

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Plaza Food & Liquor, Inc.)
Affif S. Obhi Ibrahim, President)
Licensee/Revocation)
for the premises located at)
3459 West Ogden) LAC No. 10 LA 48
v.)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

The Licensee received an Amended Notice of Hearing in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued for the premises located at 3459 W. Ogden, Chicago, Illinois. Three charges were initially alleged as the bases for discipline. These charges were:

1. That on October 24, 1990, the Licensee became ineligible to hold a liquor license pursuant to Municipal Code of Chicago, 4-60-030, because its owner was convicted of a felony and is thus ineligible to hold a liquor license pursuant to the Municipal Code of Chicago 4-60-030 (e), (k).
2. That on October 24, 1990, the Licensee became ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2, because its owner was convicted of a felony and is thus ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2 (a)(4), (10).
3. That since November 3, 1990, the licensee corporation has failed to notify in writing the Department of Business Affairs and Licensing of the City of Chicago of the licensee's president's 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.

This matter proceeded to hearing on June 15, 2010, before Deputy Hearing Commissioner Robert Nolan. Assistant Corporation Counsel Margaret Shiels represented the City and David Kugler represented the Licensee. Prior to the start of evidence the City withdrew Charge 3. The Deputy Hearing Commissioner entered Findings of Fact that the Licensee became ineligible to hold a liquor license under the Municipal Code and the State Statute because its owner was convicted of a felony. He further found the Licensee's Motion for a Directed Finding should be denied and that, based on the totality of the circumstances, the appropriate punishment is revocation. A timely Notice of Appeal was filed with this Commission.

Since this case deals with an appeal of a revocation of a liquor license the review for this Commission is limited to the following 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.

The first issue that is actually before this Commission is whether the findings in this case that Affif S. Obhi Ibrahim was convicted of a felony on October 24, 1990. That is not necessarily the only issue since the Municipal Code in 4-60-030 (e) does not state conviction of a felony under state or federal law automatically disqualifies a person from obtaining a liquor license. That section of the Municipal Code adds language that such a

felony conviction would bar issuance of a license:

...if the local liquor control commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust.

The City introduced certified copies of signed orders of probation in cases 90 CR 18603 – 90 CR 18621. These orders do reflect that the probation is for a period of 24 months Felony. No evidence was introduced as to who filled out the order. The City did not introduce certified copies of the convictions because as the corporation counsel admitted in her response to the Hearing Officer's questions that a certified copy of the conviction does not show that was a felony conviction. While she added she believes there was clerical error made by the clerk, she found out that the certified copy of the clerk's system conviction records does not show a felony.

Case law suggests that revocation of a liquor license under this section of the Municipal Code requires some investigation by the local liquor control to serves as a basis on which to make a determination that the person convicted of a felony has not been sufficiently rehabilitated to warrant the public trust. That nature of that investigation may vary depending on circumstances involving the felony conviction. In the case of Ryan vs. Verbic, 97 Ill.App.3d 739, it was stated that a full investigation was not needed since a hearing was held two months after the licensee was placed on three years probation and licensee was allowed to present evidence at a hearing.

Assuming there was a felony conviction on this case, that conviction was on October 24, 1990, which is over twenty years ago. According to the certified copy of disposition, the term of probation was terminated satisfactorily on October 24, 1994, which is over 16 years ago. The City presented no evidence of any investigation by the Local Liquor Control Commissioner that could serve as a basis for determining that Mr. Ibrahim has not been sufficiently rehabilitated to warrant the public trust. This issue was not raised by either party at the hearing.

The defense placed into evidence Group Exhibit 1, which consists of 18 certified statements of conviction. Each of these certified copies set forth an indictment charging the defendant Affif S. Obhi Ibrahim with violation of 120 - 452 A less than 300.

Neither party placed into evidence a copy of the statute charged.

Affif S. Obhi Ibrahim testified he was convicted of tax evasion in 1990 for filing a fraudulent retailer's occupation tax return for Plaza Food and Liquor. He is the President of the corporation which has operated at 3459 W. Ogden for twenty-eight years. The criminal case was originally a felony and he pled to a misdemeanor to not effect his license.

The substantial evidence standard in these cases is law and is met if there is any evidence in the record supporting the decision of the Deputy Hearing Commissioner. That standard has not been met in this case. The only evidence reflecting a felony

conviction is the order of probation. While it is certified and does contain the term felony, it is not a dispositive document on the issue of the disposition of the case. The dispositive document on that issue was the certified copies of dispositions that were introduced by the Licensee and which the Assistant Corporation Counsel agrees do not reflect a felony conviction.

For purposes of judicial economy this Commission will address the second issue in the event a reviewing court determines there was substantial evidence in the record as a whole to support the finding that a felony conviction was proven.

As pointed out earlier in this opinion the Municipal Code does not provide for automatic disqualification of an applicant for having a felony conviction. The State Statute also does not provide for automatic disqualification of an applicant for a felony conviction.

Assuming there was a felony conviction in this case the City has presented no evidence to establish that after investigation, Mr. Ibrahim has not been sufficiently rehabilitated to warrant the public trust.

The findings that the licensee is ineligible to hold a liquor license pursuant to 4-60-030 (e), (k) of the Municipal Code and 235 ILCS 5/6-2 (a)(4), (10) are not supported by substantial evidence in light of the whole record. The revocation of the liquor license

for the premises at 3459 W. Ogden in the name of Plaza Food and Liquor, Inc. is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order revoking the liquor license of the appellant is hereby REVERSED.

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: February 14, 2011

Dennis M. Fleming
Chairman

Donald O'Connell
Member