

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Nickel Liquors & Mini Mart, Inc.)
Sameer Quaiti, President)
Licensee/Revocation)
for the premises located at)
3637 West Division Street) Case No. 14 LA 5
)
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 would be held pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other licenses issued to it for the premises located at 3637 West Division. The charges alleged against the licensee were:

1. That the licensee's operation of its business was or created a nuisance pursuant to the Chicago Municipal Code.
2. That the licensee failed to report a change of officers since at least July 9, 2012, in writing to the Department of Business Affairs and Consumer Protection within ten days of the change, in violation of the Municipal Code of Chicago 4-60-040(k).
3. Since at least July 9, 2012, failed to report a change in the manager's required information in writing to the Department of Business Affairs and Consumer Protection of the City of Chicago within ten days of the change, in violation of 4-60-040(k).
4. On or about July 9, 2012, the licensee by and through its agent, sold outdated merchandise which was not physically separated from the food that was not outdated nor clearly designated as outdated, in violation of the Municipal Code of Chicago 4-276-470(a)(13).

This matter proceeded to hearing before Deputy Hearing Commissioner Robert Emmett Nolan who entered Findings of Fact that the City of Chicago met its burden in each of the counts and further found, based on the totality of the circumstances, that revocation was the appropriate punishment. He also denied the licensee's Motion to Dismiss based on collateral estoppel. The licensee filed a timely appeal with this Commission.

Chicago Municipal Code 4-60-142(a)...a city liquor dealer's license issued or renewed after the effective date of this section shall be subject to suspension or revocation if the licensee's business becomes or creates a nuisance under this section... A licensed business is or creates a nuisance under this section if within any consecutive 12 months not less than three separate incidents occur, before, on or after the effective date of this 2012 amendatory ordinance, on the licensed premises, on or in the licensed premises' parking facility or on adjacent property, while the business establishment is open for business or within one hour of the time the establishment is opened or closed for business, involving acts that violate any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons. It is not a defense to a charge violating this section that the licensee or the licensee's agents were not personally involved in the commission of the illegal acts except as provided otherwise in Paragraph (1) of Section (c).

4-60-142(b)(2) – the term “illegal acts” means any conduct or activity that violates any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons.

4-60-142(c)(1) – for purposes of determining whether three or more illegal acts occurred during a 12-month period, illegal acts occurring in the public way shall be limited to acts of the licensee, its employees, agents or patrons or otherwise involving circumstances having a nexus to the operation of the business.

4-60-142(c)(2) – the illegal acts must occur or exist while the licensed premises is open for business of within one hour of the time the establishment is opened or closed for business.

4-60-142(c)(3) – any evidence on which a reasonably prudent person would rely may be considered without regard to the formal or technical rules of evidence, and the commissioner may rely upon official written reports, affidavits and other business records submitted by police officers or other authorized city officials or employees charged with inspection or enforcement responsibilities to determine whether such illegal acts occurred. If during any 12 month period three separate incidents of illegal acts occur on the licensed premises, on or in the licensed premises parking facility, or on adjacent property, a rebuttable presumption shall exist that the licensed business is or creates a nuisance in violation of this section.

4-60-190(c)(1) – “adjacent property” means:

- A. Any private property that is owned, leased or rented by the licensee and that is located next to the business premises;
- B. Any public way located next to the business premises;
- C. Any private property which is owned, leased or rented by the licensee which is located next to such portion of the public way described in paragraph (B) of this definition.

1-4-190(f) – Public way means any sidewalk, street, alley, highway or other public thoroughfare
4-60-40(k) – If a change in any information required in subsection (b) of this section occurs at any time during a license period, the licensee shall file a statement, executed in the same manner as an application, indicating the nature and effective date of the change. The supplemental statement shall be filed within ten days after the change takes effect.

SUMMARY OF THE RECORD

Jason Johnson has been a police officer for 12 years and is assigned to do license investigations. He was working on July 9, 2012, when he went to Nickel's Liquor store at 3637 West Division. Prior to going to Nickel's Liquors, he did a background check on the City's license database which showed the president-secretary of the corporation was Sameer Quaiti. The listed site manager had a last name of Mohsin. When Johnson and his partner Officer Liboy went to Nickel's he spoke with the manager who had a last name of Abdullah. He left paperwork with Abdullah and also told Abdullah he needed to speak with the owner. Johnson returned to the store on July 16 where he met with the owner and site manager. He identified City's Exhibit 3 as a copy of the IRIS document with the owner's information on it. Johnson made notes on the exhibit that he received from Mr. Quaiti's driver's license. City's Exhibit 4 is a copy of the IRIS document showing Mohammed Mohsin as the site manager. It also contains handwritten information made by Johnson's partner that was attached from Mohsin's driver's license. These documents were admitted but not for use of any information contained in the statement referencing Mohsin being a manager for 20 years.

Officer Johnson did no investigation of the store that day. He never contacted the Secretary of State of Illinois to determine if the information on the identification was correct or accurate. Mr. Sameer did state that the information on his driver's license was correct. He did not have a conversation with Mr. Mohsin about whether the information on his identification card was correct and up to date.

Sophia Carey has been supervisor with the Small Business Center of the Department of Business Affairs and Consumer Protection for six years. The City maintains a database of licensees called IRIS. With respect to Nickel's Liquors, the last time there was a change of address for Mr. Sameer Quaiti was in 2003 and there was never a change of address for the site manager, Mr. Mohsin. She has no personal knowledge of where either of these two individuals actually reside.

Marisol Liboy is a Chicago Police Officer who has been assigned to licensing for the last three years. In that capacity, she went to Nickel's Liquors at 3637 West Division. She spoke with the owner who stated the store's hours of operation were 9:00 a.m. until midnight Mondays through Saturdays and 11:00 a.m. until 11:00 p.m. on Sundays. She did a license premise check and found expired Ramen Noodles. The first group was 13 packages that expired on June 16, 2012 and there was a second set of ten packages that expired on January 21, 2012. The 13 packets were only expired one week. In the course of the investigation, she spoke with and obtained information from a Mr. Abdullah that included his name and information.

Roger Bay is currently the executive officer, or the second in command, of the 11th District. He was testifying at the request of Commander Eric Washington. He is familiar with Nickel Liquors at 3637 West Division which is in the 11th District. He is familiar with it because he has responded to 80 to 100 calls at that location which is a food and liquor store. It is a one story brick structure in a strip mall with a parking lot shared with other businesses. The interior of the store has shelves and coolers with food and liquor items for sale. The surrounding area is a mix of business and residential. Cameron Elementary School is located within 1000 feet. The store closes generally at midnight. The police activity in and around Nickel Liquors includes daily calls for narcotic sales, loitering and fights. This has a negative impact on police resources by draining police resources to this location from other locations. He is aware of gang activity in the area of Nickel Liquors as it is in a designated high threat level gang conflict area. Captain Bay identified City's Group Exhibit 5A-J as arrest reports, case reports, and supplementary reports. The most recent is dated November 18, 2013, and the oldest is June 13, 2012. These reports were allowed in evidence.

City's Exhibit 5A has RD # HV333527 and it references a narcotic incident that occurred at 3637 West Division on June 13, 2012 at 9:00 p.m. while Nickel's Liquors was open and that it occurred within 1000 feet of Cameron Elementary School. This was a felony cannabis arrest because it involves a delivery and the location is within one thousand feet of a school.

City's Exhibit 5B has RD # HV363643 and addresses a July 2, 2012 incident when an aggravated battery by use of a handgun happened at 6:00 p.m. at 3637 West Division during the operating hours of Nickel Liquors.

City's Exhibit 5C deals with a September 19, 2012 felony arrest for cannabis that happened at 8:50 p.m. while Nickel Liquors was operating. The address of the arrest is 3637 West Division. This report states the arrestee retrieved items from a bottle that was placed in a piece of fence pole in the parking lot of "Nikel's" liquor store. Ten baggies were found in that bottle.

City's Exhibit 5D concerns a felony arrest for crack cocaine that happened at 9:20 p.m. on December 2, 2012 at 3637 West Division inside the Nickel Liquors store. The arrest was made inside the store.

City's Exhibit 5E has RD # HV569817 and deals with a December 10, 2012, felony arrest for delivery of cannabis at 1:25 p.m. at 3637 West Division. The store was open at that time and the arrest occurred in the parking lot.

City's Exhibit 5F has RD # HW138597 and describes a January 31, 2013 arrest at 11:30 at 3637 West Division while Nickel Liquors was operating. It deals with an undercover buy that happened in the store. Heroin was purchased which makes this a felony.

City's Exhibit 5G has RD # HW146684 and a date and time of incident of February 6, 2013 at 4:05 p.m. at 3637 West Division. This was another undercover buy of heroin within the store.

City's Exhibit 5H has RD # HW147855 and it happened on February 7, 2013 at 2:31 p.m. This was an undercover buy of cannabis that took place within the store. This is a felony because it alleges a delivery and it was within 1000 feet of an elementary school. A certified lab report shows the submitted item was positive for cannabis.

City's Exhibit 5I has RD # HW157459 and it describes a February 15, 2013 arrest which occurred at 9:30 p.m. at 3637 West Division. The arrest was for possession of heroin. The arrest took place in the parking lot.

Captain Bay was not personally involved in any of these incidents. He is not aware of any video recordings of these alleged activities. The other businesses in the vicinity of 3637 W. Division were a gas station with a Dunkin Donuts, a cell phone shop, an auto fix it shops, and a small fast food restaurant. The parking lot is used by patrons of the other businesses. The witness had no information that any of the employees of Nickel's Liquors were involved in those matters or were arrested for any of these incidents.

The City rested its case.

Prior to the start of the defense, it was noted that certain defense witnesses were not available or did not appear to testify in the licensee's defense. For the purposes of addressing the licensee's motion with respect to collateral estoppel, the Deputy Hearing Commissioner allowed in evidence Judge McGing's order on the case in the Circuit Court of Cook County alleging violations of 8-4-090 of the Municipal Code. He further allowed the entire transcript of that

proceeding to be in evidence for the purpose of that motion. For the purposes of this case, the Deputy Hearing Commissioner allowed in evidence the transcript of the testimony of Hussein Abdullah and Mohammed Mohsin.

Hussein Abdullah has been employed by Nickel Liquors at 3637 West Division for twelve years as a cashier and shift manager. The store sells food, beer, liquor, milk, chips, groceries, and bread. The store is open 9:00 a.m. to 12:00 a.m. Monday – Thursday, 9:00 a.m. to 1:00 a.m. on the weekends, and 11:00 a.m. until 11:00 p.m. on Sundays. There are four aisles and the cashier's area is plexiglass. There are 16 security cameras operating and a security guard is employed every day from 2:30 p.m. until 12:00 a.m. Outside of a period of a few months, there has always been a security guard working during certain hours. He never heard a witness who testified earlier say anything about "blows" in the store. He never saw any alleged narcotics exchanged between patrons in the store. If he had seen this type of activity, he would have called 911 and he did call 911 when he saw what he believed were drug transactions in Nickel Liquors prior to February or March of 2013. There was usually no police response. He called because of illegal business in the parking lot and outside the store. He attended seven to ten CAPS meetings since January 1, 2012, and attended aldermanic meetings. There are two no loitering signs posted on the premises of Nickel's Liquors. There was criminal activity at the cell phone store that was also in the strip mall.

Mohammed Mohsin has been the manager of Nickel Liquors located at 3637 West Division since 1999. He handles the finances and resolves problems. He hired security for the store between January 2012 and March 2013. One guard named Dorsey left because of problems

with people on the street. Since January of 2013, a person named Booker has worked security. There are 16 security cameras in the exterior and two in the front of the store. Either he or someone else has attended CAPS meetings since January of 2012. He told his security to call police at 911 for suspicious activities like loitering or selling drugs. He stopped attending meetings with the Commander because there were no results. He would tell his employees to cooperate with the police if they were called to the store.

Since this is an appeal of a decision to revoke a liquor license, the jurisdiction of this Commission is limited to these three issues:

- 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 as to whether the City has proceeded in the manner provided by law. Any objections to the ordinance based on constitutional arguments are not within the jurisdiction of the Commission.

With respect to the matters alleged in Charges 2 and 3 with respect to the failure of the licensee to advise the Department of Business Affairs and Consumer Protection within ten days of a change, there was no evidence presented as to when the changes in the addresses took place. Without that information there is not substantial evidence in the record as a whole to support those findings. The findings of the Deputy Hearing Commissioner in these counts are reversed.

The City did prove by substantial evidence that the licensee, through its agent, sold outdated merchandise which was not physically separated from the food that was not outdated nor clearly designated as outdated, in violation of the Municipal Code of Chicago 4-276-470(a)(13). While this count was brought under Section 280 of Title 4 of the Chicago Municipal Code, this Commissioner finds that the violation is not related to liquor regulation so as to allow him to consider its violation as a reason to revoke the liquor license.

There is substantial evidence in the record as a whole to affirm the Deputy Hearing Commissioner's finding that the licensee's operation of its business created a nuisance involving acts as defined in 4-60-142 of the Municipal Code. At least two of these incidents occurred inside the licensed premises and the evidence in the record from police reports is sufficient to affirm a finding that the other incidents occurred in the licensed premises parking facility or on adjacent property. While the Deputy Hearing Commissioner found 10 incidents occurred, the City only needed to prove three such incidents to prove the licensee was a nuisance.

The Deputy Hearing Commissioner denied without comment the licensee's Motion to Dismiss this case based on the doctrines of collateral estoppel and res judicata. It is the position of this Commissioner that the jurisdiction of this Commission does not include a review of this decision by the Deputy Hearing Commissioner. It is similar to arguments based on constitutional matters. For expediency in the event a reviewing court feels this Commission should have addressed this finding on the motion, the Motion to Dismiss was properly denied. While res judicata and collateral estoppel might apply in certain administrative proceedings, they do not apply on this factual situation. There are different parties involved in this case as opposed

to the Circuit Court case and these cases do not address the same issues as they were brought under different ordinances with different remedies. It is also the opinion of this Commissioner that collateral estoppel and res judicata does not prevent the City from seeking different remedies.

The final issue is whether the order of revocation is supported by the findings. In light of the evidence in the record, the revocation of the liquor license issued to Nickel Liquors and Mini Mart, Inc. for the premises located at 3637 West Division is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT 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 7, 2014

Dennis M. Fleming
Chairman

Donald O'Connell
Member