings are supported by substantial evidence in light of the whole record.

The revocation of the City of Chicago Retail Liquor license issued to Jorge L. Vega for the premises located at 2458 S. Sacramento, Chicago, Illinois 60623, is affirmed.

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: January 5, 2011

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member