

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Prattfall, Inc.)
Patrick Papas, President)
Licensee/Suspension)
for the premises located at) Case No. 12 LA 59
6809-6813 North Sheridan Road)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

The licensee received notice that a hearing was to be held pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Chicago Municipal Code in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other City of Chicago licenses issued for the premises located at 6809-6813 North Sheridan, Chicago, Illinois. The charges against the licensee were:

1. That since on or about May 2011 through May 2012, the licensee failed to adequately implement and maintain its Late Hour Exterior Safety Plan, to wit: failed to regularly attend CAPS meetings, in violation of Municipal Code of Chicago, 4-60-130(f).
2. That on or about March 28, 2012, the licensee, by and through its agent, failed to post, in the licensed establishment, in a conspicuous location, directly next to the liquor license certificate, its exterior safety plan, in violation of Rule 10 of the Local Liquor Control Commission's Rules and Regulations for Late Hour Liquor Licenses as promulgated under Municipal Code of Chicago 4-60-205.

This matter proceeded to hearing before Deputy Hearing Commissioner Robert Nolan. Assistant Corporation Counsels David Frueh and Shannon Trotter represented the City of Chicago and Martin J. Murphy represented the licensee. The Deputy Hearing Commissioner entered Findings of Fact that the licensee failed to implement and maintain its Late Hour Exterior Safety Plan from May 20, 2011 through March of 2012, by failing to regularly attend CAPS meetings in violation of Municipal Code of Chicago, 4-60-130(f); and failed to post, in the licensed establishment, in a conspicuous location, directly next to the liquor certificate, its Late Hour Safety Plan, in violation of Rule 10 of the Local Liquor Control Commission's Rules and Regulations for Late Hour Liquor Licenses as promulgated under Municipal Code of Chicago 4-60-205. He further found that based upon the totality of circumstances, including the licensee's prior record, that the appropriate punishment was a 15 day suspension. The Local Liquor Control Commission adopted the findings of Deputy Hearing Commissioner Nolan and imposed a fifteen (15) day suspension on the (Late Hour Liquor License only). The licensee filed a timely notice of appeal with this Commission.

A review of the evidence in the record will be helpful in understanding this decision.

Prior to the start of evidence, City's Exhibit 3, the Late Hour Exterior Safety Plan for the licensed premises, and City's Exhibit 4, the Local Liquor Control Commission's Rules and Regulations regarding the late hour liquor license were allowed in evidence. City's Exhibit 3 was allowed without objection, and City's Exhibit 4 was allowed in over the objection of the licensee.

Robert Kane has been a Chicago Police Officer for over 12 years and is now a Sergeant in the 24th District. He is the community sergeant which means he is the liaison between community members and the commander. In that capacity, he hosts CAPS meetings where he meets with the community to hear about issues on crimes and other concerns. His district has nine beats and three sectors which means each sector has three beats. These meetings are open to the public and business owners can attend. The Oasis tavern at 6809-6813 North Sheridan is a business in an area covered by the CAPS meetings he conducts. Attendance at these meetings is recorded by having individuals sign their names on a sign-in sheet that is typically located on a desk with information and pamphlets. When Kane conducts a meeting, he announces to everyone to sign the sheet. The sign-in sheets are kept in the regular course of business for the 24th District CAPS meetings.

Sergeant Kane identified City's Group Exhibit 5 consisting of fourteen pages as sign-in sheets for Beat 2431, which is the beat in which the Oasis is located. The first page of that exhibit is the sign-in sheet for February 14, 2011, and it reflects that a Michelle Dreman signed in as the representative of the Oasis. The second page of the exhibit is the sign-in sheet for Beat 2431 for the March 21, 2011 meeting, which shows Michelle Dreman signed in on behalf of the Oasis. Page three of the exhibit shows Michelle Dreman signed in on behalf of the Oasis for the April 18, 2011, Beat 2431 meeting. Pages four through fourteen of this exhibit purport to be the sign-in sheets for Beat 2431 meetings for May 19, 2011, June 16, 2011, July 21, 2011, August 18, 2011, September 15, 2011, November 17, 2011, February 16, 2012, March 15, 2012, and April 19, 2012. Kane opined that no one from the Oasis signed in for any of those meetings. Beat meetings were not held in December 2011 or January of 2012. There is no sheet for an

October 2011 meeting. City's Group Exhibit 5 was allowed in evidence over the licensee's objection.

Sergeant Kane explained that the top of the sign-in sheets is prepared by his office and the signature sheets are filled in by those attending the meetings. People can attend meetings without signing the sheets. Kane did not personally attend each of those beat meetings and there is no place on these sheets that state what police officer conducted the meeting. He does not know if he attended the February 14, 2011 beat meeting. Kane is not personally familiar with all the individuals who signed the sheets and does not know if any of those individuals on the sheets were employees of the Oasis at the meetings Michelle Dreman did not attend. Kane admitted it was possible there were sign-in sheets not present at the hearing. He also admitted he does not know Michelle Dreman or any other employee of the Oasis.

Kane stated there were no missing sign-in sheets and that the sheets not included, that he referenced, were for officers and aldermanic sign-ins.

Sergeant Joseph Giambrone has been a Chicago Police Officer for twenty years and for the last ten years he has been assigned to the Area North Wicker Park detail. In that position, he has the responsibility for the supervision of all liquor license establishments and liquor license investigations throughout Area North. He was working in that capacity on March 28, 2012, and went to the Oasis tavern at 6809 to 6813 North Sheridan. The license holder is Prattfall. He and other officers entered the open premises at 9:30 in the evening. The wooden bar area is to the south of 6809, and the north half of the bar has more seating, dart boards, and some televisions.

He identified himself as a police officer to a person named Georgina Garcia who was pouring a tap beer. He told her he was conducting an investigation and asked if she was an employee. He asked her for the late hour exterior safety plan because he did not see it posted. Ms. Garcia, who admitted she was an employee, was unable to locate it after she searched for twenty or thirty minutes.

Garcia did give him a floor plan but not the exterior safety plan. She was given a chance to call her supervisor but the plan was not produced.

The City rested its case.

Michelle Dreman is the daytime manager and a bartender at the Oasis. She attends CAPS meetings in that capacity. When she attended CAPS meetings she signed in on the sign-in sheets most of the time. There might have been times when she forgot. There are usually several beats involved in the same meeting and there is more than one sign-in sheet. She attended the CAPS meetings when she could. The meetings are at different locations. Joe Chikko and Kevin O'Neil from the Oasis have also attended CAPS meetings. Security personnel have never gone with her to beat meetings. She could not remember if she attended the meetings on May 19, 2011, June 16, 2011, July 21, 2011, September 15, 2011, February 16, 2012, and March 15, 2012. She remembered attending on April 19, 2012, and believes she attended a meeting on March 15, 2012. She does not know of the dates Joe Chikko attended the CAPS meetings or if he regularly signed in on behalf of the Oasis.

Benjamin Chikko was the managing partner for the licensee on April 29, 2008. He received a call from Ms. Garcia looking for the safety plan. The licensee maintained a safety plan on the premises as part of the requirement for the late hour license. At that time, the plan was kept in a file cabinet and now it is posted by the license. It was posted there after the sergeant told them to do so. The exterior safety plan was not posted in the establishment on March 28, 2012. His brother Joe Chikko and Michelle Dreman attended CAPS meetings on behalf of the licensee.

Over objection, City's Exhibit 6, which lists prior orders of disposition was allowed in evidence. Licensee's Exhibit 1, which is a letter from the City approving the licensee's exterior safety plan, was allowed in evidence.

Since this case deals with the appeal of a fifteen day suspension of a late hour license the scope of the jurisdiction of 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.

There is no issue raised on the record that the local liquor control commissioner did not proceed in the manner provided by law. The licensee was given due and adequate notice of the charges against it and was allowed to participate in a hearing on those charges. The licensee's

disagreement with evidentiary rulings that were made during the hearing is not material as to whether the local liquor control commissioner proceeded in the manner prescribed by law.

The next issue is whether the findings of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record. Substantial evidence has been defined to require affirming a decision if there is any evidence in the record that supports the decision of the Deputy Hearing Commissioner. This Commission does not have the power to reverse on the basis that its members feel the evidence in total was insufficient. This Commission cannot reverse because its members would have come to a different conclusion.

With respect to the finding that the licensee failed to post its late hour safety plan in violation of Rule 10 as promulgated by Municipal Code 4-60-205, the licensee does not deny that the safety plan was not so posted on March 28, 2012. The defense seems based on an argument that Rule 10 is not applicable since there was no evidence that this rule was necessary to implement the requirements of Chapter 4. While the Deputy Hearing Commissioner did not address this argument, it appears to this Commissioner that the implementation of the rules based on this statutory power presupposes that the Local Liquor Control Commission felt this rule was necessary to implement the requirements of this ordinance. Whether or not Rule 10 is actually necessary is not a matter in controversy. The fact is that Rule 10 was adopted by the Local Liquor Control Commission pursuant to statutory authority and a licensee must comply with its requirements. The second argument on this point is that the licensee received no actual notice from the Local Liquor Control Commission about Rule 10. This argument was also not addressed by the Deputy Hearing Commissioner. It seems to this Commissioner that a licensee

cannot claim lack of knowledge of what was required by the rules dealing with late hour licenses. It should also be noted that Licensee's Exhibit 1, which is a letter dated April 29, 2008, to the licensee approving the exterior safety plan refers the licensee to the DBA's website for concerning rules and regulation requirements. Since the rules were effective March 1, 2008, one can assume the rules were on the website by April 29, 2008. There was no testimony from the licensee that it checked the website for rules after April 29, 2008, and Rule 10 was not posted.

The City has met its burden of proof that the licensee failed to post the exterior safety plan pursuant to Rule 10 on March 28, 2012, as alleged on Count 2.

Count 1 alleges that the licensee failed to implement and maintain its Late Hour Safety Plan by failing to regularly attend CAPS meetings in violation of the Municipal Code of Chicago 4-60-130 (f). A copy of that section of the Municipal Code was entered in evidence as Licensee's Exhibit 2. Nothing in that section of the ordinance mentions or requires the regular attendance of a late-hour licensee at CAPS meetings. The exterior safety plan submitted by the licensee and approved by the City is in evidence as City's Exhibit 3. This document reflects that "up to this point managers have attended CAPS meetings. In the future, security personnel will join management at meetings." The document mentions an attached CAPS letter from the Chicago Police Department that verifies as of April 4, 2008, Ben Chikko, the owner of the Oasis Bar and one of his representatives attends monthly CAPS meetings. The late hour plan does not require regular attendance at CAPS meetings. The rules of the Local Liquor Control Commission, in evidence, did not require regular attendance at CAPS meetings.

The evidence presented at the hearing was sufficient to show by substantial evidence that the licensee did not attend the CAPS meetings on a regular basis. There is not sufficient evidence on the record as a whole to support a finding that such failure to attend CAPS meetings regularly violated 4-60-130 (f) of the Municipal Code. The finding of the Deputy Hearing Commissioner on Count 1 is reversed.

The final issue is whether a 15-day suspension of the late hour license is supported by the findings. This Commission is again found with a finding of fact that based on the totality of the circumstances a 15-day suspension was appropriate. The order of the Deputy Hearing Commissioner did not state the 15-day suspension was concurrent on both charges. That failure to do so leaves a void as to the issue of whether a 15-day suspension is still appropriate since the totality of circumstances have changed due to the reversal of Count 1. In addition to that change of circumstance, the previous history of discipline is a 4-day suspension for a 1996 sale to minor, and a \$2500 fine for an October 6, 2004 sale to minor. The past history does not indicate to this Commissioner that the licensee has a pattern of violating liquor laws. The sustained charge also does not show a disregard for the requirements for the late hour ordinance. There was an approved exterior safety plan on site, but it was not properly posted. While the City is not required to follow progressive discipline, it is difficult to understand how discipline goes from a four day suspension and a \$2500 fine to a 15-day suspension for a totally unrelated ordinance violation. That discipline is more suspect now with the reversal of Count 1.

Since this Commission does not have the power to modify penalties or to remand for reconsideration, the issue is whether the 15-day suspension on the one sustained count is so arbitrary and capricious as to require an outright reversal with no penalty for the sustained count. While this case may be close, it does not meet that standard.

The decision of the Local Liquor Control Commission on Count 2 is sustained and the imposition of the 15-day suspension of the late hour license is sustained.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the Appellant for FIFTEEN (15) 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: May 29, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member