

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Cazim, Inc.)
Cazim Mustafalic, President)
Licensee/Revocation) Case No. 11 LA 57
for the premises located at)
4356 West Belmont Avenue)
)
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

Licensee received a First Amended Notice of Hearing on August 15, 2011, that a hearing was to be held in connection with disciplinary proceedings concerning the City of Chicago Liquor Licenses and all other licenses issued to it for the premises located at 4356 W. Belmont Avenue, Chicago, Illinois. The charges were:

1. That since on or about May 3, 2010, the licensee, by and through its agent, has failed to cooperate with identified police officers, and to fully and truthfully answer all questions posed by those officers, in response to a request for records, receipts and documents, in violation of the Municipal Code of Chicago 4-60-141.
2. That on or about April 14, 2011, the licensee, after receiving notice of a public hearing regarding revocation of its license, failed to make books and records available for the purpose of investigation and control by the Local Liquor Control Commission, in violation of the Municipal Code of Chicago 4-4-280.

A hearing was held at the Local Liquor Control Commission with Deputy Hearing Commissioner Raymond Prosser presiding. Assistant Corporation Counsels Rachel Berger and

Noel Quanbeck represented the City and David Kugler represented the licensee. The Deputy Hearing Commissioner entered Findings of Fact that the evidence presented on Charge 1 was insufficient and that the charge was not sustained. He further found the City sustained its burden of proof on Count 11, and further found that due to the serious nature of the charge and the licensee's intentional refusal to produce books and records that revocation was the proper penalty as to Charge 2. The licensee filed a timely petition for appeal with this Commission.

Since this case involves an appeal of a revocation of a liquor license the issues before this Commission are 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.

A synopsis of the evidence will help in understanding this decision.

On the first hearing date of August 18, 2011, the City introduced as a charging document City's Exhibit 2, a First Amended Notice of Hearing. It was allowed without objection through counsel for the licensee, but stated he had received it the day before the hearing. The City also introduced into evidence on August 18, 2011, City's Exhibit 3, which is an order to the licensee to produce records of sales receipts, invoices, and other documents indicating the amount of liquor and food sold from September of 2010 until the present. The return date on that order was September 22, 2011. City's Exhibit 3, was also allowed in evidence without objection.

Officer Robert Murphy has been a Chicago Police Officer for fifteen years and has been assigned to the license investigation section for four years. In that position, his duties and responsibilities include investigating licensed and unlicensed establishments for license infractions.

In February of 2010, Murphy was assigned to an investigation into Cazim's located at 4356 W. Belmont. As part of his investigation, he sent a copy of City's Exhibit 4 to Cazim, Inc. That exhibit is a letter requesting all records of the purchase and sale of alcohol with the information of each distributor, and all records for the purchase and sale of food for the past (12) twelve months. That letter was dated April 27, 2010. On that date, the witness conducted a license investigation at the premises of Cazim, Inc. After he entered the premises, he spoke with a bartender named Ewa Goleblowski. He requested that Ewa sign a receipt of the request for business documents and City's Exhibit 6, in evidence, is that signed receipt. Murphy left a copy of the request for records and directed Ewa to give the document to the president and secretary, and manager. In response to that request, Murphy did receive a document showing the purchases of alcoholic beverages and food items. This response was inadequate since it did not contain records of sales of food and liquor.

Officer Murphy never sent the licensee a letter saying the documents were incomplete and never called the licensee with that information. Murphy left work in April of 2010 and returned to work in October of 2010. The documents were delivered sometime in that period but he did not know when. The first time Murphy saw the documents was when he returned to work in October. He did not feel the bartender answered any of his questions untruthfully. In the

conversation he had with Cazim, Cazim answered the questions truthfully. Murphy felt the licensee was uncooperative because he failed to produce records of the sales of food and liquor.

Feim Azizi was called as an adverse witness by the City. He has been the manager of the establishment at 4356 W. Belmont for six or seven years and is listed as a manager with the Department of Business Affairs and Consumer Protection. He works from 4:00 p.m. until closing five days a week. He takes care of the place, does the ordering, and hires employees. Mr. Cazim has a bookkeeper named Sylvia. He saw City's Exhibit 7, the order to produce books and records, when his attorney gave it to him after they were in court for the first time. In response, Azizi gave Mr. Kugler cash register tapes. The tapes were probably for August and September of 2011. Mr. Azizi did not show City's Exhibit 7 to Sylvia who handles the books for Mr. Cazim. He did not have a reason why he did not show Sylvia the document. The tapes have numbers reflecting the total cash but there is nothing to distinguish what portion was for food and what portion was for alcohol.

The initial decision is whether the findings are supported by substantial evidence in light of the whole record. The term "substantial evidence" has been defined very broadly and cases have been affirmed if any evidence in the record supports the finding. This Commissioner also cannot reverse a revocation because a majority of the Commissioners believe that revocation is too severe a penalty.

The revocation in this case is based on the Deputy Hearing Commissioner's finding that the failure of the licensee's witness, Feim Aziz, to contact the licensee's bookkeeper to seek

documents in her possession which would potentially disclose additional documents as required by the Order to Produce was intentional and designed to thwart the plain language of the Order to Produce. That finding is not supported by substantial evidence in light of the whole record. The testimony at the hearing was that the licensee had a person who handled the books named Sylvia. Azizi admitted he did not show City's Exhibit 7 to Sylvia, and stated he did not have a reason why he did not give the document to Sylvia. He also testified the cash register tapes are kept only a few months and the tapes do not differentiate between sales of food or a drink. There was no evidence presented at this hearing that Sylvia had any of the requested documents that were not produced. Without even a scintilla of such evidence, the finding by the Deputy Hearing Commissioner cannot be affirmed.

It should also be noted that counsel for the City called Mr. Azizi as an adverse witness and after completing the direct examination stated "we're going to need to call either the accountant or the president." If either had been called and testified the required documents were in Sylvia's possession, then there would be evidence that could support the Deputy Hearing Commissioner's finding that Azizi's actions were intentional.

It should also be noted what was not charged in this case. Mr. Quanbeck, in his closing argument, made reference to rules and regulations of the Illinois Liquor Control Commission that required retail licensees to make records available to the Local Liquor Control Commission, to keep cash receipts, and to keep records for three years. The licensee potentially could have been charged by the Local Liquor Control Commission for failure to comply with the rules and regulations of the State Commission pursuant to Section 4-4-280. The City chose not to do this.

The revocation of the liquor license issued to Cazim, Inc., for the premises located at 4356 West Belmont Avenue is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT is 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 28, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member