

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Grand & Ashland Tap, Inc.)
Betty Stokes, President)
Licensee/Suspension)
for the premises located at) Case No. 13 LA 25
1600 West Grand 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

Grand and Ashland Tap, Inc. received an Amended Notice of Hearing advising a hearing was to be held pursuant to 235 ILCS 5/7-5 and the Municipal Code of Chicago 4-4-280 in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other City of Chicago licenses issued to it for the premises located at 1600 W. Grand Avenue, Chicago, Illinois. The four charges were that on or about January 19, 2013:

- a. The licensee did not hold a State of Illinois liquor license and was therefore ineligible to hold a City of Chicago Retail liquor license pursuant to Municipal Code of Chicago 4-60-030(s).
- b. The licensee, by and through its agent, engaged in the business of retail liquor dealer without having obtained a State of Illinois license in violation of 235 ILCS 5/2-1.
- c. The licensee, by and through its agent, failed to frame and hang its retail liquor license in plain view in a conspicuous place on the licensed premises in violation of 235 ILCS 5/6-24.

- d. The licensee, by and through its agent, failed to display its retail liquor license in plain view in a conspicuous place on the licensed premises, in violation of Municipal Code of Chicago 4-4-210.

This matter proceeded to hearing before Deputy Hearing Commissioner Raymond Prosser who entered Findings of Fact that the City sustained its burden of proof on all charges and further found that in light of the licensee's prior disciplinary history and the facts of this case, that a 14-day Suspension concurrent on all four charges was an appropriate disposition. Gregory Steadman as the Local Liquor Control Commissioner and Rosemary Krimbel as Commissioner of the Department of Business Affairs and Consumer Protection adopted the findings of the Deputy Hearing Commissioner and entered a finding of Charge(s) 1 thru 4 Sustained – Fourteen Day Suspension. The licensee filed a timely appeal with this Commission.

Since this appeal deals with a suspension, the review by this License Appeal Commission shall be 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.

RELEVANT STATUTES AND ORDINANCES:

4-60-030(s) Chicago Municipal Code – No license for the sale of alcohol shall be issued to:
... (s) – A person who is ineligible for or fails to receive a license to sell alcoholic liquor at retail from the State of Illinois.

235 ILCS 5/2-1 – No person shall...sell... deliver, furnish or possess any alcoholic liquor for beverage purposes, unless such person has been issued a license by the Commission.

235 ILCS 5/6-24 – Every licensee shall cause his license or licenses to be framed and hung in plain view in a conspicuous place on the licensed premises.

4-4-210 Chicago Municipal Code – It shall be the duty of every business for which a license is required to post such license in a conspicuous place on the premises of the business.

A synopsis of the record will aid in an understanding of this decision.

Prior to the start of testimony the Deputy Hearing Commissioner, over objection from the licensee's attorney, allowed in evidence City's Exhibit 3. This exhibit is a renewal application for a State of Illinois Liquor License signed by Betty Stokes in her capacity as President of Grand and Ashland Tap, Inc. on January 24, 2013. It reflects the license was issued on January 28, 2013, and would expire on December 31, 2013. It also reflects there is a hold on the license.

Genevieve Hutcheson has been a Chicago Police Officer for 15 years and was working as a beat officer on January 19, 2013, at approximately 3:00 a.m. with her partner Officer Ziembra. They were called by a sergeant to a bar at 1600 West Grand which was open and operating. They performed a license premise check and observed an expired State of Illinois Liquor License. It had expired December 21, 2012.

While on the premises on January 19, 2013, she did not observe a valid State of Illinois license. She could not recall if there were any City of Chicago licenses posted. Her report is silent about city licenses but it would have been noted if the City of Chicago liquor license had not been posted.

The City rested its case.

Gene Stokes testified on behalf of his mother Betty Stokes who is the owner of the business. His mother is 74 years old and in ill health. As manager, he opens and closes the bar and works with promotions and entertainment. A renewal notice for the state license was received by the bar but he was not sure if it went to the bar or to his mother's home. He went to the State of Illinois to renew the liquor license. There was a \$15,000 outstanding balance of sales tax due. He contacted the bar's accountant and the figures were reviewed and the amount of what was owed was determined and it was paid. The corporation is not delinquent to any liquor or beer wholesaler. The state liquor license was not denied and he was asked to pay outstanding sales tax. The corporation and his mother have never been convicted of a felony or a gambling offense. He and his mother are not public officials or law officers and neither has ever received or borrowed money or anything of value from another licensee or supplier of alcoholic products. They are not more than 30 days delinquent in paying a child support order and the corporation has liquor liability insurance and is in good standing with the State of Illinois. After the tax liability was paid, the state license was issued and displayed.

The witness admitted that Grand and Ashland Tap, Inc. did not have a valid state license on January 19, 2013, and that it did not renew the license until January 28, 2013. The business was operating from December 31, 2012, until January 28, 2013. He is not aware if the bar was convicted of any gambling offenses in 1997. No one from the State told him he was not to operate from January 1st to January 28th.

The licensee's attorney has argued that the licensee should not be held responsible for the failure of the State of Illinois to issue its license in a timely manner. He argues further that there was no lack of due diligence or activity on behalf of the licensee that contributed to the license not being issued. He specifically stated in closing "the licensee went before the date." If the evidence showed the licensee had gone to the Illinois Department of Revenue prior to December 31, 2012, and had paid the delinquent tax or had made an agreement for payment with the State and the State had not issued its license, this argument would have validity. Those are not the facts in this case. The licensee's witness may have gone to the State Department of Revenue prior to December 31, 2012, (he does not remember the exact date, but the evidence is clear that he did not reach an agreement with the State Department of Revenue until January 28, 2013, and did not file the renewal until January 24, 2013.) Under those facts, it is clear the licensee did not have a valid State of Illinois Liquor License on January 19, 2013.

Based on that fact, the City of Chicago did prove by preponderance of the evidence the allegations of Charge 1, 2, and 3. The City failed to prove by a preponderance of the evidence the allegations of Count 4. Since the State has a statute requiring a license to post its state license, and there is a finding of liability in Count 3 on that charge, this Commissioner feels that Section 4-4-210 of the Chicago Municipal Code, as applied to this case, references the City of Chicago Liquor License. There is insufficient evidence in the record to establish that license was not displayed in a conspicuous place on the licensed premises.

The issuance of a fourteen day (14) suspension based on the facts of this case and the prior disciplinary history of the licensee, which shows no discipline since a sale of alcohol to a

minor with a 14-day suspension on January 14, 1999, seems unduly harsh. That is not the standard of review in this case and since the 14-day suspension is not completely arbitrary and capricious, it cannot be reversed.

The 14-day Suspension concurrent on Counts 1, 2, and 3 is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the Appellant for FOURTEEN (14) days 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: December 16, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member