

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

2033 Pizza, Inc.)
Refusal to Renew)
for the premises located at)
2033 North Milwaukee Avenue)
)
v.) Case No. 11 LA 52
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

On or about November 5, 2011, the licensee attempted to renew its liquor license for 2033 N. Milwaukee Avenue. Payment was made but the liquor license did not issue because of holds placed on their account. After the Local Liquor Control Commission refused to renew its liquor license, the licensee filed an appeal to this Commission.

The relevant section of the Chicago Municipal Code is 4-4-150, entitled Indebtedness – License Ineligibility. The definition of “debt” for this portion of the code includes:

- (1) a sum of money owed to the city for which the period granted for payment has expired...and in the case of a “tax” within the meaning of Section 3-4-020 of this code, includes any unpaid tax liability, whether or not an assessment has been issued;

- (4) a sum of money owed to the State of Illinois when the city has received certification from the state that the license applicant has been given notice and an opportunity to contest the state’s determination that he or she owes the sum of money.

Also relevant to this case is the procedure set out in Sections 4-4-150(d)(1) through 5. This Commissioner has reviewed these sections and feels that they raise an issue as to whether this License Appeal Commission has the statutory authority to conduct a trial hearing on whether this license should be renewed. Since the licensee filed its appeal in this forum and the City has not objected to jurisdiction, this Commissioner feels judicial economy is best served by issuing a decision and allowing either party to raise the issues of jurisdiction on appeal.

Attached to the Notice of Appeal were several “Hold Notices” from the City of Chicago for the following businesses:

1. Account 344881 for 2033 PIZZA INC. located at 2033 N. Milwaukee Ave., 1st Floor, Chicago, Illinois 60647, case of Zenia Lombardo.
2. Congress Pizza, Inc., at 2033 N. Milwaukee Ave., 1st Floor, Chicago, Illinois 60647, case of Frank Lombardo.
3. Account 3635 for Tony Lombardo – 2033 N. Milwaukee Ave., 1st Floor, Chicago, Illinois 60647.
4. Account 339898 for Z-A Pizza, Inc., at 5925 W. Diversey Avenue, Chicago, Illinois 60639.

A review of the evidence presented at the hearing will be helpful in a resolution of the issues.

Bryan Knipper has been employed by the Department of Business Affairs and Consumer Protection for five and a half years and is currently a Business Consultant Supervisor. His duties include assisting in the processing of liquor licenses and overseeing document review on liquor applications. He is familiar with the process of reviewing a liquor license. All licenses now

receive notice in the mail to file their renewals on-line. This process will tell the applicant if there are any holds on their account. Debt holds are monies that the City feels are owed to it by that corporation or individual. Non-debt holds would be for manager holds such as adjudication holds for a pending case that needs to be resolved.

Knipper uses the IRIS - Integrated Revenue Information System every day. Entries are made into the IRIS system by people from other Departments and the State of Illinois Department of Revenue. If there is a hold in the system, a bright red light appears on the screen.

Knipper testified 2033 Pizza, Incorporated, d/b/a Congress Pizza at 2033 N. Milwaukee Avenue made an application for the renewal of its liquor license on November 15, 2011. That was for Account 34488. That license was not issued at that time for debt holds. Knipper explained that Zenia Lombardo has been associated with one other account under the name of Z-A Pizza, Inc. That was Account 339898. Zenia Lombardo was listed as the 100% owner of both corporations.

Knipper stated that if a new entity opens up an establishment, holds would be dependent on what happened in the transfer of business such as whether there was a bulk sale of the assets of the previous business. The witness stated this application was for a new license but he had no knowledge if there had been a bulk sale of assets. He also stated he could not tell when the holds for Z-A Pizza, Inc., had been incurred or how they were incurred. City's Exhibit 2(c) was described by the witness as a hold from the State of Illinois Department of Revenue for sales tax, but Knipper could not give specifics. The holds on Account 325777, in the name of

Frank Lombardo, were probably included because the City felt a bulk sale occurred. Knipper could not say if a sale had or had not occurred he is not from revenue. Knipper also explained Account 3635 was in the name of Tony Lombardo as a sole proprietor, and Account 325777 was for the legal entity Congress Pizza, Inc. If it was determined there had been a bulk sale, an applicant would work with the tax department to resolve the matter.

The Chairman indicated that the License Appeal Commission would take judicial notice of Title 3, Chapter 4, Section 140 of the Chicago Municipal Code, which is entitled Bulk Sales or Transfers. In essence, this section states a person must file a written notice of the included sells or transfer of:

1. The stock of goods or inventory of the person
2. The furniture or fixtures
3. Machinery or equipment
4. Real property

If a purchaser or transferee fails to provide proper notice, the purchaser or transferee shall be jointly and severally liable with the seller or transferor for the amount of taxes, interest, penalties, nontax debts, and other debts owed by the seller or transferor to the city.

Dana Bussie has been a project coordinator for the last six of his nineteen year career with the Department of Finance. He oversees employees who perform debt search for various reasons. Employees search five or six sources such as parking, water, administrative hearings, cost recovery, business licensing debt, and inspection fines. The search is done by name, address, and business name. City's Exhibit 3, in evidence, was identified as a Department of Revenue Indebtedness search result for 2033 Pizza, Inc., at 2033 N. Milwaukee. The total

amount of indebtedness as of July 16, 2012, was \$17,488.15. That amount is subject to change with interest or late fees.

The witness identified City's Group Exhibit 4, as supporting documents for the indebtedness amount. Page 1, is a screen from the water system; Pages 2 and 3, of the exhibit show inspection fees, and sign inspection fees for Congress Pizza at 5925 W. Diversey. The fourth page reflects fees for elevator inspections at 2033 N. Milwaukee Avenue. The fifth page shows administrative hearing debt for Congress Pizza at 2033 N. Milwaukee Avenue. The final page of the exhibit shows debt to administrative hearings for 5925 W. Diversey for Congress Pizza and Z-A Pizza, Inc. Group Exhibit 4, was allowed in evidence.

The witness agreed this group exhibit was a compilation of everything on that address regardless of the entity. It does not tell who incurred the debt and the witness does not know who operated at 5925 W. Diversey, at what time.

The City called Zenia Lombardo as an adverse witness. She started 2033 Pizza, Inc., in 2009, and she is the President and sole shareholder. Prior to her opening at the 2033 N. Milwaukee address, there was a restaurant at that location operated by her now deceased father-in-law, Tony Lombardo. She did not purchase the equipment. There was a pizza oven and some tables and fixtures, but she purchased other things. There was no inventory except a few cans of this and that. She pays rent and leases. She did not file a bulk sales notification with the City. She has been the shareholder of Z-A Pizza, Inc., at 5925 W. Diversey for 2 ½ to 3 years. Prior to her business, her late husband Frank Lombardo operated a business. She had a similar

management where she used the pizza oven, some furniture, and inventory. She did not file a bulk sales notification with the City.

Frank Lombardo died in May of 2008. The witness denied any sales contract for 2033 N. Milwaukee and denied purchasing equipment. She has never received notices from the Department of Revenue to pay taxes. When she applied for 2033 N. Milwaukee no one told her she was responsible for these other taxes. She would not have entered into a lease if she knew she had to pay \$20,000.00. She was not associated in any corporation with Tony Lombardo or Frank Lombardo.

The witness denied owing any tax monies and asserted she is current in all her filings and all her taxes. She might be responsible for an elevator inspection from October 7, 2010, but she was never billed for that inspection.

The lease for the premises at 2033 N. Milwaukee was allowed in evidence by agreement as Joint Exhibit 1. City's Exhibit 5 was allowed in evidence, it reflects a hearing was scheduled at the State of Illinois Liquor Control Commission on September 19, 2012, with respect to a ST-14 Chicago Soft Drink Assessment Tax of \$76.90, a failure to file Sales/Use Tax and E911 Surcharge from July 2012 to current, and failed to pay an assessment balance of \$6,449.54 and failed to pay Withholding Income Tax in the amount of \$294.75.

The ordinance in question deals with the City's power to not renew a license if the licensee owes a "debt" to the City. The ordinance does not allow the City to deny a license to a

licensee because that licensee may owe a “debt” to the City for another licensee. In this factual situation, the ordinance does not seem to allow the City to not renew the license of 2033 Pizza, Inc. with Account 344881, owned 100% by Zenia Lombardo because a “debt” may be owed to the City by Z-A Pizzeria, Inc. owned 100% by Zenia Lombardo with the Account number 3398998. As such, the failure to renew the license for 2033 Pizza, Inc. because of alleged debt owed by Z-A Pizza, Inc. would not be proper under the Municipal Code.

The City has also alleged the licensee is responsible for outstanding “debt” for Account 3635, in the name of Tony Lombardo for 2033 N. Milwaukee, for Account 325777, in the name of Congress Pizza, Inc. for 2033 N. Milwaukee. It also sets out a Department of Buildings debt for Congress Pizza at 2033 N. Milwaukee. Under Title 3, Chapter 4, Section 140 of the Chicago Municipal Code, this licensee could be responsible for the debt if the City proves there was a bulk sale or transfer of property. While the City witnesses speculated that the City believed there had been a bulk sales, neither of the witnesses could testify to the specifics of why the City felt there had been bulk sales. Without such proof, the City has failed to meet its burden of proof on whether bulk sales took place in a manner that would have made the licensee responsible for past debt.

City’s Exhibit 4, in evidence, does show an open invoice for an elevator inspection conducted on October 7, 2010. That inspection would have occurred after this licensee took possession of 2033 N. Milwaukee, and it would be responsible to make payment prior to renewal of this license. While the licensee claimed it was paid or she did not receive the bill in the mail, that testimony was insufficient to establish payment.

Under the Municipal Code, the license cannot be renewed for a sum of money owed to the State of Illinois when the City has received certification from the State that the license applicant has been given notice and an opportunity to contest the State's determination that she owes the sum of money. City's Exhibit 5, in evidence, would be sufficient that 2033 N. Pizza, Incorporated was given notice that a hearing was to be held by the State of Illinois Liquor Control Commission with respect to a possible fine, suspension, or revocation of its license on these grounds. One of the grounds was failure to pay sales tax, which is a reason listed on one of the hold notices.

The City of Chicago has not proved by a preponderance of the evidence that the license of 2033 Pizza, Inc. should not be renewed due to debt owed to the City of Chicago under any account other than Account 344881. The City of Chicago did prove by a preponderance of the evidence that a debt was owed by the licensee for an elevator inspection and did prove that the City has received certification from the State of Illinois that money is owed to the state by the licensee, and that the applicant has been given notice of hearing and an opportunity to contest the state's determination that the licensee owes the money. These were valid reasons to refuse to renew this license. For these reasons, the decision to refuse to renew the license for 2033 Pizza, Inc. for the premises of 2033 N. Milwaukee is affirmed.

This Commissioner is aware of case law that has held a failure to renew to be comparable to revocation with respect to required procedural due process. It is my understanding that upholding a failure to renew should be equated with an order revoking this license. If the City wishes to revoke this license, it must follow proper procedures. As pointed out earlier there

seems to be a separate procedure set out in the Municipal Code to be followed in these types of cases. For whatever reason, that process was not followed and an appeal was filed with this Commission. As neither party objected to the jurisdiction of this Commission, the best practice seemed to be to conduct a hearing and issue this decision.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local
Liquor Control Commissioner of the City of Chicago be and the same hereby 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: February 21, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member