

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

The Pumping Company, Inc.	)	
David A. Rossman, President	)	
Licensee/Suspension	)	
for the premises located at	)	
6157 North Broadway	)	Case No. 08 LA 24
	)	
v.	)	
	)	
Department of Business Affairs & Licensing	)	
Local Liquor Control Commission	)	
Mary Lou Eisenhauer, Acting Director	)	
	)	
	)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER KOPPEL

The City of Chicago filed a Notice of Hearing alleging that the licensee failed to cooperate with police officers in violation of Title 4, Chapter 60, Section 141 (b); failed to provide complete books and records for inspection in violation of 235 ILCS 5/4-5 and amended to add 235 ILCS 5-6-10; and produced an amusement for gain or profit without a Public Place of Amusement license in violation of Title 4, Chapter 156, Section 300 of the Municipal Code. On February 9, 2007, Deputy Hearing Commissioner Raymond Prosser was appointed by Richard M. Daley to conduct license disciplinary proceedings regarding the City of Chicago liquor license and all other licenses issued to the respondent. The hearing was conducted on January 10, 2008 and March 6, 2008, and the Deputy Hearing Commissioner prepared Findings of Fact that sustained Charges 2 and 3 and based on the facts of this case and the licensee's prior disciplinary history, including a suspension in 2003 for operating without a public place of

amusement license, found a 21 day suspension concurrent on these charges to be an appropriate disposition. Acting Director Mary Lou Eisenhower of the Department of Business Affairs and Licensing adopted each of those findings. A 21 day suspension was entered. The licensee filed a timely Notice of Appeal and oral argument was made before the License Appeal Commission.

Police Officer Mary Legittino testified she is assigned to the License Investigations Unit of the Vice Control Division. She was assigned to conduct a subterfuge investigation into the ownership of The Pumping Company, Inc. In the course of this investigation she sent by certified mail to Mark Duckman, a listed owner, and to other corporate officers at their homes and at the place of business a request for production of documents. The letters came back unclaimed. On January 12, 2007, the witness went to the bar at 6157 N. Broadway. It was open and a band was playing. She issued a ticket for operating without a Public Place of Amusement license due to the size of the place and an occupancy over 100. She also gave to Brent Pulliam, the licensee's agent, a letter for request of business documents. Mr. Pulliam signed acknowledging receipt of this letter. She never received a response from either of the corporate officers but did receive a phone call from attorney Timothy Fitzgerald that he would provide the requested documents except for tax returns and bank statements. As of January 22, 2007, she had not received any of the requested documents.

At the March 6, 2008, hearing Mr. Fitzgerald stipulated to Charge 2 and to Charge 3. While Mr. Fitzgerald attempted to add mitigating facts that the owner was not aware of the activity alleged on Count 3, that was not part of the stipulation. No constitutional arguments or

procedural arguments were presented at this hearing.

Review of this decision by this Commission is 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.

The licensee has argued before this Commission that since the penalty provision of Section 4-156-300 specifically calls for a fine of \$10,000, the City must first successfully prosecute this case, obtain a fine as penalty and then use that conviction as a basis for seeking to suspend the liquor license. The City argues that pursuant to 4-4-280 of the Municipal Code the City can suspend or revoke any license if it is determined the licensee shall have violated any of the provisions of the Municipal Code or State Statues.

Cases interpreting 4-4-280 suggest that the City may proceed under this section if the statute or ordinance alleged to be violated is fairly related to the control of liquor. While this Commissioner feels that the issue must be decided on a case by case basis, the use of a violation of the Public Place of Amusement Ordinance as a basis for discipline on the liquor license would be appropriate in this case. This is a band clearly performing in a venue with a tavern license. There is nothing in case law that suggests that the City must first prove the allegations of the violation of the PPA ordinance in another venue prior to filing a case at the Local Liquor Control Commission. The Local Liquor Control Commissioner did proceed according to law.

Counsel for licensee also argued that the City did not prove its case since it did not show an occupancy of over 100. Without taking into consideration the fact that there was a stipulation to this charge, this defense disregards the provision of the ordinance that states “when determining whether a venue has a capacity of more than 100 persons, this total occupancy of all rooms or other occupancy areas of the premises of the business operating the amusement shall be calculated”. Adding the occupancy of all rooms comes to a figure in excess of 100.

In addition, the fact is that counsel for licensee did stipulate to the facts alleged in Charges 2 and 3. There is no indication it was not a voluntarily stipulation. There is no evidence the stipulation was improper or beyond the authority of counsel. Based on these facts the stipulation to Charges 2 and 3 is sufficient evidence to uphold the findings.

As the imposition of a 21 day suspension is not so arbitrary or unreasonable so as to require its reversal. The 21 day suspension of the liquor license is upheld.

**IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor**

license of the appellant for TWENTY-ONE (21) 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: October 8, 2008

Dennis M. Fleming  
Chairman

Irving J. Koppel  
Member