

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Hadas, Inc.)
Dilis A. Del Quadro, President)
Licensee/Suspension-Fine)
for the premises located at)
560 West Van Buren) Case No. 10 LA 4
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND O'CONNELL

This matter proceeded to hearing on an Amended Notice of Hearing advising the licensee that a hearing would be held in connection with disciplinary proceedings regarding the City of Chicago liquor license and all other licenses issued for the premises located at 560 W. Van Buren. The charges in this Amended Notice of Hearing were:

1. That the licensee failed to notify the Department of Business Affairs and Consumer Protection of a change in the name of the licensed business within 60 days of the change that occurred before January 29, 2009, in violation of Title 4, Chapter 4, Section 176(a) of the Municipal Code of Chicago.
2. That on or before February 16, 2009, a change occurred in the officers of the licensee corporation and the licensee failed to notify the Department of Business Affairs and Consumer Protection of the change within 30 days of the change, in violation of Title 4, Chapter 60, Section 060(c) of the Municipal Code of Chicago.
3. That on or before February 16, 2009, a change occurred in the officers of the licensee corporation and the licensee failed to notify by writing the Department of Business Affairs and Consumer Protection of the City of Chicago of a change within 10 days of the effective date of such change, in violation of Title 4, Chapter 60, Section 040 (k) of the Municipal Code of Chicago.

4. That a change occurred in the officers of the licensee corporation on or before February 16, 2009, and the licensee corporation failed to notify by writing the Illinois Liquor Control Commission of a change within 30 days of the effective date of the change, in violation of Title 11, Chapter I, Part 100, Section 100.00 of the Illinois Administrative Code.
5. That since on or before February 16, 2009, the licensee has not been the beneficial owner of the business and is therefore ineligible to hold a City of Chicago Retail Liquor license pursuant to Title 4, Chapter 60, 030(r) Municipal Code of Chicago.
6. That since on or before February 16, 2009, the licensee has not been the beneficial owner of the business and is therefore ineligible to hold a City of Chicago Retail Liquor license pursuant to 235 ILCS 5/6-2(15).

This matter proceeded to hearing before Hearing Commissioner Robert Emmett Nolan. The City was represented by Assistant Corporation Counsels Shannon Trotter and Maggie Shiels and the licensee was represented by attorney Michael Lee. The City called one witness and the licensee called no witnesses. The parties agreed to a Stipulation of Facts and also agreed to the introduction into evidence of City Exhibits 4 through 17.

Gus Apostolos testified he has been a Revenue Investigator for the City of Chicago for 16 years and was working on that capacity on January 29, 2009. He was assigned to 560 W. Van Buren to check out the ownership of the bar restaurant located at that address. He felt it was a Korean Food Restaurant since it had a sign posted Korean Seoulfood. He had checked the IRIS computer system before he arrived at the premises and was aware the location had a current retail food license, and consumption on premises restaurant liquor license. These licenses were issued in the name of Hadas,

Company. Additional information from the computer revealed the doing business name of the licensee was Café Exeole. There were no signs for a Café Exeole on the premises. In addition to the sign, the menu listed the name Korean Seoulfood Café. The manager of the restaurant, a Jae Cheon, said the name of the business was Korean Seoulfood. The witness identified City's Exhibits 3 A & B and 4 A & B as pictures that truly and accurately portrayed the inside of the restaurant on January 29, 2009. They were admitted in evidence without objection. He reviewed the records of the Secretary of State and learned the president and secretary of Hadas, Co., was a Dilis Del Quadro.

At the November 24, 2009 hearing, Mr. Lee on behalf of the licensee agreed to a Stipulation of Facts which was entered into evidence as City's Exhibit 6. That stipulation was four pages long and contained 34 separate paragraphs. Without reciting each fact stipulated to, in essence this stipulation contained agreement from the licensee that each of the state statutes and City of Chicago Municipal Ordinances set out in the amended notice of hearing correctly stated the law and that the licensee had not complied with those sections of the state statute and City of Chicago Municipal Code. In addition to the actual stipulation, City Exhibits 7 through 18 which consisted of various documents in support of the stipulation were allowed in evidence.

Since this is an appeal of a \$2,000.00 Fine and a 7-day suspension review by this Commission is limited to the following 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.

It should be noted that counsel for the licensee on this appeal was not the counsel of record for the licensee that appeared at the hearing before the Local Liquor Control Commission. In the appeal it is asserted in paragraph one that Hadas is in possession of the necessary retail liquor license and other licenses issued by the City of Chicago, as well as a liquor license issued by the State of Illinois, authorizing it to engage in the retail sale of alcoholic beverages for the premises located at 560 W. Van Buren, Chicago, Illinois. That point, true or not, is not material to the scope of this Commission's review. If any violations stipulated to at the hearing were corrected prior to the end of the hearing, those matters should have been put in evidence. Since no such matters are in the record before this Commission, they cannot be considered by this Commission.

With respect to paragraphs 5 through 8, the licensee seems to be asserting there was no competent evidence admitted before the Local Liquor Control Commission that the licensee knowingly and intentionally failed to make proper notifications to the Department of Business Affairs and Consumer Protection, and to the Illinois Liquor Control Commission. The charges before the local and the applicable sections of the Chicago Municipal Code and state statute do not require that the City prove that a failure to notify was knowing and/or intentional. Since such proof is not required, lack of such proof cannot be basis to reverse. There was substantial evidence in the record from the testimony of the investigator and the stipulation to support these findings.

With respect to the matter asserted in paragraph nine of the appeal that there was no competent evidence admitted before the Local Liquor Control Commission that the licensee is not the beneficial owner of the business and is ineligible to hold a license, paragraph 24 of the stipulation states “Since February 16, 2009, Dilis Del Quadro and Michael Del Quadro have not been the beneficial owners of Hadas.” This stipulation provides sufficient evidence under the substantial evidence analysis to support the finding of the Hearing Commissioner.

Paragraph 12 asserts that the Local Liquor Control Commissioner did not proceed in the manner provided by law in that the licensee did not receive notice of the proceedings and was not afforded an opportunity to defend his interests before the Commission. If such an allegation was true then reversal would be appropriate. The facts in this record show that counsel for respondent did not object to the amended notice of hearing and that he stated affirmatively on the record that the licensee had no witnesses. The Local Liquor Control Commission did proceed in accordance with the law.

The licensee also argues in its appeal incompetency of counsel at the hearing before the local. The basis of this incompetence seems to be the attorney’s failure to call witnesses to testify or to offer evidence on the licensee’s behalf. A claim of incompetency of counsel based on trial strategy such as deciding whether to call witnesses or introduce evidence is very difficult to prove in criminal cases in the Circuit Court. It is not a claim that is within the jurisdiction of this Commission.

The final argument put forth by the licensee is that the \$2,000.00 Fine and 7-day closing was arbitrary, unreasonable and an unlawful exercise and abuse of discretion in light of the facts and the licensee's disciplinary history. There was no evidence in the record whatsoever as to the licensee's previous disciplinary history. It would be improper for this Commission to surmise that since the City did not introduce evidence of prior discipline that there was no prior discipline. The Hearing Commissioner does not mention prior discipline as a factor in his determining appropriate punishment. That finding listed the facts of this case as the sole basis for his finding on punishment.

The licensee did not argue that a \$2,000.00 Fine and 7-day closing in and of itself was an inappropriate penalty. Under these circumstances it would be outside the power of this Commission to substitute its opinion as to appropriate penalties in place of that approved by the Local Liquor Control Commission. The penalty was not an abuse of discretion or so arbitrary or capricious as to require reversal.

The decision of the Local Liquor Control Commission is affirmed with respect to the liquor license issued to Hadas, Co., for the location of 560 W. Van Buren. This Commission has no jurisdiction to review findings relative to any other licenses issued by the City of Chicago.

IT IS THEREFORE ORDERED AND ADJUDGED that the order Suspending the liquor license of the Appellant for SEVEN (7) days is AFFIRMED. FURTHER, IT IS ORDERED that the order to Fine the Appellant the sum of \$2,000.00 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: October 1, 2010

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member