

LICENSE APPEAL COMMISSION CITY OF CHICAGO

PM WINE & SPIRITS, INC.,)
Mukundbhai J. Patel (President))
Licensee/Revocation)
For the premises located at)
1922-1924 E. 95th St.,)
Chicago, Illinois 60617)

v.)

Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

Case No. 22 LA 07
20-LR-0070

ORDER

DECISION of Commission Chair PARRY with
Commissioner GIBBONS CONCURRING in part/DISSENTING in part, and
Commissioner BERG CONCURRING

An of Order of Revocation was issued by the Department of Business Affairs/Local Liquor Control Commission of the City of Chicago (“Local Liquor Control Commission” or “LLCC”) on July 19th, 2022, revoking the City of Chicago Retail Liquor License and all other City licenses issued to PM Wine & Spirits, Inc., Mukundbhai J. Patel (President) for the premises located at 1922-1924 E. 95th St., City of Chicago, County of Cook, State of Illinois (“Licensee” or “PM”) upon the Local Liquor Control Commissioner sustaining the Findings made by the Hearing Commissioner after a public hearing on the charges set forth below. For the reasons stated herein, the Order of Revocation is UPHELD and SUSTAINED.

JURISDICTION

This appeal was heard pursuant to the authority granted to the License Appeal Commission of the City of Chicago (“License Appeal Commission” or “LAC”) by the State of Illinois under (235 ILCS 5/) Liquor Control Act of 1934 (“Liquor Control Act”). The appeal was timely and properly filed by the Licensee. Licensee seeks review of an Order of Revocation issued subsequent to a public hearing before the Department of Business Affairs and Consumer Protection/Local Liquor Control Commission of the City of Chicago pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago (“MCC”).

BASES FOR REVOCATION

The Local Liquor Control Commissioner sustained recommendations of revocation made by the Hearing Commissioner on seven charges and entered an Order on July 19th, 2022, revoking the City of Chicago Liquor License(s) and all other City licenses issued to Licensee.

The findings made by the Hearing Commissioner on the seven charges were, in summary:

1. As to Charges #1, #2, #6 and #7: That on or about November 20, 2020 and March 20, 2022, by and through its agents, Licensee operated as a packaged goods store, and not as an accessory to the principal use of the license as a retail food establishment in violation of the issued license and zoning restrictions that require special use approval for packaged goods liquor licenses (MCC 17-3-0207(E)), finding specifically that the overwhelming inventory on the premises for retail sale were alcoholic beverages as demonstrated by credible evidence including the visual evidence presented during the hearing and the zoning evidence presented for the premises.
2. As to Charges #3 and #4: That the corporation that held the license at issue was dissolved effective May 14, 2021, and therefore was ineligible to hold a City of Chicago liquor license as of that date under state law and municipal ordinance (235 ILCS 5/6-2(a)(10a) MCC 4-60-030(1), respectively), basing the factual findings on records from the Illinois Secretary of State.
3. As to Charge #5: That on May 30, 2021, by and through its agent, Licensee failed to have a logbook for all incidents of illegal activity reported or required to be reported to the police department on the premises, in violation of §6 of the agreed Plan of Operation

and MCC 4-60-040(h), basing the factual findings that no logbook of any sort was ever produced during inspection.

4. That based upon the above violations, revocation was proper under MCC 4-60 *et. seq.* and 17-16-0505-A(1).

REVIEW OF RECORD OF PROCEEDINGS

At the April 27, 2022 hearing, City's Exhibits 1-5 and 7-9 (City Exh. 8 in aggravation, were admitted, as were Licensee's (a/k/a Respondent's) Exhibits 1-7.

There was no issue raised on appeal that disputed the fact that the sole owner of the corporation and City-issued licenses, Mukundbhai J. Patel (President), died in 2019. There was no evidence that a change of ownership for the corporation or licenses issued by the City were filed prior to April 22, 2022¹. Evidence presented at hearing showed that as to the corporation that held the City licenses, there was an involuntary dissolution recorded May 14, 2021 and records presented at hearing indicate it remained dissolved as of April 22, 2022, (Bates 000046), almost a year later.

There was no dispute that a logbook was not presented upon request to the investigator upon the May 30, 2021 inspection as was listed as required in the Plan of Operation².

ARGUMENTS ON APPEAL

Licensee Argument on Appeal: In summary

Licensee argued that the revocation was not justified. It did not argue that the corporation was not dissolved or that there was a logbook recording reportable incidents of

¹ The date of the printout from the Illinois Secretary of State showing corporate status presented at hearing.

² This was City Exhibit #6, identified but not introduced for admission. However, the testimony of the inspector went into detail about its existence and the requirement that a logbook be maintained.

illegal activity or that Licensee was subject to cited zoning restrictions. As to Charges #3, #4, and #5, Licensee argued that the dissolution of the corporation or failure to have a logbook did not justify revocation. (Tr. 6, 15). Licensee also argued that City did not prove its case that the store was operating in violation of the license it held. It argued that it was allowed to sell alcohol as an accessory use to its retail food establishment license in the B3-2 zone in which the premises is located. Licensee asserted that what defines "accessory" is vague and does not allow those who are held to its standards to have adequate notice of what is required to qualify as "accessory." Licensee argued that because there is no set measurement of what counts as "accessory" it could be interpreted to mean a comparison of total sales of liquor to food or volume of sales of liquor to food, and it argued that sales should be determinative. (Tr. 11, 14, 28-34, 42). Licensee argued that because the City did not provide evidence of sales, it could not sustain its burden of proof. (Tr. 6). Licensee asserted that "accessory" should not be measured by what is offered for sale in the store but rather by what is being sold, reasoning that whatever is being sold is what is going out into the community, and that a tiny section of liquor in a store that predominantly has food for sale could potentially put out a lot more liquor than food into the community (Tr. 32). Licensee argued that if sales are primarily food, then liquor sales are an accessory. Licensee agreed that what consumers actually purchase is out of the control of the Licensee. (Tr. 32). Licensee noted that the photographs it provided as evidence showed that there were shelves of food for sale (photographs were taken within a week before the April 27, 2022 hearing) (Tr. 35).

As to the evidence at hearing, Licensee argued that the Hearing Officer erred in relying on and/or affording the weight given the November 20, 2020 Investigator's testimony of what the investigator opined needed to be offered for sale in order to constitute a retail food establishment

as a primary use -- specifically as it relates to the testimony that the investigator considered whether perishable items are being sold, despite the fact that requirement is not in the ordinances defining what constitutes a retail food establishment. (Tr. 6-10).

City Argument on Appeal: In summary

City argued that review of the decision to revoke is limited to a three-pronged test: (1) whether the Local Liquor Control Commission proceeded in a manner provided by law; (2) whether the Order of Revocation was supported by the findings; and (3) whether the findings were supported by the evidence in light of the record - only overturning the findings if they were made against the manifest weight of the evidence (Tr. 15) and that the findings can only be disturbed if the opposition conclusion is clearly evident (Tr. 21). It argued that there was no dispute that the LLCC proceeded in a manner provided by law (Tr. 16). City pointed out that under MCC 4-4-280 a liquor license can be revoked for good and sufficient cause or if it determines there is a violation of any provision of the code, rule promulgated thereunder or any applicable state or federal law fairly related to the control of liquor (Tr 16). It argued that Illinois caselaw grants the LLCC broad discretion in revoking for cause and that there is strong public policy for vesting the LLCC with that discretion. (*Askew v. Daley*, 379 N.E.2d 75, 77 (Ill. App.1st 1978), *Weinstein v. Daley*, 229 N.E.2d 357, 364 (Ill.App.1st. 1967)). (Tr. 17).

City argued contrary to Licensee that zoning violations are a justifiable basis for revocation because zoning is considered when issuing a liquor license (Tr. 19). It also pointed out that "accessory use" under MCC 17-9-0201-A is defined as a use subordinate to the principal building or principal use in terms of area, extent and purpose (Tr. 20). It noted that in a B3 zoned area, in order to sell liquor, it must be an accessory use to a retail food license or there must be special use approval (Tr. 21).

City argued that as to the evidence supporting the findings, visual evidence showed on both November 20, 2020 and March 20, 2022 the store's shelves were primarily filled with liquor, some candy, some chips and no perishable foods, and that the rear stock room contained only liquor and no food items at all (Tr. 21-26) and that the store was primarily set up as a packaged goods liquor store and its primary sales were liquor (T. 27). Upon questioning of the Commissioners, City answered that it knew of no reports that needed to be filed documenting sales history, or the presentation of products on the premises to demonstrate primary or accessory use in a zoning-restricted area. City iterated zoning ordinances define "accessory use" as one subordinate to the principal use in terms of area, extent and purpose. (Tr. 38-39). Upon further questions, City pointed out that the retailer was operating "for a long period" without proper licensing due to the death of the sole owner of the corporation and City licenses, whose death was not discovered until the April, 2022 hearing (Tr. 39). City posited that the inspectors have experience in determining whether there's more liquor or food being sold, noting by example a comparison of a "Binny's" to a "Jewel," and that although there is no bright line rule as to what constitutes "accessory use" in comparing liquor to food -- the whole of the visual evidence showed that the store operated primarily as a packaged goods liquor store (Tr. 40-42).

ANALYSIS

Standard of Review for Appeals of Revocation Orders

In considering an appeal of an Order of Revocation issued by the Local Liquor License Commissioner, the License Appeal Commission shall determine the appeal by a review of the record of proceedings leading to the Order, and shall be limited to considering:

- 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 the light of the whole record. (235 ILCS 5/7-9)

Proceeding in the Manner Provided by the Law

There was no issue raised on appeal that the LLCC had not proceeded in a manner as required by law. The Liquor Control Act gives authority to local liquor control commissioners to discipline a Licensee if it is determined that the licensee violated any provisions of the Liquor Control Act or any valid ordinance or resolution enacted by the particular city council, president, or board of trustees or county board or any applicable rule or regulations established by the local liquor control commissioner or state commission which is not inconsistent with law, provided that the licensee be given three days written notice and an opportunity to appear and defend in a hearing open to the public and for which all evidence is reduced to writing and official record of the proceeding maintained. (235 ILCS 5/7-5). That is all that is required to find that the LLCC proceeded in the manner provided by law. There is no dispute in this appeal as to this issue. As summarized herein, Licensee was given notice of charges and a hearing; the evidence was reduced to writing; and an official record was maintained.

Having fully considered Arguments on Appeal summarized above and based upon the law and a review of the record, the License Appeal Commission finds that the local liquor control commissioner has proceeded in the manner provided by law as to all charges.

Findings Supporting the Order

As provided by the Municipal Code of Chicago (“MCC”) and Illinois Compiled Statutes (“ILCS”) a liquor license control commissioner (“LLCC”) may promulgate rules and regulations to control liquor (MCC 4-60-205; 235 ILCS 5/4-1) and revoke a license for violations of state

law, municipal ordinance or local rules established to control liquor (MCC 4-4-280; 235 ILCS 5/4-4; 235 ILCS 5/7-5).

The Liquor Control Act “shall be liberally construed to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale, and distribution of alcoholic liquors” (235 ILCS 5/1-2). It authorizes local commissioners to “revoke for cause all local licenses issued to persons for premises within his jurisdiction” (235 ILCS 4/4-4(1)). The courts have described “for cause” as allowing local governments broad discretionary power to be exercised reasonably. (*Askew v. Daley*, 379 N.E.2d 75, 77 (Ill. App.1st 1978)).

The Local Liquor Control Commissioner revoked Licensee’s license after reviewing and sustaining the findings of the Hearing Commissioner for the charges at issue in this appeal.

As to Charges #1, #2, 6# and #7, it was found and sustained that there were violations of municipal ordinances and/or rules promulgated thereunder on November 20, 2020 and March 20, 2022, in that Licensee operated as a packaged goods store, and not as an accessory to the principal use of the license as a retail food establishment in violation of the issued license and zoning restrictions that require special use approval for packaged goods liquor licenses. (MCC 17-3-0207(EE)).

As to Charges #3 and #4, it was found and sustained that the corporation under which the city licenses had been issued was dissolved May 14, 2021, and that its sole owner had died in 2019. While the Hearing Commissioner found that the corporation was eventually reinstated to good standing, it was dissolved at least until April 22, 2022, almost a year after its dissolution. The store was operating during the time the corporation was dissolved. Under state law and

municipal ordinance a license cannot be issued to a corporation not in good standing with the Illinois Secretary of State and qualified to transact business in Illinois, and thus cannot legally sell liquor if it is not in good standing (235 ILCS 5/6-2(a)(10a) and MCC 4-60-030(l)). As a corporation not in good standing and not qualified to transact business in Illinois, it cannot legally conduct the business of selling liquor in the City of Chicago in the State of Illinois.

As to Charge #5, it was found and sustained that there was a violation of the conditions set forth in the Plan of Operation for the failure to maintain a logbook as required by that Plan. According to the ordinance cited by the City, "... An applicant's failure to adhere to a written plan of operation approved by the commissioner pursuant to this section shall constitute a basis to impose a fine and to suspend or revoke any liquor license subsequently issued, as appropriate," MCC 4-60-040(h).

As discussed above, a liquor license may be revoked for violations of federal or state law or municipal ordinances established to control liquor. Having fully considered Arguments on Appeal as summarized above and based upon the law and a review of the record, it is found that the findings of the violations of law and ordinances found by the Hearing Commissioner and sustained by the Local Liquor Control Commissioner are related to the control of liquor, and the LLCC acted reasonably in ordering the revocation. The License Appeal Commission finds that the Order of Revocation is supported by the Findings.

Findings Supported by Evidence

The "findings of the local commissioner are presumed to be prima facie true and correct and may only be disturbed where they are against the manifest weight of the evidence and an opposite conclusion is clearly evident" (*Byrne v. Stern*, 103 Ill.App.3d 601, 605 (1st Dist. 1981)).

As to Charges #3, #4 and #5, there was no evidence in the Record or argued on Appeal that the corporation was not dissolved on May 14, 2021 and remained dissolved at least until April 22, 2022. There was uncontroverted evidence that there was no logbook on May 30, 2021. The findings on Charges #3, #4 and #5 are supported by the evidence.

The Hearing Commissioner found and the LLCC sustained the findings that City presented credible visual evidence that on or about November 20, 2020 and March 20, 2022 there was an "overwhelming" inventory of alcohol (a/k/a liquor) for sale on Licensee's premises. As to November 20th, it was found that there was no evidence of food items, perishable or not, save for chips, snacks and candy. As to March 20, 2022 the Hearing Commissioner noted that Licensee presented photographic evidence of eggs and milk purported to be for sale at the location, but parties agree Licensee's photographs were taken days before the April 2022 hearing and not at or near the time of the alleged violations. The Hearing Commissioner also noted as to the March 20th findings that advertising signage both inside and outside the premises was for various brands of liquor, beer and wine and not food. These findings were sustained by the LLCC. While no one piece of evidence is dispositive, the totality of the evidence presented at hearing is what is considered. The evidence included photographs of the store's exterior which included advertisements for alcohol and liquor products, and none for any kind of food. The name of the store itself, "PM WINE & SPIRITS," has no indication of food for sale. The photographs taken by City on November 20, 2020 and March 20, 2022 show multiple aisles of liquor for sale and one aisle and a few endcap displays of packaged foods such as chip, snacks and candy. The refrigerated units in the photos show two units containing non-alcoholic beverages (along with a rack of unrefrigerated non-alcoholic beverages) and what appears to be beer, wine and other alcohol-based products in the remaining units that line two other walls

(approximately 15 refrigerator doors to open). There appear to be four aisles (shelving on six sides). The photographs show wine and/or liquor bottles lining all the shelves on four sides and at least the top row of shelves on the two outside sides across from refrigerated units. Some endcaps appear to have chips and others alcohol-based products. There are no interior signs advertising food, except for the "Savor the Flavor" sign above a rack of chips, a small "Frito Lay" sign on an endcap and the "7UP" signs on the two refrigerated units of non-alcoholic beverages. The photographs taken behind the counter show more bottles of alcohol/liquor and some paper products. Photographs of the stock room show, for example, on just one of the sets of palettes a conservative estimate of 4 cases wide, by 10 cases long, by 4 cases high of alcohol-based products (160 cases). (City Exh. 4). It was a two-level stock room with a break room and part of it was refrigerated. The refrigerators had mostly alcoholic beverages and there was some "soda". There was no evidence at all of food products being stored in the stock room. (Bates 00090, 00169). Licensee's photos, taken days before hearing and not on November 20, 2020 or March 20, 2022 shows various angles of what appears to be the aisle across from the refrigerated units with the "7UP" signs, consisting of three shelves of paper and plastic products and packaged food items (Licensee Exh. 4, Bates 00063-00069).

As to Licensee's argument that City must prove its case by a measure of sales of alcohol/liquor over food, it is not based in law. Illinois state law under the Liquor Control Act of 1934 defines what activities a retail liquor licensee may engage in. "A retailer's license shall allow the licensee to sell and offer for sale at retail, only in the premises specified in the license, alcoholic liquor for use or consumption..." 235 ILCS 5/5-1(d). It specifically notes the activities of selling liquor and offering liquor for sale. Thus, the law contemplates not only what is being sold, but what is being offered for sale. Under that standard, evidence of either or both of what is

being offered for sale as well as what actually is being sold would be proper to consider. It is not persuasive that only sales, whether in volume or receipts, should be considered. Further, the Zoning ordinances describe "accessory use" as a use subordinate to the principal building or principal use in terms of area, extent and purpose (MCC 17-9-0201-A). The evidence clearly shows that in terms of area, extent and purpose, alcohol/liquor are the primary contents of the store, the stock room and the purpose of the store advertising itself as selling wine and spirits.

Having fully considered arguments on Appeal summarized above, and based upon the law and a review of the record, the findings made by the Hearing Commissioner and sustained by the Local Liquor Control Commissioner are prima facie true and correct, are not against the manifest weight of the evidence and an opposite conclusion is not clearly evident. The License Appeal Commission finds that the Local Liquor Control Commissioner sustained Hearing Commissioner findings that were supported by the evidence.

Discipline of Revocation

The Liquor Control Act requires a municipality with a population over 500,000 to establish a license appeal commission (235 ILCS 5/7-8). Chicago is one such municipality. It limits the authority of that license appeal commission to either sustain or reverse a decision to discipline made by the local liquor control commissioner. (235 ILCS 5/7-5). "The plain language of section 7-5 draws a clear distinction in the appellate powers bestowed on the License Appeal Commission and the state commission. The License Appeal Commission may sustain or reverse a decision, whereas the state commission may sustain, reverse or modify a decision.

Benchwarmers, Inc. v. Daley, 294 Ill.App.3d 385, 390 (1st Dist. 1997).

Illinois statute and case law gives local liquor control commissioners wide discretion in deciding when revocation may be imposed (*933-935 North State Corp. v. Daley*, 115 Ill.App.2d

263 (1st Dist. 1969); *Weinstein v. Daley*, 85 Ill.App.2d 470 (1st Dist. 1967)). "...[T]he mere fact [that a reviewing court] considers a different sanction more appropriate does not render a decision arbitrary." *Roach Enterprises, Inc. v. License Appeal Comm'n*, 277 Ill.App.3d 523, 530 (1st Dist. 1996) (citing *Yeksigian v. City of Chicago*, 231 Ill.App.3d 307, 312 (1st Dist. 1992)).

As discussed above, the scope of review for the License Appeal Commission is defined by law to be limited to whether (1) the local liquor control commissioner proceeded in a manner provide by law; (2) the order is supported by the findings; and (3) the findings are supported by substantial evidence in the light of the whole record. It is not within the scope of review for the License Appeal Commission to modify the type of discipline issued or otherwise substitute its assessment of what discipline is appropriate.

CONCLUSION

Having fully considered Arguments on Appeal summarized above, based upon the law and a review of the record, and for the reasons stated herein, the License Appeal Commission finds that the Local Liquor Control Commissioner proceeded in a manner provided by law; the Order of Revocation is supported by the findings; and the findings are supported by substantial evidence in the light of the whole record.

IT IS THEREFORE DECIDED AND ORDERED that the JULY 19TH 2022 Order of Revocation of the liquor license issued to PM WINE & SPIRITS, Inc., Mukundbhai J. Patel (President) for the premises located at 1922-1924 E. 95th St., City of Chicago, County of Cook, State of Illinois is UPHELD and SUSTAINED.

CONCURRING OPINION, by Commissioner Berg

The Hearing Officer acted reasonably in his decision as to the Zoning B3 violation, the Licensee offering for sale primarily alcohol as supported by the photographic evidence and testimony of the inspectors. Licensee should have rectified its corporate status in a timely manner after the death of the owner and sought to obtain a special use approval to reflect what it was offering for sale on the premises, which was primarily alcohol.


DISSENTING OPINION as to Charges #1, #2, #6 and #7, by Commissioner Gibbons

After reviewing the transcripts, I am of the opinion that the City did not prove its case as to the breakdown of sales between food and liquor by the Licensee. The investigators' observations as presented may be true but were not enough to convince me of a violation. The fact that the store operated without a valid liquor license after a reasonable time after the death of the sole owner without a recorded and permitted change in ownership is enough for a revocation. For the reasons stated above, I respectfully dissent as to revocation based on Charges #1, #2, #6 and #7, and concur that revocation is proper under Charges #3, #4 and #5.

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: January 5, 2023


Laura Parry
Commission Chair


Thomas Gibbons
Commissioner


Cynthia Berg
Commissioner