

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Major Hall Corporation)
Nancy Sosa, President)
Licensee/Revocation)
for the premises located at)
5660 West Grand Avenue) Case No. 09 LA 74
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The Local Liquor Control Commission sent out notice to Major Hall Corporation that 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 to the corporation for the premises located at 5660 W. Grand, Chicago, Illinois. The Notice of Hearing contained seven charges but Charge two was withdrawn by the City prior to the start of the hearing. Count 1, alleged that on February 8, 2008, the Licensee engaged in the business of a retail food establishment without having a valid retail food establishment license in violation of Title 4, Chapter 8, Section 020(a) of the Municipal Code of Chicago. Since the Deputy Hearing Commissioner ruled the City did not prove the charge, the matter is not part of this appeal.

The remaining written counts on the Notice of Hearing allege that the Licensee's place of

business was conducted by a manager or agent who did not possess the qualifications needed to obtain a license in violation of Title 4, Chapter 60, Section 030(m) of the Municipal Code of Chicago; that the president of the corporation was married to an individual who is disqualified from obtaining a license in violation of Title 4, Chapter 60, Section 030(y) of the Municipal Code of Chicago; that this Licensee was a corporation which employed a manager who would not be eligible to receive a license for any reason other than residence within the city in violation of Title 4, Chapter 60, Section 030(k) of the Municipal Code of Chicago, and that the Licensee failed to notify the Department of Business Affairs and Consumer Protection of changes occurring in the officers of the Licensee in violation of Title 4, Chapter 60, Section 060(c) of the Municipal Code of Chicago. All these charges were alleged to have occurred on or about February 8, 2008.

In addition to the counts on the written Notice of Hearing the Deputy Hearing Commissioner allowed, over objection, the City to orally amend the charges by adding another count. That charge alleged that on or about May 23, 2005, the Licensee knowingly filed false or incomplete information on a liquor license application in violation of Title 4, Chapter 60, Section 030(a) of the Municipal Code of Chicago.

Section 4-60-30 states, in relevant part, no license for the sale of alcoholic liquor shall be

issued to:

A person who knowingly files false or incomplete information on a liquor application pursuant to Section 4-60-040. Section 4-60-30(a)

A person whose place of business is conducted by a manger or agent, unless the manager or agent possess the qualifications required to obtain a license. Section 4-60-30(m)

A person who is married to an individual who is disqualified from obtaining a license under this chapter of the Liquor Control Act of 1934. Section 4-60-30(y)

A limited liability company or any other legal entity, if any manger of the company or entity would not be eligible to receive a license hereunder for any reason other than residence within the city. Section 4-60-030 (k)

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. Section 4-60-30 (e)

Title 4, Chapter 60, Section 060(c) of the Municipal Code of Chicago requires a licensee to notify the Department of Business Affairs and Consumer Protection whenever any changes occur in the officers of the licensee.

Since this case deals with a revocation of an existing liquor license the review by the License Appeal 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 substantial evidence standard has been defined broadly by the Illinois courts and calls for affirming a decision of the local liquor control commission if such decision is supported

by any evidence in the record.

Mary Legittino has been a license investigator for vice control section of organized crime for the Chicago Police Department since 1998. On February 8, 2008, she and her partner Ben Venuti were assigned to investigate an allegation of subterfuge at 5600 W. Grand. Major Hall was located at this location and the premises consisted of a tavern at 5600 W. Grand and a banquet hall on the entrance on Major Avenue. When she entered the banquet area she saw a party with about 20 people going on. Food was being served buffet style from large tin trays. While Legittino was speaking with the woman who had rented the room Raul Diaz approached and identified himself as the manager. Diaz produced the licenses and occupancy card. The licenses produced were for a tavern in the front, for a consumption on premises - incidental activity for the banquet room and a public place of amusement license which encompassed the entire building. No food license was produced and Mr. Diaz stated the food license at the establishment previously had been cancelled. The licenses were issued in the name of Major Hall Corporation and Nancy Sosa was president and secretary of the corporation. Mr. Diaz first stated he was married to Nancy Sosa but later said the marriage was not legal. Diaz told Legittino he had been running the day-to-day operations of the business and that Sosa rarely, if ever, came in. The witness identified City's Exhibit 4, in evidence without objection, as the liquor license application submitted by Nancy Sosa for Major Hall Corporation. Mr. Diaz is not listed on the application. Legittino spoke with Ms. Sosa by phone and in that conversation Sosa stated she was married to Diaz and that he was the manager of the business, and she had a job as a paralegal and was never there. Sosa later stated they were not legally married. A name check

on Mr. Diaz revealed he had felony convictions for burglary and robbery. The parties stipulated that Mr. Diaz and Ms. Sosa were legally married as of February 8, 2008. Mr. Diaz was not listed on any of the documents relative to the license application.

Legittino did not see any food being sold or any employees of Major Hall serving food and did not see any food stored in the premises. There were no waitresses and no cook on the premises. All the licenses produced were valid and up to date. She never saw an actual copy of an order of protection obtained by Ms. Sosa against Mr. Diaz. City's Exhibit 6, in evidence, was identified as a document reflecting Mr. Diaz signed on February 15, 2008, as an agent for Ms. Sosa reflecting he had received a request for the licensee to produce documents.

Nancy Sosa testified she has three children with Raul Diaz and that they were living separated and in the process of a divorce. She works for Bernstein and Associates as a paralegal and owns Major Hall Corporation at 5660 W. Grand. She started working there in 2001 and later took over the business in 2005. She had originally applied in 2003, but did not finish that application for financial reasons. She did not renew the food license because she does not sell or prepare food. She is the sole shareholder and sole officer of the corporation. Raul Diaz worked there as a bartender since 2001. She married Raul in 2001 and has been separated from him since 2001. In her phone conversation with the investigator, Sosa told Legittino that Diaz was just an employee and she managed the business. She did the paperwork, the accounting, and the ordering. She sent an affidavit to that effect to the City and that affidavit is in evidence as City's Exhibit 7. Mr. Diaz worked as a bartender only until February of 2009. Sosa denied

intentionally not checking off a box pertaining to her marital status. She was unsure how to answer that question since a divorce attorney had been hired. They had not been living together for many years and did not consider one another as being married. Mr. Diaz was not convicted of a felony during the course of the marriage from 2001.

Sosa worked at Major Hall from 12:00 p.m. until 8:00 p.m. on February 8, 2008. Diaz started as a bartender in the front tavern at 9:00 p.m. There were two other employees working. Diaz worked for tips and Sosa would pay the note on Diaz's car. In February of 2008, she had a savings and checking account. She put together the money to buy the business in 2005 through savings from her paralegal job and refinancing the home she owned by herself. In February of 2008, she worked part-time 20 hours a week as a paralegal for Bernstein and Associates and 45 hours a week running Major Hall Corporation. Raul Diaz was not her agent in running the business and was only a bartender in February of 2008. Sosa does not recall telling the police officer that Mr. Diaz has always run the day-to-day operations of the business but did tell the officer she and Diaz were married. Sosa denied telling the investigator that Diaz was paid cash from banquets. She was aware Diaz was found guilty of robbery and residential burglary.

Counsel for the licensee has argued that the local liquor control commissioner did not proceed in the manner provided by law in that the duly appointed Deputy Hearing Commissioner abused her discretion in allowing improper hearsay testimony concerning admissions made by Raul Diaz to Officer Legittino at the premises on February 8, 2008. These admissions and statements were to the effect that Diaz was the actual manager of the premises who ran the day-

to-day operations of the business. The argument is that these were hearsay statements since they were “offered to establish the truth of the matter asserted.” In general admission of evidence is within the sound discretion of the tried judge and that discretion is not abused unless the ruling is unreasonable or arbitrary. The discretion given to finders of fact in administrative hearings is even greater since most such hearings have relaxed hearsay rules. A review of the entire record in this case allows resolving this issue without addressing where there was an advise of discretion sufficient to reverse the revocation. In addition to the alleged hearsay evidence Officer Legittino testified, without objection, to her conversation with Ms. Sosa in which Ms. Sosa admitted that Diaz was the manager of the business and that she did not have involvement with the business at all because she had a job as a paralegal. Ms. Sosa’s testimony on these issues was that she did not recall such statements. Without the alleged hearsay there was evidence in the record for the Deputy Hearing Commissioner to find that Officer Legittino was more credible than Ms. Sosa on these factual issues and to rule for the City.

The next issue to be addressed is whether the Findings of Fact of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record. As stated earlier the standard is very broad and has been defined as more than a mere scintilla of evidence. Issues of credibility are to be decided by the Findings of Fact and this Commission cannot reverse solely because its members might feel a different result was appropriate. Since Count 2 was withdrawn prior to hearing it is unclear why the Deputy Hearing Commissioner made a finding on that Count 2. Since it was withdrawn that finding will not be considered in this decision. Based on complete review of the record as a whole the City did not meet its burden of

proof on Count 6. There was no evidence of a change of officers occurring on February 8, 2008 and, as such there was no change of officers that the licensee would have been required to report to the Department of Business Affairs and Consumer Protection.

The City did prove by substantial evidence written Charges 3, 4 and 5, and Charge 7 which was made of record in the course of the hearing. This is based on the fact that Raul Diaz was a convicted felon. The fact that there was an order of protection is not material to this decision.

The decision to revoke the liquor license is supported by the findings.

The decision to revoke the Chicago Liquor Licenses issued to Major Hall Corporation at 5660 West Grand is affirmed. This Commission makes no decision as to any other City of Chicago licenses issued to these premises as that decision is not within the statutory jurisdiction of this Commission.

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: May 27, 2010

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member