

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Lawrel Liquors, Inc.)
Michael J. Calderone, President)
Licensee/Fine)
for the premises located at)
4471-75 West Lawrence) Case No. 10 LA 12
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)

ORDER

OPINION OF CHAIRMAN FLEMING

The Licensee was served with a notice that a hearing would be conducted in connection with proceedings to revoke the City of Chicago Retail Liquor License and all other City of Chicago licenses issued to it for the premises located at 4471-4475 W. Lawrence, Chicago, Illinois. The charges against the Licensee were:

1. That on or about October 21, 2008, the licensee, by and through its agent, operated or permitted the operation of an arcade, without having a valid Public Place of Amusement License, in violation of Title 4, Chapter 156, Section 230, Municipal Code of Chicago.
2. That on or about October 21, 2008, the licensee, by and through its agent, failed to display a valid Public Place of Amusement License in a conspicuous place on the licensed premises, in violation of Title 4, Chapter 4, Section 210, Municipal Code of Chicago.

This matter proceeded to hearing before Hearing Commissioner Juliana Wiggins Stratton on July 24, 2009, December 11, 2009, and January 15, 2010. She subsequently issued Findings of Fact that the City met its burden of proof on Charges 1 and 2, and that a \$5,000.00 fine was an appropriate penalty. Norma Reyes in her role as Local Liquor

Control Commissioner adopted those findings as those of the Department of Business Affairs and Consumer Protection/Local Liquor Control Commission. The Licensee filed a timely appeal with this Commission.

Since this case deals with review of the propriety of the order of the local liquor control commissioner only these questions are to be considered:

- (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.

It should be noted the notice of hearing specifically states that the hearing was conducted pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280, Municipal Code of Chicago. In essence these acts allow the local liquor control commissioner to discipline or fine a licensee for any violations of provisions of this Municipal Code or state statute.

Title 4, Chapter 156, Section 230 of the Municipal Code of Chicago states that:

It is unlawful for any person to operate or permit the operation of an arcade unless the person in control of such place has first obtained a public place of amusement license.

Title 4-156-010 of the Municipal Code defines “arcade” as a place of amusement that includes four or more automatic amusement devices. Section 4-156-305 (b) specifically states “a pool or billiard table shall be included when calculating the number

of automatic amusement devices for the purposes of this subsection if players must pay to use the pool or billiard table.

Section 4-4-210 of the Municipal Code of Chicago states “It is the duty of every person conducting, engaging in, maintaining, operating, carrying on or managing a business or occupation for which a license is required by any provision of this code to post such license in a conspicuous place at the premises where the business or occupation is being conducted.

Section 4-156-180 of the Chicago Municipal Code in relevant part states “It shall be unlawful for the owner or lessee of any premises or person in control of such premises to permit the installation or use of an automatic amusement device within the City of Chicago for gain or profit unless the tax has been paid and is evidenced by a tax emblem affixed to the automatic amusement device in a conspicuous location.”

Section 4-156-150 defines automatic amusement device as “any machine, which, upon the insertion of a coin, slug, token, card or similar object, or upon any other payment method, may be operated by public generally for use as a game, entertainment, or amusement, whether or not registering a score...”

David Drell testified that on October 21, 2008, he was a Chicago Police Officer assigned to work in a covert capacity for the gambling section for vice control. In that position he investigated illegal gambling on licensed premises. On that date he went to

the licensed premises at 4471-75 W. Lawrence which consists of a liquor store with a tavern attached to it. He and his partner Edwin Roman entered through the liquor store and advised the clerk that they were conducting a licensed premises check. He observed three automatic amusement devices which are so-called gambling devices. One would deposit U.S. currency into the machine, play the machine and win points. All three machines had valid City of Chicago tax emblems and were plugged in. There was a pool table in the middle of the room that contained a U.S. currency slot where a person would deposit money. The pool table had a valid City of Chicago tax emblem. The pool table had a money slot and was operational. One could not play the pool table or the three machines without inserting money. There were no signs in the establishment indicating free play. The Licensee did not have a PPA license and no valid PPA license was displayed.

On cross the officer testified no one was playing pool and he did see not see anyone insert money into the pool table. He saw no one playing the automatic amusement devices and saw no one insert money into those machines. Over the years he has seen machines that could be played for free but on redirect the witness asserted the three machines and the pool table at this location could not be played for free.

Richard Gora testified he owned a vending company that has been in business with the Licensee for 15 years. He was the vendor on October 21, 2008, and had installed all the machines. In the bar were three poker machines, a Mega Touch bar game that does not require money, a juke box and a pool table that was free play and did not

take money. There is a sign on the pool table for free play. There has never been money on the pool table. Only the jukebox and the three pokers take money. The coin slot on the jukebox is blocked and there are pins in it. You could not put a quarter in one. He does provide tax emblems for the machines.

Lisa Schultz was working as a bartender at Lawrel Liquors on October 21, 2008, when the police came in the premises. They told her she was under arrest and searched around everything. She did not see the police play the machine or inspect the pool table. She is familiar with the pool table and the Mega Play machines. Those machines did not take money on October 21, 2008, and there were free play signs on those machines on that date. The police did not inspect those machines. The three video poker games all accept money. The free play sign on the table was right by the coin slot.

Mike Calderone is the third generation owner of Lawrel Liquors. It has been in his family since 1946, and was previously operated by his grandfather and his father. On October 21, 2008, there were three poker machines, a Mega, a pool table and a video juke box on the establishment. The pool table and the Mega were free play. The poker machines took money. Pictures of the pool table in evidence were taken on September 10, 2008, but they truly and accurately portray how they would have appeared in October, 2008. The police did not put money into the machines or try to play the machines. The slots on the inside of the mechanism are blocked so that if anybody went to put money into the machine, they could not put it in.

The initial issue is why an allegation of a violation of the ordinances related to Public Place of Amusement Licenses should be heard by the Local Liquor Commission. Under the holding in the case of Askew v. Daley, 62 Ill.App.3d 370, the local liquor commission can revoke or suspend a license for a violation of any statute or ordinance us such statute or ordinance is fairly related to control of liquor. Since the machines in question are located on a liquor licensed establishment and since it can be argued such machines are present in part to bring in customers, jurisdiction of this case would at the local and before this Commission was proper.

The real issue is whether there is substantial evidence in the record to support the finding of the Deputy Hearing Commissioner that the pool table was operated for gain or profit. There is no dispute the three poker machines took money. If the pool table took money the Public Place of Amusement License is needed. If the pool table did not take money, no such license would have been needed.

There was disputed evidence on this point. Richard Gora, Mike Calderone and Lisa Schultz all testified the pool table did not take money. Investigator Drell testified that this pool table had a slot for money and there were no “free play” signs. In his experience that formed his opinion that the pool table could not be played for free. In the Findings of Fact the Deputy Hearing Commissioner specifically found the testimony of Investigator Drell to be more credible than the testimony of Richard Gora, Lisa Schultz and Mike Calderone. Determination of credibility is made by the Hearing Commissioner and should not be reversed unless such a determination is so arbitrary and capricious that

it should not stand. That is not the fact in this case. There is no substantial evidence in the record as a whole to affirm the decision of the Deputy Commissioner on these findings.

Since no argument was presented on the issue of whether a \$5,000.00 fine was appropriate, that matter will not be addressed by this Commissioner.

OPINION OF COMMISSIONERS SCHNORF AND O'CONNELL

Chairman Fleming has reviewed the history of this case and the testimony given at the hearing. While we also agree that the issue has been properly framed, we feel that there is not substantial evidence in the record as a whole to support the findings that the pool table took money for play and was operated for gain or profit.

Investigator Drell's testimony with respect to the pool table was not specific to this machine. It was cased in generalities about billiard amusement devices. He stated the pool table had a money slot, was operational and could not be played without inserting money. However, Drell did not see anyone playing pool, did not see any money inserted into the pool table and he did not insert any money into any of the machines including the pool table. Drell then stated he based his opinion that these machines take money from his observations of previous machines. The review of this testimony shows no credible evidence on whether this particular pool table required money to be played on October 21, 2008. Without such evidence the City did not have substantial evidence in the record that the pool table was offered for gain and profit. Without the pool table there

were only three amusement devices offered for gain or profit and no Public Place of Amusement License was needed.

This should not be considered a case where we are reweighing issues of credibility determined by the Deputy Hearing Commissioner. Before one gets to the issue of weighing credibly there must be some evidence in support of that proposition. There is no such evidence on this record.

The decision of the Local Liquor Control Commission is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order to Fine the Appellant the sum of \$5,000.00 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: November 16, 2010

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member