

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Victor's Tap, Inc. )  
Faik Ademi, President )  
for the premises located at )  
3049 North Cicero ) Case No. 12 LA 52  
)  
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

On August 10, 2012, the Department of Business Affairs and Consumer Protection sent a letter via certified mail to the licensee advising that the City of Chicago Tavern License issued to it was to be rescinded effective August 21, 2012. That letter set out these reasons for the rescission:

1. The previously existing tavern liquor license issued to licensee expired on August 15, 2011, and was not renewed. An application for a consumption on premises – incidental activity license was filed by Estrella Blanca, Inc. in November 2011. That application was denied and appealed to the LAC but that appeal was withdrawn. Since the new application was denied and the long period of time that elapsed, this licensee should have been required to file a new application and not been allowed to renew.
2. This location is subject to a moratorium on the issuance of a tavern license.

This matter proceeded to hearing on September 24, 2012, before Deputy Hearing Commissioner Raymond Prosser. Assistant Corporation Counsel Rachel Berger represented the City of Chicago and David R. Kugler represented the licensee.

Deputy Hearing Commissioner Prosser entered Findings of Fact that the license at issue was issued in error and he affirmed the rescission. The basis of that finding was that the tavern liquor license previously issued to the licensee expired on August 15, 2011. That in September of 2011, licensee's license file was closed due to the fact that a new applicant, Estrella Blanca, Inc., filed an application for a consumption on premises license on August 30, 2011. This licensee attempted to renew in May 2012, but was denied due to holds. The licensee applied for renewal in June 2012, and the holds were released in error and the license issued. The renewal application was not reviewed by either Alethea Cotton, Assistant Commissioner, Department of Business Affairs and Consumer Protection or by Local Liquor Control Commissioner Gregory Steadman. The decision upholding the rescission did not address the moratorium issue.

A synopsis of the testimony will be helpful in understanding this decision.

Alethea Cotton is the Assistant Commissioner of the Department of Business Affairs and Consumer Protection. She is responsible for the day to day actions of processing business licenses. She recently had an opportunity to review the department's records for 3049 N. Cicero. The department issued a tavern license in June of 2012, at that location to a Faik Ademi and Victor's Tap, Incorporated. That license was issued in error because there was an address restriction placed on that account in September 2011, and the account was closed on September 27, 2011.

Victor's Tap, Incorporated, had previously held a tavern liquor license but that license had expired on August 15, 2011. That license was renewed on June 20, 2012. In the interim, that

account was closed by the witness as of September 27, 2011, when there was a new application for that address. If there is a new applicant you close the original account. Estrella Blanca, Incorporated filed an application for food and consumption on August 30, 2011.

The department did not issue a consumption on premises – incidental activity license to Estrella Blanca for this location based on the proposed layout which made the location look more like a tavern than a restaurant. A revised denial letter was mailed out to include a law enforcement denial.

After the witness closed the account for Victor's Tap, Incorporated in September of 2011, based on the other pending application, the account remained closed. In May of 2012, Mr. Ademi attempted to renew the license for Victor's Tap, Incorporated, and that attempt was denied because of holds. He returned in June 2012, and the holds were released in error and the license issued. The June 2012 application should have been reviewed by the witness and the local liquor control commissioner. Neither she nor the local liquor control commissioner reviewed the account. When she became aware the license had issued, she checked with the people who released the license and concluded it was issued in error. She called Mr. Ademi and asked for the return of the license but the license was never returned. Based on the hold on the account, the file should have referred to her before the license issued.

Ms. Cotton reviews every single application for a liquor license. If Victor's Tap had renewed its license timely there would be no issue as to the moratorium. When Victor's Tap, Incorporated, applied for renewal in June of 2012, they were charged a 25% additional renewal fee. The holds that were on the license in May of 2012 were released and all the monies owed were paid. She is familiar with 4-4-021 of the Municipal Code of Chicago which sets out that the amount owed for renewal are increased by 25 percent if the application is not filed or tendered by a certain date. She never received a letter from the licensee asking that its account be closed. Ms. Cotton acknowledged that with respect to this tavern license:

1. All the holds on the account were released by someone
2. The licensee was renewed and paid a 25% late fee or penalty
3. She was unaware of any provision of the then existing Municipal Code that stated a licensee cannot be renewed if it lapsed for 30 days or 60 days.

Ms. Cotton stated she did not discuss returning the renewal fees to Mr. Ademi. In her opinion, the City erroneously issued this license. The application filed by Estrella Blanca, Inc., affected the status of the license issued to Victor's Tap.

#### RELEVANT ORDINANCES

4-4-281- License Rescission – The director of the department of business affairs and licensing shall have the power to rescind any license erroneously issued by the department of business affairs and licensing...

4-4-021- Renewal of Licenses – Every person who conducts a business or occupation for which a license is required shall renew such license or licenses every two years based upon the zip code in which the business is located. A renewal application must be filed no later than the 15<sup>th</sup> day of the month in which the license expires.

4-4-260- License Renewal - ...All license renewal applications filed after the date specified in Section 4-4-021 shall be charged a late license fee in the amount of 25 percent of the amount of the annual license fee, but in no event less than \$25.00.

4-4-260- License Renewal (**Effective 5/9/12**) - ...All license renewal applications filed after the expiration date of the license shall be charged a late license fee in the amount of 25 percent of the amount of the annual license fee, but in no event less than \$25.00. Renewal may be denied, and a new license application may be required, if the licensee fails to apply for renewal within three months after the expiration date of the license.

This case arises out of Section 4-4-282 of the Chicago Municipal Code which sets out procedures to be followed in the event the City wishes to rescind an erroneously issued license. The last line of that ordinance states “a licensee may appeal the commissioner’s decision to a court of competent jurisdiction.” There is a question as to whether this Commission has jurisdiction to hear this case. Since the licensee has filed its appeal before this Commission and since the City has not raised any objection, this Commission will render its decision. It does with the knowledge that its jurisdiction may be challenged at a later date. It also does so for the sake of judicial economy and with the knowledge that a reviewing court may equate rescission with revocation for the purposes of jurisdiction of this Commission.

Proceeding under that assumption that rescission is comparable to revocation the issues to be decided by this Commission are limited to:

- (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 is whether the Local Liquor Control Commissioner proceeded in the manner provided by law. Section 4-4-281 allows for the rescission of a license erroneously issued by the Department of Business Affairs and Licensing. This ordinance sets out the procedures which must be followed which specifically include notice of the basis for the rescission. That notice was sent out by certified mail on August 10, 2012, and lists two reasons for rescission referenced earlier. This ordinance did not define the term “erroneously issued.” The record supports the finding that the Local Liquor Control Commission proceeded in the manner provided by law.

There is substantial evidence in the record as a whole to support the findings of the Deputy Hearing Commissioner. That evidence does not necessarily establish Ms. Cotton’s opinion that this license was renewed in error.

The order of rescission is not supported by the findings of the Deputy Hearing Commissioner. Initially, the question of whether Ms. Cotton or Mr. Steadman should have reviewed the renewal application was not set forth in the letter of August 10, 2012, as a basis for the rescission. Since the licensee was not given notice of that reason for rescission, it cannot be a basis for rescission. This is true also of the issue of whether holds on the license were released in error.

The fact that Victor’s Tap allowed its license to expire on August 15, 2011, and that a different applicant was denied a license at this location is not a basis for rescission. The fact that

the license was not renewed from August 15, 2001 until June 20, 2012, is not a basis for rescission. These matters do not establish this license was renewed in error.

The ordinance in effect prior to May 9, 2012, allowed late renewals of liquor licenses upon payment of a penalty. The ordinance that became effective as of May 9, 2012, allowed the City to deny a renewal application if filed more than three months after it lapsed.

Under the language of this ordinance, the City could have denied renewal and requested a new application but it did not do so. The language is permissive and not mandatory.

The notice of rescission letter also listed the fact there is now a moratorium on issuance of tavern licenses at this location as a basis for the rescission. If this was a new application, the moratorium issue would be relevant. Since it is not a new application, the issue of a moratorium is not relevant to this case.

The Local Liquor Control Commissioner may not have wanted to renew this license for whatever reasons. That does not change the fact that when the licensee made a proper renewal application it did renew the license. That also is not sufficient to establish an error which would allow rescission. The Local Liquor Control Commission failed to meet its burden of proof on the two reasons set out in the letter of August 10, 2012, as the basis for the rescission.

The rescission of the tavern license issued to Victor's Tap, Inc. is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Order Rescinding the issuance of the Tavern license 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: May 24, 2013

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member