

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

El Toro Loco, Inc. )  
Miguel Suarez, President )  
Licensee/Revocation )  
for the premises located at ) Case No. 12 LA 24  
5708 South Western Avenue )  
)  
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 in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued to it for the premises located at 5708 South Western, Chicago, Illinois. The allegations assert that on April 16, April 20, April 29, and May 6, 2011, the licensee by and through its agent, knowingly delivered or possessed with intent to deliver, less than one gram of cocaine. These actions were further alleged to have violated the following state statutes and sections of the Municipal Code of Chicago:

- a. 720 ILCS 570/401(d)
- b. 720 ILCS 570/406.1
- c. 720 ILCS 570 et seq.
- d. 720 ILCS 570/37-1
- e. 720 ILCS 570/407(b)(2)
- f. 8-4-090(b)
- g. 4-60-141(a)
- h. 235 ILCS 5/10-3

In total 36 charges were filed against the licensee.

This matter proceeded to hearing before Deputy Hearing Commissioner Robert Emmett Nolan. The City was represented by Assistant Corporation Counsels Daniel Rubinow and Shannon Trotter, and the licensee was represented by attorneys Richard Kaplan and David Kugler. The Deputy Hearing Commissioner entered Findings of Fact that the City met its burden of proof on all charges and further found that based on the seriousness of these violations the appropriate punishment was revocation.

It is of note that in his findings that the women named Cynthia and Lorraine\* were agents of the licensee based on the fact that their actions were a benefit to the establishment and the establishment accepted the benefit when the bartenders allowed them to wait tables.

#### SUMMARY OF PROCEEDINGS

Joseph Sneed has been an investigator with the Department of Business Affairs and Consumer Protection for about fourteen years, and has been a supervisor for approximately five years. His assignment on May 20, 2011, was to conduct an investigation with respect to 5708 S. Western. He conducted a measurement to determine if the premises were located within 1,000 feet of a public park. Using a roto ruler, which is a wheel connected to a meter - which was at zero, he measured from the northwest corner of the property of El Toro Loco bar to the southwest property line of Gage property. The distance was 799 feet.

Sneed did not look at any track books to determine the location of Gage Park to El Toro Loco. He measured what he believed the property lines were. He measured from the building of El Toro Loco to what he believed was the property line of Gage Park. Gage Park is at the intersection of 56<sup>th</sup> and Western. He crossed 57<sup>th</sup>, then 56<sup>th</sup> past the curb, sidewalk, and grass. He measured to the grass.

Emerico Gonzalez has been a Chicago Police Officer for eight years and has been assigned as a narcotics officer for eight months. In that position, he does undercover narcotics purchases, and investigations. On April 16, 2011, he and other police officers of his unit were assigned to conduct a narcotics investigation at the El Toro Loco bar at 5708 S. Western. He was dressed in street clothes when he arrived at the bar with Officer Mata and a confidential informant. Other officers were working on the investigation, but did not go into the bar. Gonzalez met with the confidential informant prior to entering the bar and made certain he had no contraband on his person. He gave the informant pre-recorded 1505 funds. Gonzalez identified City Exhibits 4a, 4b, 5a, and 5b, as pictures of the inside and outside of the bar as it existed that day. He, Mata, and the confidential informant sat at a table in the middle of the left bar. They were approached by a female Hispanic, who Gonzalez believed was a bar employee because she took his drink order, went to the bar, came back and accepted payment for the drinks. This female Hispanic was named Cynthia. He was at the bar about one hour.

Cynthia approached the table and asked in Spanish for their drink order. She took their drink order, went to the bar, then returned with drinks and accepted payment. He spoke to her in Spanish, as he is fluent in Spanish, as was Officer Mata, and the confidential informant. The bar

was about six feet away. The drinks were paid for from pre-recorded 1505 funds. When Cynthia delivered the drinks he asked her if she would join them for a drink. She accepted and sat down with them at a table. The confidential informant asked Cynthia for a *pase*, which is Spanish for cocaine; Cynthia said yes and accepted a \$20 bill from the informant. When Cynthia returned to the table she gave the informant one clear plastic bag with a white powder like substance, suspect cocaine. The informant put the bag in his pocket.

Cynthia then spoke to Officer Mata who asked in Spanish for *dos veintes*, or two \$20 bags of cocaine. Mata gave Cynthia \$40 in pre-recorded funds. Cynthia walked away, returned, and gave Mata one plastic bag of white powder like substance, suspect cocaine. This was unusual since Mata had requested two bags. Mata put the bag in his pants pocket. They were at El Toro Loco bar about one hour that night.

Officer Gonzalez was also working as a Chicago Police Officer on April 20, 2011. He was working undercover in narcotics with his team members and a confidential informant. At about 11:07 p.m., he went to the El Toro Loco bar at 5708 S. Western with his confidential informant. After being searched by security, they sat at a table along the left side of the wall. He saw Cynthia who was the same person he had seen on the April 16, 2011 visit. Cynthia approached and asked if they wanted drinks. They ordered drinks from Cynthia. She went to the bar and came back with the drinks. She took payment for the drinks from 1505 pre-recorded funds. After Cynthia brought the drinks, Gonzalez asked her to join him and the confidential informant. She agreed and sat down with them. Gonzalez then asked Cynthia for a *veinte*, a \$20 bag of cocaine. Cynthia took a \$20 bill from 1505 pre-recorded funds and walked away.

Cynthia came back and returned the \$20 bill because they were out of cocaine. Gonzalez told Cynthia he would like to buy cocaine if some became available.

Cynthia returned a short time later and told Gonzalez there was another person at the bar with cocaine for sale. Gonzalez gave Cynthia a \$20 bill and Cynthia returned and gave him a white napkin which contained a clear plastic bag with a white powder like substance, suspect cocaine. After the transaction, Cynthia was taking drink orders, returning drinks, and accepting payment for the drinks.

Gonzalez put the bag in his pocket until he arrived at Homan Square. He field tested the substance with a NIK test which came back positive for cocaine. The substance was inventoried under Inventory Number 12296685, pursuant to police procedure.

Gonzalez had never met Cynthia before the April 16, 2011 incident, and specifically denied any dealings with Cynthia at a location called Reggie's Lounge. The drinks were purchased with 1505 funds. He remembered one round of drinks, including the drink for Cynthia. Cynthia sat with Gonzalez and the informant about fifteen to twenty minutes the first time. Cynthia would walk away to retrieve drinks for customers and come back to them. Either the informant or the other police officer bought another round of drinks. Gonzalez did not purchase cocaine on April 16, 2011, but Officer Mata and the informant did purchase cocaine. No arrests were made on April 16, 2011.

John Gonzalez has been a Chicago Police Officer for thirteen years and has been assigned to the narcotics section for five years. In that position he does surveillance and works as an undercover officer. He was in that capacity on April 20, 2011, when he and a confidential informant entered El Toro Loco at 5708 S. Western before midnight. They went by security and went to the back end of the bar, and sat at a table. A Lorraina Corona (phonetic) asked for a drink order. He ordered two Lites and also agreed to buy Lorraina a drink. Lorraina went to the bar and paid for the drinks with money he gave her and returned with the drinks and change. Lorraine stood by their table and Gonzalez asked for *dos veintes*, two bags of cocaine. He gave Lorraina \$40 U.S. Currency, and walked to the front of the bar to meet a person now known as Joel Ramirez. Gonzalez saw a hand to hand transaction where Lorraina gave Ramirez money. She then came back to the table and gave Gonzalez a piece of tissue with two bags of cocaine. He placed the bags in his pocket. Gonzalez ordered other drinks from Lorraina, who delivered the drinks to him. When he left the bar, he relocated to Homan Square where he conducted a NIK test on the substance in the bags which was positive for cocaine. The bags were inventoried under Inventory Number 12302778, in accordance with police procedure.

John Gonzalez and Officer Ricardo Mata returned to El Toro Loco on May 6, 2011, a little before midnight. They were working undercover. They were at a table by the back of the bar when they were approached by the same Lorraina Corona. She took their order for drinks and asked for them to buy her a drink. When they agreed, she went to the bar and returned with the drinks. She was talking mostly with Officer Mata and took a drink order from at least one other patron. Officer Mata asked her for *dos coras*, two \$20 bags, and Lorraina said yes. Mata gave her \$40, and Lorraina went into the ladies washroom. When she returned, she gave Mata

what he later learned to be a bag containing two bags of cocaine. Mata and Lorraina had a conversation in Spanish and Mata asked Gonzalez if he wanted any *pase*. Gonzalez gave her \$40 for two *veintes*, two \$20 bags of cocaine. Lorraina took the \$40, and approached the person now known as Joel Ramirez. Lorraina returned and placed a piece of tissue containing two bags of cocaine to Mata. Mata gave them to Gonzalez. Gonzalez and Mata left the bar and relocated to their offices at Homan Square. Gonzalez performed a NIK test on the product he received from Lorraina, and the test was positive for cocaine. It was inventoried under an inventory number obtained by Officer Mata.

There were about a dozen customers, one bartender, and five waitresses in the bar on April 29, 2011. Lorraina stood by their table and in their company about an hour. She would walk around, use the washroom, and dance. They ordered more than one round of drinks. He and Lorraina danced together but she was present at their table most of the hour on April 29, 2011.

He did not make arrangements to meet Lorena on May 6, 2011. She just happened to be present that day. Lorena recognized Gonzalez, but did not recognize Mata. On May 6, 2011, there were 17 or 18 customers, one bartender, and the same number of waitresses. It was the same bartender on April 29 and May 6. She was a black, Hispanic lady. Gonzalez never sought to find out the owner of the bar.

Gonzalez knew they were waitresses because they were getting drinks from the bar and bring them back to patrons at the table.

Ricardo Mata has been a Chicago Police Officer for sixteen years presently assigned to the 10<sup>th</sup> District. On April 16, 2011, he was detailed to the narcotics section. On that day, he was working with Officer Emerico Gonzalez and a confidential informant. They were dressed in civilian clothes with the mission to conduct a controlled purchased of narcotics at the El Toro Loco bar at 5708 S. Western.

The three of them sat at a table toward the center of the bar and were met by their waitress, who he now knows as Cynthia. Officer Gonzalez placed a drink order with Cynthia, who went to the bar and returned with the drinks. Gonzalez paid for the drinks. Cynthia then sat at the table with them and the confidential informant asked Cynthia for a *pase*, which is a Spanish street term for cocaine. Cynthia asked how many and the informant replied one. The informant gave Cynthia \$20 from pre-recorded funds and she came back with a bag of cocaine that she gave to the informant. Mata then asked Cynthia for *two veintes*, which is Spanish terminology for two \$20 bags of cocaine. He gave Cynthia \$40 in pre-recorded funds and she returned with one bag. She did not give back the \$20 for the second bag ordered, but not delivered. Cynthia sat at the table and then answered two years to his question of how long she's been working at the bar. She left their table and continued to take drink orders from patrons, go to the bar, and return with the drinks.

Mata, Gonzalez, and the informant left the bar and drove to the 8<sup>th</sup> District. Gonzalez retrieved the bag from the confidential informant. That bag and the bag in Mata's possession were inventoried under Inventory Numbers 1229372 for the C.I.'s bag, and 12293713 for Mata's bag.



On May 6, 2011, Officer Mata returned to El Toro Loco at 5708 S. Western to conduct a controlled purchase of narcotics. He was accompanied by Officer John Gonzalez. They entered the bar and sat at a table at the rear. They were approached by a waitress who was identified by Officer Gonzalez as Lorena. They ordered drinks for themselves and for the waitress. He asked her for *dos coras*, which meant two \$20 bags of cocaine. He gave her \$40 from pre-recorded funds, went to the rear of the bar, and returned to give her one clear bag containing two smaller bags with cocaine. She then asked Mata if Gonzalez wanted cocaine and Gonzalez replied he wanted *dos veintes*. Gonzalez gave her \$40 in pre-recorded funds. She went to the front of the bar and met an individual now known as Enrique Amaro Ramirez. She came back and gave Gonzalez a piece of white tissue paper containing two bags of cocaine. Gonzalez placed the bags in his pocket. They left the bar and returned to Homan Square where the bags were inventoried under numbers 12308454 and 12308456.

Mata never met Cynthia before April 16, 2011, or Lorena before May 6, 2011. The last time he saw Cynthia was when she was arrested, but has not seen Lorena since May 6, 2011. There were five to twenty people in the bar which Mata described as large with many tables. He observed Cynthia approach several tables, take drink orders, and then deliver the drinks back to the tables.

Miguel Suarez has been the President of El Toro Loco, Inc. for three years. He was not present in the bar on April 16, April 20, or May 6 of 2011, when the police were present at the tavern. His wife and two bartenders work for him. He does not have and never has had any waitresses. He knows girls named Cynthia and Lorena as customers. Neither has ever worked

for him. People go to the bar from the tables and ask for drinks from the bartender. The bar is small and fits 80 people. He was not aware of any employee having drugs on their person or selling drugs on April 16, April 20, April 29, or May 6 of 2011. The first time he knew of a problem with drugs being dealt in the tavern was when he heard Cynthia had been arrested. Cynthia and Lorena have not been customers since he was served with papers in May of 2011. In the three years he has been President of El Toro Loco, he has had no violations before the Liquor Commission.

The two bartenders are named Shary and Sara. He pays them weekly. He has a security guard that he pays. He does not have waitresses because most of the customers are used to going to the bar. He knew Lorena and Cynthia as customers before April and May of 2011. Most girls ask for drinks. It would not surprise him if four people were sitting at a table and only one person went to the bar and asked for drinks for the four people.

The lab reports for the inventoried substances are in evidence without objection and the results were positive findings for cocaine.

Since this is an appeal of a revocation the issues before this Commission are limited to the following:

- 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 with respect to whether there were sales of cocaine on the premises of El Toro Loco, Inc. at 5708 S. Western on April 16, 20, 29, and May 6 of 2011. The issues are whether there is substantial evidence in the record as a whole to support the Deputy Hearing Commissioner's finding that Cynthia and Lorena were agents of the licensee. If they were agents, El Toro Loco, Inc. is responsible for their actions. If they were not agents, then the licensee would not be responsible for their actions. Substantial evidence has been defined as any evidence that would support the findings of the Deputy Hearing Commissioner. The evaluation on that issue in this case is complicated due to the interpretation of agency used by the Deputy Hearing Commissioner in his Findings of Fact.

The traditional concept and definition of agency under this type of fact pattern is that of employer-employee. If the employee of a licensee sells narcotics, the licensee is responsible for those actions. The Deputy Hearing Commissioner does find Cynthia and Lorena were agents of the licensee. That finding must be scrutinized, in conjunction with his additional findings that Lorena and Cynthia:

“...acted as a waitress in the licensed premises. Her actions were a benefit to the establishment and the establishment accepted the benefits when the bartender allowed her to wait tables.”

While not evidence, the City adopted this theory of agency in its closing argument when the Assistant Corporation Counsel stated in part:

“...I think it is clear that there are no waitresses that the licensee pays for weekly. The prosecution then added that “...all the officers did say was that these waitresses took money from them, went to the bar to get drinks, delivered the drinks, and delivered change.” Following up on this point he stated, “work, even if you're not paid formally, gives rise to a presumption of agency.”

The prosecutor actually described the actions of Cynthia and Lorena. There was no evidence either were employed as waitresses by the licensee. The licensee denied employing waitresses and denied any knowledge of narcotic sales at the bar. The Deputy Hearing Commissioner did not make findings of fact as to the credibility of the licensee.

The only evidence in the record addressing the specific issue of an employment relationship is Officer Mata's testimony that Cynthia told him she had been working at the bar for two years. The Deputy Hearing Commissioner did not mention this evidence in his Findings of Fact.

This Commissioner respectfully disagrees with the prosecutor that the case law in this case allows a presumption of agency if one does work for licensee, even if not paid formally.

This Commissioner makes the following findings:

- a. That the definition of agency used by the Deputy Hearing Commissioner in his findings of fact is not an accurate definition of the law of agency.
- b. That there is not substantial evidence in the record as a whole to affirm the findings of fact of the Deputy Hearing Commissioner that Cynthia and Lorena Corona were agents of the licensee.

Based on these findings, the revocation of the liquor license for El Toro Loco Inc. at 5708 S. Western is reversed.

\*Throughout the transcript the names Lorraine, Lorraina, and Lorena were used at different times in reference to the same woman.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT is REVERSED.

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: December 7, 2012

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member