

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Village Tavern, Inc.)	
Marc Lepcin, President)	
Licensee/Revocation)	
for the premises located at)	
6912 West Belmont Avenue)	Case No. 17 LA 21
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Shannon Trotter, Commissioner)	

ORDER

CHAIRMAN FLEMING’S DECISION JOINED BY COMMISSIONERS O’CONNELL AND
CAHILL

BACKGROUND OF THE CASE

Village Tavern, Inc. received notice that pursuant to 235 ILCS 5/7-5 and Sections 4-4-280 and 4-4-282, a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago liquor license issued to Village Tavern, Inc. for the premises located at 6912 West Belmont Avenue on thirty (30) separate charges. Charge 29 alleged the Licensee, by and through its agent, failed to install and maintain exit signs, illuminated by electricity, in violation of Section 13-160-700 of the Municipal Code of Chicago.

The remaining charges arise out of allegations that on March 3, 2017, March 23, 2017, March 30, 2017, April 7, 2017, April 29, 2017, May 4, 2017, and May 5, 2017, the Licensee, by and through its agent, knowingly delivered to an undercover Chicago Police Officer less than one

gram of cocaine. This act on these dates was alleged to violate these sections of the Illinois Statutes and Municipal Code:

1. 720 ILCS 570/401(d)
2. 720 ILCS 570/406.1
3. 720 ILCS 5/37-1
4. 4-60-14(a) – Chicago Municipal Code
5. 8-4-090(b) – Chicago Municipal Code

This case proceeded to hearing on July 25, 2017, August 22, 2017, September 12, 2017, September 19, 2017, and September 26, 2017, before Deputy Hearing Commissioner Robert Emmet Nolan. Assistant Corporation Counsel Noel Quanbeck represented the City while Stephen Hall and Kim Kardas represented the Licensee.

The Deputy Hearing Commissioner entered Findings of Fact that the City proved each of the thirty (30) charges. He found, based on the totality of the circumstance, that the appropriate punishment for Charges 1-28 and 30 was revocation and the appropriate punishment on Charge 29 was a Five Hundred Dollar (\$500.00) fine.

Local Liquor Control Commissioner Shannon Trotter entered an Order of Revocation and Fine on November 20, 2017. The Licensee filed a timely Notice of Appeal with the License Appeal Commission.

SUMMARY OF PROCEEDINGS

It was noted for the record by the Deputy Hearing Commissioner that Officer Grubisic has been in narcotics since 2003. He has been involved in thousands of undercover buys and has been involved in about a hundred narcotic investigations in the last six months. It was further noted by the Deputy Hearing Commissioner that on March 3, 2017, Officer Grubisic was investigating a call concerning sales of narcotics at the Village Tavern. He was dressed probably in blue jeans and a t-shirt in an undercover capacity. He entered the premises about 10:30 pm to see if he could make a purchase.

Officer Grubisic stated Village Tavern holds some kind of tavern or liquor license. On March 3, 2017, he entered the Village Tavern at about 10:30 pm with a registered confidential informant. Prior to entering, he searched the confidential informant for contraband and/or money. The informant had neither and the witness gave him some CPD 1505 funds; pre-recorded monies used to make controlled purchases.

The witness described the interior of the bar as being the right side with 15 to 17 bar stools. Immediately to the left is a pool table and a little further north on the left side are some amusement games and a table or two. There might have been a DJ on March 3, 2017. The establishment was open and operating with a few patrons. There were five or six waitresses and a female bartender. There was also a man going back and forth from behind the bar. He learned the name of the bartender as Layla or Lyla. He ordered drinks from her with 1505 funds. At some point, he had a conversation with Lyla a/k/a Layla. He asked if he could get a 40, meaning a \$40 bag of cocaine, and she said she could. She walked to the end of the bar and met up with a male

who was on the customer side of the bar. They walked down a little hallway out of his view. She returned seconds later and sat next to him. She asked for a hug, so she could hand him the narcotics. During the hug, she handed him a clear bag containing cocaine and he gave her \$40 in 1505 funds. He placed the suspect cocaine into an empty breath savers container and placed it in his pocket. He remained in the bar a half hour to 45 minutes.

When Grubisic left the establishment, he met up with his team members and eventually relocated to the 25th District to inventory the narcotics. The suspect cocaine was on his person the entire time until he arrived at the 25th District. At the 25th District, he entered the CLEAR system and eTrack to obtain an inventory number. The inventory number issued was 13869349. The suspect cocaine was placed in a bag and the Inventory Number 13869349 was placed in the bag. He signed the bag and his supervisor signed the bag and the bag was dropped into the narcotics safe. An evidence recovery officer takes the narcotics to the Illinois State Police Crime Lab. Lyla was not arrested on March 3, 2017.

Officer Grubisic returned to the Village Tavern on March 23, 2017, at about 9:30 pm to attempt an undercover purchase of narcotics. He entered the location alone and in street clothes. There were patrons and witnesses and Layla a/k/a Lyla was working as a waitress. The bartender was Jasmine. He ordered a drink for himself and for Lyla from Jasmine and paid with 1505 funds. Jasmine gave Lyla a white receipt for her commission on the drink. Lyla was sitting next to him at the bar and he asked if she could get him another 40 meaning a \$40 bag of cocaine. She said yes and walked out the front door out of his view. She returned and gave him the suspect cocaine. She said to buy drinks, so it would not look suspicious. He paid Jasmine for the drinks

with a \$100 bill. He then paid Lyla with two \$20 bills from the change for the drinks from the \$100 bill. He saved the suspect cocaine in his breath mint container. Officer Iglesias entered the bar right after the transaction and they stayed for about 45 minutes to an hour. They left the bar, relocated to the 25th District and started the inventory process for the cocaine. The suspect cocaine was on his person in the breath mint container from when he received it until his arrival at the 25th District. It was inventoried under Inventory Number 13881733 and dropped in the safe for pick up. No one was arrested.

Officer Grubisic returned to the Village Tavern in an undercover capacity to attempt to purchase narcotics at about 10:30 pm on March 30, 2017. He was dressed in street clothes and was alone originally. Officer Iglesias showed up later in the evening. Lyla was working as a waitress that night and Jasmine was the bartender. He ordered drinks for himself and Lyla and Jasmine with 1505 funds. Jasmine would give Lyla a receipt. The three of them had a general conversation and at some point, he asked Lyla if she could get him another “40” and she said she could. She approached later and said it would be \$50 because it was better. He gave her \$50 in 1505 funds and she stepped outside. When she returned she handed him \$50 worth of cocaine. He placed it in his mint container and continued the conversation for a half hour to an hour. He then relocated to the 25th District to do the inventory process. It was inventoried under number 13886128. No arrests were made.

Officer Grubisic returned to the Village Tavern on April 7, 2017, in an undercover capacity to make a controlled purchase. He was alone, and Lyla was bartending. He ordered drinks and paid for them with 1505 funds. He then asked if she could get him another 50 and she replied she

would. At that time, Officer Iglesias entered the bar and Lyla was done bartending and was just waitressing. He gave Lyla \$50 in 1505 funds and was told by Lyla her guy was making deliveries but would stop at the bar. After 45 minutes, two unknown males entered the bar and Lyla approached them. She returned and handed him \$50 worth of cocaine. After a half hour, he relocated to the 25th District and inventoried the suspect cocaine under Inventory Number 13891672.

The witness returned to the Village Tavern on April 29, 2017, around 10:00 pm to make a controlled purchase. He was alone and in street clothes. Lyla was bartending, and he ordered and paid for drinks out of 1505 funds. He asked for another 50 and she said she could get in a bit when her guy arrived. Lucy, who was waitressing, joined the conversation. Lyla asked for the money to complete the transaction. He gave Lyla \$50 in 1505 funds. Lyla left the bar towards the back of the bar and returned through the front door. She gave him \$50 worth of cocaine which he placed in the mint container. He stayed in the bar about a half hour to an hour and then relocated to the 25th District and inventoried the suspect cocaine under Inventory Number 13906446. No one was arrested.

The officer revisited the Village Tavern on May 4, 2017, at around 10:53 pm. He was alone and dressed in street clothes. The bartender was Kiko whom he had met in previous encounters at the bar. Kiko told him Lyla would be there in an hour or so. Lucy was waitressing that night and she came up. He ordered a drink for Lucy from 1505 funds. Lyla arrived, and he asked her if she could get him an eight ball. Lyla stated her guy only had \$50 bags and he would be in later. He agreed to that and he handed Lyla \$50 in 1505 funds. He went outside for a cigarette and noticed

a black SUV pull up. When he reentered the bar, Lyla went to the black SUV and returned with two or three bags of cocaine which he placed in his container.

Officer Iglesias entered the bar after this transaction and he, Iglesias, Lyla, and Lucy were having a conversation. The conversation was about Lyla and him doing narcotic transactions when Lucy said her family was involved and she could get it also. He and Officer Iglesias returned to the bar around 12:40 am the morning of May 5, 2017. They met Lyla and Lucy and ordered drinks. Lucy said her brother, Buddy, was getting the cocaine. They were outside and about to leave when Buddy drove by and parked. He and Iglesias were outside by the front door when Buddy approached. He gave Buddy \$180 for an eight ball of cocaine. They then discussed buying a pound of marijuana for \$700 at a future date. They reentered the bar and ordered drinks for Lucy, Lyla, and Buddy. He kept the product separate from the first transaction and returned to the 25th District to inventory the purchases. The purchase from Lyla was inventoried under Inventory Number 13909930 and the inventory from the transaction with Buddy was Inventory Number 13909934.

The City moved, and the Deputy Hearing Commissioner allowed into evidence City Exhibits 10, 11, 12, 13, 14, 15 and 16 as Lab Reports from the Illinois State Police Crime Lab. They each contained an Affidavit in Lieu of Court Appearances. They found that:

- Exhibit 10 – Inventory Number 13869349 was positive for .3 gram of cocaine
- Exhibit 11 – Inventory Number 13881733 was positive for .5 gram of cocaine
- Exhibit 12 – Inventory Number 13886128 was positive for 1.2 grams of cocaine
- Exhibit 13 – Inventory Number 13891672 was positive for .5 gram of cocaine

- Exhibit 14 – Inventory Number 13906446 was positive for .2 gram of cocaine
- Exhibit 15 – Inventory Number 13909930 was positive for .5 gram of cocaine
- Exhibit 16 – Inventory Number 13909934 was positive for .3.4 grams of cocaine

On cross-examination, the witness stated he talked with a man he knew as Kiko, now known as Rodrigo Gutierrez on May 19, 2017. He did not ask for consent to search but was aware consent to search was granted. No 1505 funds were ever recovered from the bar.

When he went to the bar on March 3, 2017, he was with a registered confidential informant (RCI) who directed the witness to Lyla who was bartending. The complaint was that the sales were from a bartender or waitress which led him to speak to the female staff. In his conversation with Lyla, he learned she worked Thursday, Friday, and Saturday. Since the bar investigations usually started at 10:00 pm it just happened Lyla was present on most occasions. He used 1505 funds to buy drinks and to purchase the cocaine. Lyla did not put the 1505 funds intended to buy cocaine in the cash register. That money would go into her purse or pocket. On three of the four days Lyla was involved; she went outside the bar and met someone outside and on one occasion Lyla talked to an unidentified male at the end of the bar.

The officer described that he and Lyla would usually hug and put their hands together. She would put the cocaine in his hand. She did it that way to avoid the cameras installed in the bar by the owner to ensure money was not stolen, to record fights and make sure there were no drug deals.

On March 23, 2017, he went into the bar and asked Lyla for a 40. She physically exits the bar through the front door and was gone a minute or two. The witness could not see where she obtained the cocaine or if she spoke with anyone. At some point, she came back in and gave him the cocaine.

At some point, the officer obtained Lyla's phone number to communicate for future transactions. He did try to make a purchase from Lyla by text when she was not at the bar.

On March 23, 2017, he entered the bar and Lyla was waitressing. He asked her for cocaine and was told someone else would get it. She went outside to order the cocaine which arrived in about thirty minutes. Lyla then left the bar and came back with the cocaine. He did not see anyone in the bar give her the cocaine and the money he gave Lyla to buy the cocaine was not put in the cash register.

The witness stated that on April 7, 2017, he asked for Lyla for drugs and she went to unknown males who had entered the bar. He made his order and Lyla made a call and after the unknown males entered the bar Lyla told the witness "he" is here.

The witness did not see this unknown male hand the cocaine to Lyla, but he did not see her get the cocaine anywhere else around the bar. He did not see any of the prerecorded funds in the cash register.

Officer Grubisic agreed the purchase on April 29 was similar in that Lyla did not get the cocaine in the bar. She walked out the back door and entered through the front. He was aware the surveillance team saw her exit a blue SUV after she exited the building. He did not see any of the money related to the cocaine put into the cash register or elsewhere in the bar.

The witness agreed there were two sales on May 4 going into May 5. He arrived at the bar about 10:53 and left after the second buy. The second buy occurred with Lucy's contact and she did not sell the cocaine, but she facilitated the transaction. He had three or four drinks that night over two or three hours. He had at least two beers and one or two shots of tequila. Buddy, the seller, brought the cocaine from outside the bar and the money he gave to Buddy did not go into the bar.

On redirect, the officer stated that on March 3, Lyla never left the bar before she gave him the cocaine. Likewise, on April 7 she never left the bar. On all these occasions, March 3, March 23, March 30, April, April 29, May 4 and May 5, the person who sold the narcotics was either the bartender or the waitress. On May 4 and 5, Lucy facilitated the purchase of the narcotics from Buddy. Lucy was an employee of the Licensee. On May 5, he thought Buddy would sell the cocaine because of his conversation with Lucy. He met Buddy outside the bar on May 4 before midnight and they discussed a narcotics transaction.

On re-cross, the witness agreed he assumed Lyla never left the bar on March 3 but did not see if she physically left the bar. To the best of his knowledge, Buddy does not work for the bar.

Marisol Liboy is a Chicago Police Officer who has been assigned to the Vice Control Section of the Licensing Unit for seven years. She was working in that capacity on May 19, 2017, and was at 6912 W. Belmont, the Village Tavern. She was doing a follow-up investigation on inspections for violations made inside the bar. In that investigation, she found the exit plates of the doorways were either missing or not lit. She identified City's Exhibits 17A, 17B, and 17C as photographs taken that evening showing unlit and missing signs.

On cross, the officer explained the licensing unit of the vice control section works with the building department on building code violations. She received training about the Municipal Code from the Chicago Police Department, so she is familiar with requirements for illumination of exit signs. She could not recall if this establishment was one with multiple stories or more than two stories in height or if it was an institutional facility with two stories or more in height or if it was an assembly building. It was not a school, intermediate care facility, church, theater or an open-air assembly with the capacity of seating 250 persons. She agreed that for a violation, the building needs to not comply with the ordinance. She agreed there was no subsection of the municipal code on a ticket, but she went off the municipal code that required the sign to be lit.

Sergeant Joshua Wallace has worked in the Narcotics Section of the Chicago Police Department for two and a half years. He was involved in an investigation of the Village Tavern. He explained buy officers work in an undercover capacity to buy narcotics and surveillance officers keep an eye on the undercover officers attempting to make their purchases. Enforcement officers are called in to make arrests. On any given night, all three such teams would be present in or around the Village Tavern. He was physically present on certain days. Buy officers went into the bar to

purchase alcohol. Pursuant to the Bureau of Organized Crime Special Orders, these officers can consume alcohol to a point where it does not impair their judgment. That is initially determined by the officer but then it is on the supervisor. The supervisor would evaluate the officer in terms of overall appearance and speech.

The Sergeant was working as a Supervisor on March 23, 2017, at the investigation of the Village Tavern. The goal was to once again purchase narcotics from a particular female. It was the practice that the team would only use prerecorded funds to purchase drinks and the narcotics. There is a special order prohibiting comingling of personal and prerecorded funds. He also supervised the March 30, 2017, investigation at the Village Tavern. The goal was to purchase narcotics from the same female from whom it was purchased the week before. There was no discussion of trying to purchase narcotics from the management of the bar. On March 30, the surveillance team noticed a dark colored SUV at the side of the bar. An employee of the bar exited and entered the SUV. It was his belief the person exiting the bar obtained the narcotics from the person in the SUV. The witness had contact with Officer Grubisic on March 23 and March 30, 2017, and Officer Grubisic did not seem to be impaired.

Rodrigo Gutierrez testified on behalf of the Licensee. He was the manager of the Village Tavern up until May 19, 2017. He was in charge of hiring and firing people and ordering liquor. The hiring process was a 15-25-minute interview. He tells applicants they will be on time and not involved in drugs or any gang-related stuff. If one employee is in drugs or gangs, they will be fired on the spot. He had security on the weekends to check IDs and eight cameras inside the premises. If he saw an employee selling drugs on a video the employee would be fired.

On May 19, 2017, he had a conversation with a regular customer known as Mark. Mark is now known to be the undercover cop, Officer Grubisic. Five or six people came in, had a drink and then went outside to smoke. When he went outside a guy pointed a rifle at him and the police raided the tavern. He later learned the raid was conducted because an employee was selling cocaine to an undercover officer.

Layla Garcia worked for him as a bartender and he believes this is the same Layla that the officer testified about. She worked from June 2016 through May 2017, and she ran the bar from 2:00 until 10:0 pm. She was never authorized to sell cocaine to customers and she was told at hiring that anything drug related would get her fired. Mark would ask for Ms. Garcia when he would come in on Thursdays, Fridays or Saturdays from 11:00 pm until 1:00 am. Ms. Garcia worked those dates from 2:00 pm until 10:00 pm.

The witness never asked or allowed Ms. Garcia or anyone else to sell cocaine to customers on the dates alleged. He never received a share of the proceeds and the Village Tavern never benefited from proceeds of any cocaine sales.

On cross, Mr. Gutierrez stated he reviewed the eight security cameras. Layla would not be going out during work time. During that time, she was in charge of the register and would not be able to go out without his permission unless she asked to go to the washroom. He does not remember if he reviewed the tapes for any of the dates in question.

On redirect, the witness stated he has not had access to the building after the raid on May 19 and has not had access to the tapes. Once an employee is off work he does not watch them. If the sales of cocaine occurred at 10:41 pm, or at 10:29 pm, or at 10:10 pm, Layla was not working.

On recross, he stated the officer was mistaken when he testified Layla was working as the bartender on March 3 at 10:30 pm. Layla would have been working on March 23 at 9:30 pm. Jasmine would have been the bartender after 10:00 pm on March 30. Layla would pick up glasses and drink with her friends after 10:00 pm but she was not on the clock. Officer Grubisic was also mistaken when he said Layla was bartending on April 7 at 10:00 pm. He does not know if the officer was mistaken when he said Layla sold him cocaine. He does not know if the officer was mistaken or lying when he said Layla was bartending after 10:00 pm on April 29.

RELEVANT STATUTES

235 ILCS 5/10-3

Every Act or omission of whatsoever nature constituting a violation of any of the provisions of this Act, by any officer, director, manager or other agent or employee of any licensee, shall be deemed and held to be the act of such employer or licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.

ANALYSIS

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

1. Whether the local liquor control commissioner has proceeded in the manner provided by law;
2. Whether the order is supported by the findings;
3. Whether the findings are supported by substantial evidence in light of the whole record.

There is no argument that the local liquor control commissioner did not proceed in the manner provided by law. The Licensee has due and adequate notice of the date, time and location of the hearing and of charges in which the City was seeking revocation of the license. The Licensee was represented by competent counsel and was allowed to cross-examine the city's witnesses and present their defense.

Substantial evidence has been defined by Illinois cases as any evidence that supports the charges filed by the city. In this case, it is important to note that the Deputy Hearing Commissioner made specific findings of fact that he found the testimony of Officers Grubisic and Liboy to be credible and the testimony of Rodrigo Gutierrez to not be credible. A finding of credibility of witnesses is reserved for the trier of fact and cannot be reversed by a reviewing court or commission except in extraordinary circumstances. No such extraordinary circumstances appear in the record of this case.

The credibility finding is pertinent to this decision since there was contradicting evidence as to the times Layla worked as a bartender. The testimony of Rodrigo Gutierrez was that Layla worked from 2:00 pm until 10:00 pm. That means any involvement with the sales of narcotics after 10:00 pm would have been when she was not working for the Licensee. Officer Grubisic's

testimony is that on several of the dates Layla was working as a bartender or waitress after 10:00 pm and was working in those positions at the time of the cocaine transactions.

The issues that arise in this case is whether Layla/Lyla and Lucy were agents of the Licensee at the time of the specific sales. If they were agents, pursuant to the Liquor Control Act cited above, the Licensee would be responsible for any and all acts. The traditional limitations on the responsibility of an employer for the acts of an employee are inapplicable.

Charges 25 through 28 alleged violations of criminal statutes that occurred on May 5, 2017. The nexus of the Licensee to these violations is a girl named Lucy. The Deputy Hearing Officer made a Finding of Fact in Paragraph #7 that Lucy was an employee of the Licensee on April 29, 2017, and May 4, 2017. Lucy was an employee of the Licensee because she was serving drinks to patrons which benefited the Village Tavern that patrons did not need to go to the bar. The testimony in the record was that Lucy was waitressing on May 4. There is no testimony that Lucy was waitressing on May 5. The transaction that occurred on May 5 occurred between the undercover officer and Lucy's brother outside of the Village Tavern. There is not substantial evidence in the record as a whole to support the findings relative to Charges 25, 26, 27 and 28.

With respect to the transactions that occurred with Layla/Lyla, the testimony from Officer Grubisic is that on each occasion she was either bartending or waitressing. On each of these occasions, Layla/Lyla accepted money from Officer Grubisic for the purchase of illegal narcotics while she was working as a bartender or waitress. This testimony provides more than substantial evidence to affirm the Deputy Hearing Commissioner's findings on Charges 1-24 and Charge 29.

The unrebutted testimony of Officer Liboy is sufficient to find there is substantial evidence to affirm the Deputy Hearing Commissioner's finding on Charge 30.

The final issue to be decided is whether the Order of Revocation and a \$500 Fine is supported by the findings. The \$500 fine for Charge 29 comports with the ordinance and is not arbitrary or capricious.

There is a question as to whether the Order of Revocation is appropriate in this case based on the Licensee's past disciplinary history. City's Exhibit 18, in evidence, shows no past discipline for narcotic related incidents. It shows a Warning on 10-17-14 for Failure to Display Friendly Neighbor Sign; a Voluntary Fine of \$500 for Gambling on 7-15-93; a 10-day closing for Gambling issued on 4-20-99; and a \$1,000 Fine for Sale of Alcohol to a Minor on 12-1-94.

There has been no discipline issued for eighteen years. The Licensee argues that a relatively mild disciplinary history that occurred over eighteen years ago is mitigation sufficient to require a disposition other than revocation.

There is case law in which the Illinois Liquor Control Commission or the courts have reversed revocation due to similar offenses as those proven in this case. There are other cases in which a reviewing court or forum has affirmed revocation for similar offenses. This suggests each case must be evaluated on its individual facts.

This Commission does not have the authority to modify discipline even if a Commissioner or Commissioners feel that revocation is too harsh a penalty. This case does not deal with an

isolated one-time sale of cocaine but a pattern of sales of cocaine in the bar by its agent on six occasions. While the evidence was insufficient to hold the Licensee responsible for the May 5, 2017 sale, there was substantial evidence in the record to establish another sale of narcotics that occurred immediately outside the Licensee's bar. While Mr. Gutierrez denied any knowledge of this activity, the Deputy Hearing Commissioner has found that his testimony was not credible.

DECISION

Based on these facts, the Order of Revocation entered on Charges 1-24 and Charge 30 and the \$500 Fine entered on Charge 29 are upheld and 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 1, 2018

Dennis M. Fleming
Chairman

Donald O'Connell
Member

Cynthia Cronin Cahill
Member