

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

El Toro Loco, Inc.)
d/b/a El Toro Loco Bar)
Licensee/Suspension)
for the premises located at)
5708 South Western Avenue) Case No. 12 LA 69
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING

The licensee received notice from the City that a hearing in connection with disciplinary proceedings regarding the City of Chicago licenses issued to it for the premises located at 5708

S. Western would be held on the following charges:

1. That on September 22, 2011, the licensee, by and through its agent, failed to have posted in a conspicuous place a sign which clearly reads: “Warning: According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems,” in violation of Municipal Code of Chicago 4-60-100(b).
2. That on or about September 22, 2011, the licensee, by and through its agent, failed to cooperate with identified police officers, regarding an inquiry or investigation concerning persons or events in or around the licensed business, in violation of Municipal Code of Chicago 4-60-141(b).
3. Count 3 was withdrawn.
4. That on or about September 22, 2011, the licensee, by and through its agent, failed to conspicuously post a sign indicating the number of persons who may legally occupy the premises, in violation of Municipal Code of Chicago, 13-84-410(a).

This matter proceeded to hearing on November 6, 2012, before Deputy Hearing Commissioner Nolan. Shannon Trotter and David Frueh represented the City and attorney George Becker represented the licensee. The Deputy Hearing Commissioner entered Findings of Fact that the City met its burden of proof on Counts 1, 2, and 4 and further found, based on the totality of the circumstance, that the appropriate punishment was a 30-day suspension. The licensee filed a timely Notice of Appeal to this Commission.

Since this appeal deals with an appeal of a suspension, the issues before this Commission are:

- 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.

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

Sergeant Lee Bielecki has been a police officer for 27 years and was the midnight beat sergeant for Beat 820 in September of 2011. On September 22, 2011, he was working and responded to a call of a robbery victim at 5708 S. Western. He responded because it was a license. He arrived around 1:27 in the morning. He knew the premises were open and operating when he arrived because he heard music. As he approached the place, a security guard closed and locked the door. He could not enter. When a patron left, he and other police were allowed entry. They had tried to enter by banging on the door. The licensee did not cooperate with him

on his arrival, but once he got in the licensee became more cooperative. A Miguel Suarez for the licensee showed the witness the licenses which were valid. He looked around but did not see the surgeon general signs warning people about alcohol consumption and the sign as to how many people would be allowed in the bar.

The police were in the bar about 45 minutes. In that time, the manager took him to the basement to review video. Once they entered the bar, the employees and the manager did not interfere with the police. He and a number of police officers were outside the bar five to ten minutes before they gained access to the bar. A patron exited the bar and that is when the police gained access. They looked around the bar for the two signs as part of his license premise investigation. The witness specifically denied seeing the surgeon general's sign or the occupancy sign. The City rested its case.

Arturo Leanos was employed as a man in charge at El Toro Loco in September of 2011. He worked five days a week from 8:00 p.m. until 2:00 a.m. He was working in the early morning hours of September 22, 2011. At about 1:40 a.m. there was banging on the door. He went to the front door and opened it and there were a couple of police officers. Last call was called at 1:30 a.m. when they close the front door so patrons who leave cannot reenter the bar. There was a gentleman with the police who claimed he had been robbed in the bar. He advised the police the bar had video surveillance inside and outside, and he took the police to the basement to access the video. He never stopped the police from doing their investigation and did not order the staff to not cooperate with the police. The police requested to see the licenses and he produced them. The police requested to look at the surgeon general's sign and the occupancy

sign. The witness identified Licensee's Exhibit 2, as the surgeon general's sign which was posted in a visible location behind the bar. Licensee's Exhibit 3 was identified as the occupancy sign which was also located behind the bar in a visible spot. He saw these signs on a nightly basis in the same locations. There was a security guard named Eduardo working that morning. He was standing by the front door when the police knocked on the door. He does not know if Eduardo saw the police prior to knocking on the door. The signs are posted eight feet above them behind the bar. He took the licenses off the wall, took them out of their frames, and showed them to the police. The police never asked to see the occupancy sign because it was there to see. He pointed these signs out to the police as the police wrote citations for failing to have the signs, but the police wrote the violations anyway.

Miguel Suarez has run El Toro Loco for three years. He is in the bar every day since he opened the bar. Both the surgeon general's and the occupancy signs were posted behind the service bar on September 21, 2011, when he was at the bar. As a policy, bartenders announced last call at 1:30 a.m. and people are not supposed to come into the bar after 1:30 a.m. He was present when the police came to the bar the morning of September 21, 2011.

The licensee has made no argument that the Local Liquor Control Commissioner did not proceed in the manner provided by law.

Count 2 alleged the licensee failed to cooperate with identified police officers regarding an inquiry or investigation concerning persons or events in or around the licensed premises. The evidence in the record on this allegation is the testimony of Sergeant Bielecki that the bar's security guard locked the door as he and other police approached the front door. The testimony from the licensee's agent is that security was at the front door of the bar and that the door was opened after they heard the police banging on the front door. Once the police gained access, there is no dispute that the licensee and its agents cooperated with the police. The standard of review is substantial which is a law standard of proof that needs any evidence to affirm the finding of the Deputy Hearing Commissioner. There is some evidence in the record to support the findings of the Deputy Hearing Commissioner on Count 2.

There is a conflict on the evidence in the record on Charges 1 and 4 with respect to the surgeon general's sign and occupancy sign. Sergeant Bielecki's testimony was that he looked for these signs as part of his license investigation and did not see them posted. The witnesses for the licensee testified the signs had been posted for three years and they were posted in a conspicuous place when Sergeant Bielecki did his investigation that morning. The Deputy Hearing Commissioner made a specific finding that he found the testimony of Sergeant Bielecki to be credible and believable. Determinations of credibility are to be made by the trier of fact and cannot be reversed by this Commission because it might disagree with that finding. There is substantial evidence in the record to support the findings on Counts 1 and 4.

The final issue is whether the order of a 30 day suspension is supported by the findings. The Deputy Hearing Commissioner made this finding based on the totality of the circumstances.

Those circumstances include evidence that this licensee has had no previous liquor violations. There were two non-liquor related ordinance violations for posting bills on public property which were resolved by a default fine \$1000.00, and a plea of liable with a \$200 fine. This Commission does not have the authority to modify a suspension or to remand a case to the Local Liquor Control Commissioner. While members of this Commission might have imposed a less onerous penalty, that is not an option. The 30 day suspension for the three charges is not so arbitrary and capricious as to allow this Commission to reverse.

The findings of the Local Liquor Control Commissioner are sustained.

COMMISSIONER O'CONNELL'S CONCURRING OPINION

This Commissioner feels strongly that the penalty in this case is very close to arbitrary and capricious and would drastically reduce it if allowed, as he is allowed at the State Commission. Unfortunately, the law does not allow this Commission to change the penalty or remand cases for reconsideration, and this results in often drastically harsher penalties in the City of Chicago for non-major infractions than in the rest of the State of Illinois. I believe, unfortunately, that I am bound by law to concur with Chairman Fleming in this case due to lack of authority to remand or reduce penalty.

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: July 17, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member