

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Silvia Vazquez, Inc.)
Licensee/Revocation)
Michaela Vazquez, President)
for the premises located at)
2501 South Drake Avenue) No. 10 LA 62
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 conducted pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago in connection with proceedings to revoke the City of Chicago Retail Liquor License and all other City of Chicago licenses issued to it for the premises located at 2501 S. Drake, Chicago, Illinois. In summary, it was alleged that the licensee, by and through its agents, knowing delivered cocaine to an undercover police officer on four separate occasions. It was alleged the delivery of cocaine violated the following State Statutes and Municipal

Ordinances:

1. 720 ILCS 570/401(c)(2)
2. 720 ILCS 570/406.1
3. 720 ILCS 5/37-1
4. 8-4-090(b)
5. 4-60-141(a)
6. 720 ILCS 570/407(b)(1)

The date of the alleged transactions were September 1, 8, 9 and 21 of 2010. The case proceeded to hearing on October 28, 2010, before Deputy Hearing Commissioner Raymond Prosser. Assistant Corporation Counsel Daniel Rubinow represented the City and attorney Mitch Furman represented the licensee. The Deputy Hearing Commissioner issued Findings of Fact that the City proved by a preponderance of the evidence Counts 1 through 5, 7 through 11, 14 through 17, and 19 through 23 and found revocation appropriate on each of these charges. Counts 6, 12, 18, and 24 are alleged a sale of narcotics within 1000 feet of a school in violations of 720 ILCS 570/407(b)(1), and the finding on these counts was that there was insufficient evidence and they were not sustained. Count 13 was not sustained since the amount of cocaine was less than one gram. These Findings of Fact were adopted by Gregory Steadman as Local Liquor Control Commissioner and by Norma J. Reyes as Commissioner of the Department of Business Affairs and Consumer Protection. The licensee filed a timely Notice of Appeal with this Commission and the case proceeded to oral argument before this Commission.

Since this is an appeal of a revocation of a 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.

A summary of the evidence presented at the hearing will be beneficial to the review of those issues.

David Torrez has been a Chicago Police Officer for seventeen years and has been assigned to the Narcotics Unit for more than four years. His duties are mostly undercover operations involving narcotics. He was working on September 1, 2010, on an undercover narcotics operation at a business at 2501 S. Drake licensed as Silvia Vazquez, Incorporated. He entered the bar and observed a female known as Patty taking care of customers by serving drinks and doing busy bartender work. He bought a drink from Patty and had a conversation in Spanish. He is a fluent Spanish speaker. He asked about purchasing cocaine and Patty responded she did not sell cocaine but other people come in and sell. He gave Patty his covert cell phone number and left the bar. A short time later a person identified only as Ramon called that cell phone number and Ramon stated he received the number from Patty at Silvia's bar. Torrez and his team returned to the bar. Torrez entered and ordered a drink from Patty, the same bartender as earlier. Before entering the bar Torrez had met with Ramon outside the bar. Ramon entered the bar and went to the men's room in the rear of the bar. At this time Patty signaled Torrez with a head nod to follow Ramon to the bathroom. Torrez went to the men's room and exchanged \$500.00 of prerecorded 1505 funds for five bags of cocaine. As he was leaving, Torrez gave Patty \$10.00 of prerecorded funds as a tip for services setting up the cocaine deal. He kept control of the substance until he returned to his unit at Homan Square. He inventoried the five bags on the computer, generated an inventory number,

placed them in a plastic heat-sealed bag and gave it to his sergeant who dropped it in the safe. The inventory number was 12113876.

Officer Torrez returned to Silvia's at 2501 S. Drake on September 8, 2010. He was undercover in civilian dress accompanied by his teammates. When he entered the bar he saw a female he knew as Patty working at the bar. He had a conversation with Patty about buying cocaine and Patty responded she does not sell cocaine and the guy that does sell cocaine was not there. He gave Patty his cell phone number if that person showed up. Later he received a call from a person who identified herself as Patty. Patty told him the person had not yet shown up. He later received a call from a person who he knew as Ramon. He then returned to and entered Sylvia's. Patty was at the bar and she remarked she did not have cocaine but Ramon has Torrez's number. Ramon came into the bar and walked to the men's room in the rear of the bar. Patty gave him a signal by head nodding Torrez to follow Ramon which he did. In the bathroom Ramon gave Torrez five bags of cocaine in exchange for one hundred U.S. Currency of 1505 prerecorded funds. Torrez asked Ramon if he could produce five more bags. Ramon left the bar and went back to the bathroom in the rear when he returned. In the bathroom Torrez received five bags of cocaine in exchange for a hundred dollars of the prerecorded 1505 funds.

Torrez kept the bags in his sole care and custody until he returned to the station where he created a unique inventory number, placed the bags in a heat-sealed bag and

gave it over to a sergeant who would drop the bags in the safe. All the bags were inventoried under number 12119903.

Prior to leaving the bar that day Patty wrote her personal phone number on a napkin and gave it to him. Torrez felt that meant he could call Patty directly if he wanted more cocaine and that Patty would make the necessary calls.

Torrez was again at Sylvia's at 2501 S. Drake on September 9, 2010. He entered the bar and saw a bartender he knew only as Marie. She was taking care of customers and working the cash register. They had a conversation in Spanish, in which Marie said she did not sell cocaine and the guy who does sell cocaine was not there. Ramon entered the bar and Marie nodded to Torrez to go to the bathroom. In the bathroom Torrez received one bag containing two smaller bags of suspect cocaine from Ramon in exchange for \$40.00 U.S. Currency from 1505 prerecorded funds. Torrez gave Marie a tip and left the bar. He kept the suspect cocaine on his person and returned to the station where he inventoried the product under inventory number 12121047. He had previously done a field test with a Narcotics Identification Kit which was positive for cocaine derivatives.

The witness was working on September 21, 2010, when he returned to Silvia's bar at 2501 S. Drake. The bartender known as Marie was again working the bar. He spoke with Marie who again stated she does not sell cocaine and the person who does sell cocaine was not at the bar. He gave Marie his cell phone number and left the bar. Marie

called him later in the day to tell him the guy who sells cocaine was in the bar. He returned to the bar and Marie introduced him to an individual who identified himself as Jose. Torrez then spoke to Jose about purchasing cocaine. When Jose walked back to the men's room Marie signaled Torrez by a head nod to follow him. In the washroom Torrez gave Jose \$120.00 U.S. Currency from prerecorded 1505 funds in exchange for two bags containing suspect cocaine. As Torrez left the bar he spoke to Marie and gave her a \$20.00 tip for setting up the cocaine deal. He returned to the station and inventoried the product under number 12131650.

Torrez explained he was sent to Silvia's in response to complaints from police district generated from CAPS meetings. In his initial conversation with Patty he asked if she sold or knew someone who might sell cocaine. He had conversations with Ramon before returning to the bar, but it was Patty who instructed him to go to the washroom. He does not recall if he tested the product or one of his teammates tested it. He had not exchanged phone numbers with Ramon after the September 1, 2010, exchange.

Torrez acknowledged that nothing was ever said by the bartenders regarding setting up a drug deal. He also stated giving a tip to a bartender is typical and customary.

Over the objection of licensee's attorney City's Exhibits 8, 9, 10 and 11 were allowed in evidence. They are affidavits in lieu of court appearance prepared by Forensic Scientists with respect to their findings as to tests conducted on inventoried substances. They show the following:

1. Inventory 12113876 was positive for cocaine in the amount of 1.2 grams of powder from five (5) items.
2. Inventory 12119903 was positive for cocaine in the amount of 1.4 grams of white powder from five (5) items. 1.4 grams of white powder from five (5) items were not analyzed.
3. Inventory 12121047 was positive for cocaine in the amount of 0.2 grams of white powder from one (1) item. An estimated 0.2 grams of white powder from one (1) item was not analyzed.
4. Inventory 12131650 was positive for cocaine in the amount of 4.7 grams of powder from two items.

The City rested its case.

Joseph Barrera was sworn in to interpret for Michaela Vazquez.

Michaela Vasquez testified she lives at 2501 S. Drake in the area behind the bar. She lives there with her husband, four daughters and a small child. She is 57 years old and she opened Silvia's lounge in 1984. She has a person named Amelia who helps her and would be the manager. She works weekends and Amelia works the bar during the week. Amelia hired Patty about three months before the alleged occurrence. She was not aware Patty was setting up drug transactions at the lounge, and to the best of her knowledge Amelia did not know about the alleged drug transactions. The witness denied knowing Ramon or Jose. There are Latin Kings in the area. There are no problems inside the bar since the people know her and she does fully cooperate with the police if there is an incident. Patty was fired from Silvia's Lounge. She personally fired Marie. She cooperated with the City when it issued a notice to shut down the lounge. The

witness was not present on September 1, 8, 9 or 21 of 2010. She did not want Patty or Marie working because of this incident, they were selling drugs.

City's Exhibit 12, which is the previous order of disposition was allowed in evidence.

The relevant portions of the statutes and ordinances at issue in this case are:

720 ILCS 570/401(c)(2) – It is illegal to possess one gram or more but less than 15 grams of a substance containing cocaine...

720 ILCS 570/406.1 – Any person who controls any building and performs the following act commits the offense of permitting unlawful use of a building:

Knowingly grants, permits or makes a building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance other than methamphetamine.

570 ILCS 407 (b)(1) – A person who violates Section C of 401 within 1,000 feet of a school.

720 ILCS 5/37-1 – Any building used in the commission of offenses prohibited by the Illinois Controlled Substances Act is a public nuisance.

4-60-141(a) – No Licensee shall permit or allow any illegal activity on the licensed premises.

8-4-090(b) – Any person who owns, manages or controls any premises and who (i) encourages or permits an illegal activity as described in subsection (a) to occur or continue on such premises shall be subject to a fine according to the schedule set forth in subsection (c).

Since this case deals with the revocation of a liquor license the review by this Commission shall be limited to the 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.

Since there is no appeal from the City there is no need to review the findings that there was insufficient evidence on Counts 6, 12, 18 and 24.

It should be noted that the basis on which the Hearing Officer found insufficient evidence had been presented on Count 13, was that there was not evidence that the amount of cocaine involved in this incident was more than 1 gram. There was evidence presented to support a finding that the substance was cocaine in an amount less than 1 gram. This is important to note since the findings on Counts 14 through 17 do not need to be based on an amount of cocaine of more than one gram.

The substantial evidence standard is met in these types of cases if there is any evidence in the record to support the finding. The evidence in this case showed that the bartenders were agents of the licensee. The licensee is responsible for the acts of these agents even if the licensee was not aware of the actions of the bartenders. The testimony from Officer Torrez was deemed credible by the Deputy Hearing Commissioner and it is not the role of this Commission to review the findings of credibility. There is in the

record substantial evidence in light of the whole record to support the findings that Patty and Marie were involved in the drug transactions that occurred on the licensed premises.

The next issue is whether the order of revocation is supported by the findings. While there are findings on 19 separate violations of the state statute and municipal ordinances, what is before this Commission are four separate dates in which drug transactions took place on the licensed premises over a three week period. The past disciplinary history lists a previous narcotics charge which occurred with a sale to minor – not a SAM, and both resulted in a three-day closing. Whether the members of this Commission would have imposed revocation based on these facts is not before this Commission. The revocation of this license based on the sustained findings is not the type of finding that would be considered so arbitrary and capricious as to require reversal.

There was no argument presented that the Local Liquor Control Commissioner did not proceed in the manner provided by law.

The findings of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record and the order of revocation is supported by the findings.

The revocation of the license issued to Silvia Vazquez, Inc., for the premises located at 2501 S. Drake 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: June 29, 2011

Dennis M. Fleming
Chairman

Donald O'Connell
Member