

CITY OF CHICAGO
LICENSE APPEAL COMMISSION

Victor's Tap, Inc.)	
Faik Ademi, President)	
Licensee/Revocation)	
for the premises located at)	
3049 North Cicero)	Case No. 13 LA 17
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Gregory Steadman, Commissioner)	

ORDER

CHAIRMAN FLEMING'S DISSENTING OPINION

Respondent received a Notice of Hearing that pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Chicago Municipal Code, a hearing was to be held 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 3049 N. Cicero. This hearing was based on the following charges:

1. That on or about September 25, 2012, the licensee, by and through its agent, upon notice failed to provide complete books and records of the licensed premises for inspection during an investigation, in violation of 235 ILCS 5/6-10.
2. That on or about September, 2012, the licensee, by and through its agent, failed to cooperate with the police department during an investigation of the licensed premises, in violation of Title 4, Chapter 60, Section 141(b), Municipal Code of Chicago.

This matter proceeded to hearing before Deputy Hearing Commissioner Raymond Prosser on January 28, and April 8, 2013. Deputy Hearing Commissioner Prosser entered Findings of Fact that the City met its burden of proof on Count I, but failed to meet its burden of proof on Count II – the Count II referral in this finding is not the Count II alleged in this case. There is confusion as to what the Deputy Hearing Commissioner found to be an appropriate punishment. The Findings of Fact attached to the Notice of Appeal filed with this Commission states the Deputy Hearing Commissioner found revocation to be the appropriate penalty. No explanation of this discrepancy was made at the oral argument before this Commission. A copy of the findings attached to the appeal is Addendum A to this report, and a copy of findings attached to the exhibits is attached as Addendum B. This discrepancy is pointed out as it might impact a review of the decision by a reviewing court.

Gregory Steadman, the Local Liquor Control Commissioner, entered an Order of Revocation on April 22, 2013. This order of revocation specifically states that the Local Liquor Control Commissioner considered the Hearing Officer's Report of Proceedings and that he conferred with the Hearing Officer on the credibility of the witness and the evidence. It does not state which Report of Proceedings/Findings of Fact entered by the Hearing Officer was discussed in this meeting.

Since this case deals with an appeal of a revocation of a liquor license this Commission can decide only these three 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.

A synopsis of the relevant testimony and evidence in the record will aid in an understanding of the rationale of this decision.

James Gallagher has been a Chicago Police Officer for 16 years and has been assigned to the License Investigations Section for 10 years. His responsibilities in this unit include investigations of licensed and unlicensed establishments in the city. On September 14, 2012, he went to 3049 N. Cicero to deliver a letter requesting corporate documents from the current owner of the establishment. The establishment was open and operating with an outside sign of Estrella Blanca Nightclub. He spoke with a Maria Balboa who was working behind the bar and identified herself as an employee. The witness identified City's Exhibit 3, in evidence, as the letter requesting corporate documents. It is dated September 14, 2012, which is the date he delivered it to Maria Balboa. Page 3 of the letter is a receipt signed by Maria Balboa that the letter requesting documents was received by an agent of the business. Officer Gallagher related a conversation with Ms. Balboa in which she told him the current owner of the establishment was Faik Ademi. Ms. Balboa said she would give Faik Ademi the letter.

Officer Gallagher attempted to obtain a contact number for Faik Ademi and he unsuccessfully tried to contact him multiple times on October 9, 2012. Gallagher also tried to contact a Yoshio Sanchez, who was a prospective buyer of the business. That attempt was also unsuccessful. No one from the corporation contacted the witness with regard to the request for books and records. The letter dated September 14, 2012 requested these records by September 25, 2012, and Gallagher did not receive a response by September 25, 2012. No one from the establishment ever contacted Officer Gallagher with respect to the request made.

On cross, Officer Gallagher stated City's Exhibit 3 was addressed to Yoshio Sanchez at 6420 N. Hermitage or current owner. Gallagher never attempted to personally contact Sanchez. He also admitted Mr. Sanchez's name does not appear in the Secretary of State Corporate Detail Report, in evidence as Licensee's Exhibit 1, as an officer of or as a registered agent of Victor's Tap. Paragraph 3 of City's Exhibit 3, requested the current lease or management agreement with any and all companies involved with Estrella Blanca. He was looking for any business activity on the business whether or not it's on record with the city. He admitted the name Victor's Tap does not appear anywhere on City's Exhibit 3. Gallagher could not recall if he checked with Springfield to see if Estrella Blanca was an Illinois Corporation. He did identify Licensee's Exhibit 2, as the corporate search for Estrella Blanca that lists Yoshio Sanchez as the officer of that corporation. Faik Ademi's name is not on that document. His check for records on the City's IRIS system showed that a food license issued to Estrella Blanca and Mr. Sanchez at the same time a tavern license had issued to Mr. Ademi at Victor's Tap.

Feim Azizi is the brother-in-law of Faik Ademi and is familiar with the premises at 3049 N. Cicero occupied by Victor's Tap. He works at that location. Maria Balboa was employed there but she no longer works there. Azizi identified City's Exhibit 3 as a document Maria Balboa gave him. Azizi mailed the document to Mr. Sanchez about the time he received it from Maria. He did not read the letter because it was not his mail. Maria said the papers were dropped off and he did not know the letter was from the Chicago Police Department. The witness is not an owner or corporate officer of Victor's Tap, but he works there occasionally.

Over the respondent's objection, the Deputy Hearing Commissioner allowed in evidence City's Exhibit 5, consisting of prior Orders of Disposition to be used in the event of a finding. That exhibit revealed the following previous dispositions:

1. A ten-day closing for gambling on 10/7/02
2. A seven-day closing for Failure to Display/Operating without a License on 8/30/07
3. A \$2000 Voluntary Fine for Obscenity on 5/14/93
4. A three-day closing for Gambling on 1/21/98

The first issue is whether the Local Liquor Control Commissioner proceeded in the manner provided by law. There was no issue raised by the licensee as to this issue. The second issue to be addressed is whether the findings of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record. The finding as to Charge 1 is based on the Deputy Hearing Commissioner's finding of fact that the letter given to Maria Balboa was addressed to "Mr. Sanchez or current owner." Since Maria Balboa said she would give the letter

to the owner Faik Ademi, the Deputy Hearing Commissioner found the request to produce the records was properly served on Victor's Tap, Inc.

The Deputy Hearing Commissioner's Findings seem to ignore the fact that the Request to Produce was not directed to Victor's Tap, Inc. or to Faik Ademi, but was directed to Yoshio Sanchez who was the registered agent for the now dissolved corporation Estrella Blanca, Inc. It also seems to rest on the testimony that Maria Balboa stated to Officer Gallagher that Faik Ademi was the owner. The record is silent as to whether Officer Gallagher asked Ms. Balboa who was the operator of Estrella Blanca, Inc. or who was the operator of Victor's Tap, or if there was a relationship in the ownership of these two corporations.

The substantial evidence standard is very broad and has been interpreted to mean a decision of a Deputy Hearing Commissioner must be affirmed if there is any evidence in the record to support it. The evidence in this case barely meets this standard. While this Commissioner would not have made the same finding, that is not a basis for this Commission to reverse. It might well be a different decision in a different forum with a different standard.

The next issue is whether the Order of Revocation is supported by the findings. This case should be remanded to the Local for clarification on this issue since there are two separate findings in the record. This Commissioner cannot fathom why one signed Findings of Fact recommends a seven-day suspension while the other recommends revocation. Since this Commission cannot remand, it will address the issue with respect to both Findings in the record.

If this Commission assumes that the Deputy Hearing Commissioner recommended a 7-day Suspension and the Local Liquor Control Commissioner imposed an Order of Revocation, the first matter to be considered is whether it was appropriate for the Local Liquor Control Commissioner to reject the recommendation of the Deputy Hearing Commissioner. Case law suggests that a finding of a hearing officer may be rejected in this type of situation provided that there was discussion of the issues and the credibility of the witnesses. The Order of Revocation states Commissioner Steadman considered the Hearing Officer's Report of Proceedings and conferred with the Hearing Officer on the credibility of the witnesses and the evidence. Such a meeting would be sufficient under case law for Commissioner Steadman to reject a seven-day suspension and on his own impose an order of revocation. The case law does not require that Commissioner Steadman states his reasons for not following the recommendation of the Deputy Hearing Officer.

Since Commissioner Steadman has the authority to impose revocation as opposed to a 7-day suspension, the next question is whether the order of revocation is supported by the findings. While this Commissioner feels that revocation under the facts of this case is very close to being so arbitrary as to allow reversal, the past disciplinary history is such that one cannot say the revocation is so arbitrary as to allow reversal. Suffice it to say that this Commissioner would not have imposed revocation and would not have imposed the seven day suspension recommended by the Deputy Hearing Commissioner.

If the Findings of Fact recommending revocation was the finding reviewed by Commissioner Steadman, the same line of reasoning applies. While this Commissioner would not have imposed such a penalty with the past history, revocation is not so arbitrary as to allow for reversal.

The decision of the Local Liquor Control Commissioner to revoke the retail liquor license issued to Victor's Tap for the premises located at 3049 N. Cicero should be affirmed.

Dennis M. Fleming, Chairman

DECISION OF COMMISSIONER SCHNORF AND COMMISSONER O'CONNELL

This case is one that is the poster boy for the need to give this Commission the power to remand cases to the Local Liquor Control Commission under certain circumstances. Since this Commission cannot remand, it is left with the decision to reverse outright or to affirm. Under the facts of this case, the decision of the Local Liquor Control Commissioner revoking the license of Victor's Tap is reversed.

The standard review in this case on the issue of proof is whether there is substantial evidence in the record to support the finding of the Deputy Hearing Commissioner that the City proved the elements of Count 1. While this substantial evidence standard is very broad, it does still need some evidence to affirm that decision. There is no evidence in this record that the licensee, Victor's Tap, failed to produce books and records as required by 235 ILCS 5/6-10.

235 ILCS 5/6-10 states in pertinent part:

It shall be the duty of every retail licensee to make books and records available upon reasonable notice for the purpose of investigation and control by the Illinois Liquor Control Commission or any other local liquor control commission having jurisdiction over the licensee.

The key phrase in that statute with respect to this case is “reasonable notice.” The licensee that is being requested to give books and records must have reasonable notice of that request. Notice becomes important in this case since the record shows there were two separate licensees at this location. Victor’s Tap, Inc. held the retail liquor license; Victor’s Tap was an active Illinois Corporation. The registered agent of record was Faik Ademi at 3049 N. Cicero, Chicago, Illinois. The president was Faik Ademi and the secretary was Engella Ademi and both had the address of 6443 N. La Crosse, Chicago, Illinois. Estrella Blanca, Inc. was an Illinois corporation involuntarily dissolved as of September 14, 2012. The listed registered agent was Yoshio Sanchez with an address of 3049 N. Cicero. According to Officer Gallagher, Mr. Sanchez had a home address of 6420 N. Hermitage. No documents in this record prove any relationship existed between Victor’s Tap, Inc. and Mr. Sanchez and/or Estrella Blanca, Inc.

City’s Exhibit 3, in evidence, is the document delivered to a Maria Balboa who was a bartender of Victor’s Tap. It consists of three (3) pages. The letter is addressed to Yoshio Sanchez at an address of 6420 N. Hermitage, and Pages 1 and 2 specifically state:

RE: Department of Business Affairs and Consumer Protection
Liquor License Investigation – Estrella Blanca
3049 N. Cicero

It is addressed to Mr. Sanchez or current owner. It is clear that the term current owner meant the current owner of Estrella Blanca. Request Number 3 asks for a “copy of the current lease and or management agreements with any and all companies involved with Estrella Blanca.” Records of Victor’s Tap, Inc., are not referenced in the request.

The third page of City’s Exhibit 3 is a document entitled “Owner/Agent acknowledging receipt of letter requesting corporate documents from Estrella Blanca Night Club.” It is signed by Maria Balboa who agreed to forward this letter to the owners/officers of Estrella Blanca Night Club. The testimony at the hearing is that Mr. Azizi, the brother-in-law of the owner of Victor’s Tap, Inc. mailed City’s Exhibit 3 to Yoshio Sanchez at 6420 N. Hermitage.

The Deputy Hearing Commissioner relied on testimony from Officer Gallagher that Ms. Balboa stated the owner of the establishment was Faik Ademi and that Ms. Balboa stated she would give Mr. Ademi City’s Exhibit 3. That statement is not dispositive of the issue in this case since it has never been disputed that Faik Ademi was the owner of Victor’s Tap, Inc. That hearsay statement does not establish that Victor’s Tap, Inc. or Faik Ademi had an ownership interest in Estrella Blanca on September 14, 2012.

If the Local Liquor Control Commission wanted the records of Victor’s Tap, Inc. it should have given a proper request to Mr. Ademi or some other agent of Victor’s Tap, Inc. As it did not give such notice, it cannot prove the allegations of Charge 1.

In the event a reviewing court disagrees with this analysis and agrees with the Chairman's decision as that the City proved Charge 1 by a preponderance of the evidence, revocation of this license based on this record including the past history of the licensee is so arbitrary and capricious as to require reversal. The City has great latitude in determining the appropriate penalty but that latitude is not completely unlimited. Revocation for this specific alleged offense and taking into consideration the timeframe of the past offenses is arbitrary and capricious and must be reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order revoking the liquor license of the appellant is hereby REVERSED.

Pursuant to Section 54 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: May 8, 2014

Stephen Schnorf
Member

Donald O'Connell
Member