

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

1770 W. Greenleaf Corporation )  
Ignacio Estrada, President )  
Licensee/Suspension )  
for the premises located at )  
1770 West Greenleaf ) Case No. 12 LA 13  
v. )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Gregory Steadman, Commissioner )

ORDER

DECISION OF CHAIRMAN FLEMING

Licensee received notice that a hearing was to be held pursuant to Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago in connection with disciplinary proceedings regarding the City of Chicago licenses issued to it for the premises located at 1770 W. Greenleaf.

The sole charge was:

1. That on or about March 19, 2011, the licensee, by and through its agent, committed a battery by knowingly or intentionally, and without legal justification, making physical contact that caused bodily harm to a patron, in violation of 720 ILCS 5/12-3(a)(1).

The case proceeded to hearing before Deputy Hearing Commissioner Robert Nolan. The City was represented by Assistant Corporation Counsel Shannon Trotter and the licensee was represented by David Daudell. Deputy Hearing Commissioner Nolan entered Findings of Fact that the City proved the sole charge and further found that, “based on the totality of the

circumstances, including the licensee's prior record, that the appropriate punishment is a 30-day suspension." The licensee filed a timely appeal with this Commission.

Prior to the start of oral argument, the Commission needed to address what amounts to as a "request to supplement the record" to allow correct information on the Prior Order of Disposition which had been allowed in evidence at the hearing as City's Exhibit 3. That document reflected the licensee received a 21-day suspension in case 97 LR 0282 for a battery that occurred on October 5, 1997. Documents obtained from a freedom of information request filed by the licensee show that the battery count was not prosecuted due to the fact it was an agent of the licensee that was the victim of the battery and that the licensee and its agents acted properly and complied with the law. The decision in that case did impose a 21-day suspension on charges that the licensee, through its agents, possessed cocaine and maintained a public nuisance. Deputy Hearing Commissioner stated in his Findings of Fact that part of the totality of circumstances he considered imposing a 30-day suspension was the licensee's prior record. The licensee argues since part of the record relied on by the Deputy Hearing Commissioner was inaccurate, the 30-day suspension is excessive.

This Commission was created by the State of Illinois Liquor Control Act and its jurisdiction and powers are limited to those set out in the Liquor Control Act. Review 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.

Since this Commission cannot remand cases for clarification and cannot rely on new or additional evidence, the “request to supplement the record” to consider the facts found by the licensee must be denied. While that ruling may seem harsh, this Commissioner finds there is no other option based on the plain wording of the Liquor Control Act.

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

Francisco Leon Ramirez was at the bar at 1770 W. Greenleaf on March 19, 2011, about 1:00 or 2:00 in the morning. He arrived alone but met some of his friends that were already inside. These friends were Gregorio Gomez, Maximilliano Mancera, known as Marso, and one called Federale. As you enter there are two pool tables and the bar. There was a security person at the door but he did not check for an ID and there was another security person who was coming from the bathroom. He also did not check for ID but he had a badge on and his shirt said “security.” He did check other people’s ID and he was helping at the bar by bringing beer from the back. That security person is named Danielito Valentin. Valentin got into an argument with Gregorio Gomez. Ramirez had seen Valentin working at the bar as security about five times before. The argument started inside and Gregorio went outside. The security guard followed him. Security then pulled out his gun and shot Marso in the knee. Everyone was in the front of the bar by the front of the building except the security persons were inside the building right at the door. He did not have a gun and none of his friends had a gun that night. Earlier the security guard that did the shooting had pulled a gun on the witness and told the witness to shut up

because the argument was not his problem. The witness then contradicted himself as to whether the gun in the stomach incident happened on an earlier date or the date of the shooting. He did reiterate on the night of the shooting a security guard pointed the gun at the witness, then at Gomez and then shot Marso. The witness had responded to the security guard to calm down, and if he was pulling out his gun, to use it. The security guard was standing right at the door of the bar.

Ignacio Estrada has owned the bar at 1770 W. Greenleaf since 2002 and also owns a liquor establishment at 4613 N. Kedzie. While he was present at 1770 W. Greenleaf on March 19, 2011, he did become aware of an incident. He had two security agents working on that date. He has never instructed his security personnel to carry guns and did not authorize the security guard who was involved in the shooting to carry a gun. That guard was fired for carrying a gun. The security was present so people could be safe and check ID's. Danielito Valentin was the security guard involved in the March 19, 2011 incident. The witness hired Valentin in early 2011 and Valentin worked every weekend. The witness paid Valentin and created the work schedule. Valetin was fired the next day.

Yolanda Zunigas lives at 1730 W. Greenleaf and has worked at the bar at 1770 W. Greenleaf for a year and a half. She was working on March 19, 2011 from 8:00 p.m. on the 18<sup>th</sup> until closing time at 5:00 a.m. on March 19, 2011. She saw no problems at closing. She was familiar with the security guards and never saw any guards with a gun. She did not see any gun play in the bar that evening. She was working the bar counter immediately in front and Danielito

Valentin was working security and was wearing a badge. She was not present when the shooting happened because she left. The other lady stayed to count the money.

Maria Gonzalez has worked at 1770 W. Greenleaf for two years. She was working on March 19, 2011 until 5:00 a.m. She knows the security as co-workers and security guards were working that morning. She did not know the guards to be armed and had never seen any of the guards with a gun in the two years she worked there. She did not see anyone pull a gun in the bar on March 19, 2011. She left the bar between 5:30 a.m. and 5:45 a.m. because she counts the money and restocks the bar. She was not aware of a shooting that morning and knew that people will leave the bar intoxicated and stick around talking. She heard no gunshots and the police did not come into the establishment. Danielito Valentin was working security but he had left the bar around 5:00 a.m. when the people were gone. Valentin did have words with some customers who did not want to leave and Valentin escorted that group out the door. The only people left in the bar was the manager and the witness. Valentin was outside at that point and she does not know what happened when he left. The door was locked, one security left with the people and nobody came back in the door.

Eyanira Cabrera has worked as a bartender at 1770 W. Greenleaf for 11 months. She was working until 5:00 a.m. on March 19, 2011. She was not told by security that they had a gun and did not see anyone in the bar with a gun that evening. She did see an argument between a bartender and three people. As it was closing, security escorted the people and turned on the lights. She did not observe anyone with a gun. That morning she was picking up the bottles and glasses. It was the previous witness, Esmeralda, that had the argument with the group of people.

She was aware there was an argument and security guard Danielito Valentin escorted those people out. Everyone was exiting at that point since it was closing time. She did not see them after they left and she was not aware of a shooting at 4:00 a.m. in front of the bar.

This decision has already set out the questions that this Commission must address in cases dealing with appeals of suspensions. Reviewing the findings of the Deputy Hearing Commissioner, the first matter is whether there is substantial evidence in the record as a whole to support the finding that the licensee, through its agent, committed a battery. Unlike other cases in which security guards at licensed premises were employees of a separate security firm, the evidence in this case is clear and unambiguous that Danielito Valentin was an agent of the 1770 West Greenleaf Corporation on March 19, 2011. The owner testified he hired the security guards including Valentin and the owner made the schedule. The testimony is that Valentin was hired to protect the customers and to check for ID's.

Since Valentin was an agent of the corporation on March 19, 2011, the next step in this analysis is whether there is substantial evidence to support the finding that a battery occurred. This is a somewhat unusual case since the person that was allegedly shot did not testify at the hearing. Francisco Leon Ramirez testified he saw Valentin shoot his friend. There was no real testimony from the licensee to rebut that fact. The fact the bartenders may not have heard the shot or may not have been aware of a shooting does not rebut the eyewitness testimony. The owner was not present but did testify he was aware of a shooting that involved one of his security guards that happened on March 19, 2011, and that he fired the security guard the next day. This

testimony is more than sufficient to provide substantial evidence on the record as a whole to support the finding that a battery occurred.

The final analysis that needs to be made is whether the licensee should be held responsible for the actions of its agent under the facts of this case. Unlike traditional principal-agency law the Illinois Liquor Control Acts imposes strict liability on a licensee:

“Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Act, by any officer, director, manager, or other agent or employee of any licensee, shall be deemed and held to be the act of such employer or licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.”

The breath and scope of that statute has been limited by the case law that suggests it applies to cases where the agent was acting within the scope of the employment or where the acts of the employee were not in furtherance of the licensee’s business or where the offense is fairly related to the control of liquor. Any employee may act beyond the scope and course of his employment by engaging in conduct opposite to the proper regulation of alcohol and the employer is responsible. An example would be an employee who sells drugs or engages in prostitution. An example of actions not covered by this statute is the Nappi case where it was held the act of the barmaid shooting her husband during a quarrel was not in furtherance of the employer’s business, was not within the scope of her employment, and was not fairly related to liquor control.

There was much testimony and argument about where Valentin was standing at the time of the shooting. While proximity to the liquor establishment could be an important factor in certain cases, it is not a crucial factor in this case. Whether Valentin was inside the door in a vestibule area or on the public way does not change the fact that Valentin was acting as a security guard emptying the premises at closing when this event occurred. While there was testimony a previous problem between Valentin and some of the patrons and an argument that night between Valentin and some of the patrons, there was not specific evidence of such bad blood between Valentin and the patrons so the shooting was solely a personal action. There is substantial evidence in the record as a whole to find that the licensee was responsible for the shooting by security guard Valentin.

Part of the issue of whether the 30-day suspension is supported by the findings has been discussed. Whether any of the Commissioners on this Commission feels due process would require a remand is not relevant since this Commission cannot remand so the Deputy Hearing Commissioner could review the documents relative to the previous disciplinary case. Whether any of the Commissioners feels 30 days is too harsh a suspension is not material since this Commission cannot modify a suspension. Based on the facts that were in the record at the time the 30-day suspension was imposed such a suspension was not so arbitrary and capricious so as to require reversal.

The 30-day suspension of the liquor license issued to 1770 West Greenleaf Corporation is affirmed.



COMMISSIONER O'CONNELL'S CONCURRING OPINION

Despite my usual frustration with this Commission's limitations expressed herein, I concur with Chairman Fleming's opinion in this case.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for THIRTY (30) 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: August 20, 2012

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member