

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Frank & Rose Tavern, Inc.)
Miguel Perez, President)
Licensee/Revocation)
for the premises located at) Case No. 18 LA 2
4501-4503 West Belmont Avenue)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

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

CASE BACKGROUND

The Licensee received notice that pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 280 of the Municipal Code of Chicago that a hearing was to be conducted on October 30, 2017 at 1:30 pm in Room 805 of City Hall, 121 N. La Salle Street, Chicago, Illinois in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other City of Chicago licenses issued to it for the premises located at 4501-4503 W. Belmont Ave., Chicago, Illinois.

The charges against the Licensee set out in the Notice of Hearing were:

1. The Licensee failed to pay a debt due to the City after the period granted for payment expired, in violation of Municipal Code of Chicago 1-20-090, and is therefore subject to license suspension or revocation pursuant to Municipal Code of Chicago 4-4-084.
2. That the Licensee’s business is or creates a nuisance, in that within 12 consecutive months three or more separate incidents occurred on the licensed premises, on or in the

licensed premises' parking facility, or on adjacent property, involving illegal acts, in violation of Municipal Code of Chicago 4-4-313(a)(i).

3. That pursuant to 235 ILCS 5/6-2 (10a), the licensee corporation is ineligible to hold a City of Chicago Retail Liquor License because the licensee corporation was not in good standing effective 10/19/17.
4. That pursuant to Municipal Code of Chicago 4-60-030(l), the licensee corporation is ineligible to hold a City of Chicago Retail Liquor License because the licensee corporation was not in good standing effective 10/19/17.

This matter proceeded to hearing on January 22, 2018, before Deputy Hearing Commissioner Khaled J. Elkhatib and Assistant Corporation Counsel Dan O'Keefe represented the City of Chicago. The transcript does not identify counsel for the Licensee, but it is believed to be Mr. Ted Smith from the Law Firm of Smith Ortiz, P.C. The Deputy Hearing Commissioner entered Findings of Fact that the City proved each of the four charges and that revocation was the proper punishment for each of the violations. An Amended Order of Revocation was issued on March 14, 2018, by Local Liquor Control Commissioner Shannon Trotter. The Licensee filed a timely Notice of Appeal with the Commission on April 4, 2018. Oral argument was heard, and the matter was taken under advisement by the License Appeal Commission.

REVIEW OF THE RECORD

A synopsis of the record, in this case, is helpful to an understanding of this decision.

John Mariane has been Manager of Collections for the City of Chicago's Department of Business Affairs and Consumer Protection for sixteen years. The City uses the IRIS database to maintain records of licensed businesses in the city. That database includes information about whether a licensee owes a debt to the City. He checked the records for Licensee Frank and Rose Tavern,

Inc. Mariane explained a hold is placed on a licensee's account when the licensee has an outstanding debt. He then identified City's Exhibit 3, in evidence, as a hold mailed to Frank and Rose Tavern, Inc. at 4501 West Belmont, 1st Floor, Chicago, Illinois 60641, on January 22, 2018. This notice is four pages long and lists fourteen (14) separate holds on this account. The witness then identified City's Exhibit 4, in evidence, as a screenshot for the Licensee's account showing \$8,021.08 owed to the City with all the debts more than thirty (30) days old.

The witness explained he had access to the Illinois Secretary of State's website containing information about the corporate status of a business. City's Exhibit 5 was identified as a true and accurate copy of the Corporate File Detail Report on the Licensee's Corporation which reflects its current status as *Dissolved* (the actual status on this exhibit is *Not Good Standing*).

On cross-examination, counsel for the Licensee questioned Mr. Mariane as to whether any of the fines related to the sale of narcotics. All of Mr. Mariane's responses were inaudible.

The City then introduced into evidence, over the objection of counsel for the Licensee, City's Exhibits 6A, 6B, 6C and 6D which are:

- 6A – Arrest reports concerning a May 31, 2016, narcotics undercover delivery of cocaine at the bar located at 4501 W. Belmont by a Juan Garzon.
- 6 B – Arrest reports concerning a June 7, 2016, narcotics undercover for delivery of cocaine at 4501 W. Belmont by a Jose Sotelo.
- 6C – Arrest reports concerning an August 9, 2016, narcotics undercover delivery of cocaine at 4501 W. Belmont by Eleazare Ramos.

- 6D – Arrest reports concerning an August 9, 2016, narcotics undercover delivery of cocaine at 4501 W. Belmont by Gonzalo Avila.

City's Exhibits 7A, 7B, 7C, and 7D were identified as lab reports of the above-referenced narcotics purchases as well as the affidavit in lieu of court appearance for each of these buys.

The City rested its case.

Miguel Perez testified he is the owner of Frank and Rose Tavern, Inc. at 4501 W. Belmont in Chicago. He has had the liquor license about 13 years. He does not know Gonzalo Avila and Mr. Avila was not an employee of his on August 9, 2016, at 7:50 pm. He does not know Eleazare Ramos and Mr. Ramos was not an employee of his on August 9, 2016, at 6:56 pm. He does not know Juan Garzon and Mr. Garzon was not an employee of his on August 31, 2016. He does not know Jose Sotelo and Mr. Sotelo was not an employee of his on June 7, 2016.

None of these gentlemen ever worked for him and he has never written them a payroll check. He did not know Gonzalo Avila was arrested for sale of cocaine on August 9, 2016. He did not know Juan Garzon was arrested for sale of cocaine on August 31, 2016 (the date on the reports of this sale is May 31, 2016). He did not know Jose Sotelo was arrested on June 7, 2016, for sale of cocaine. He did not know Eleazare Ramos was arrested on August 9, 2016, for the sale of cocaine. He only learned of these matters when he received the notice from the City around July 31. The bar has not been open since around July 31. The City never offered an agreement to try to stop narcotic sales in or around the establishment. He would enter into such an agreement and would follow all the rules.

He has been trying to get the corporation in good standing with the Secretary of State, but he owes taxes and owes fines to the City of Chicago. Frank and Rose Tavern, Inc. is his only source of employment and income.

On cross, Mr. Perez agreed the corporation owed the City about \$8,000.

City's Exhibit 8, the Order of Dispositions, was introduced into evidence. It shows no discipline since 2004.

RELEVANT STATUTES AND ORDINANCES

4-4-313 (a) – a license may be suspended or revoked if a licensee's business is or creates a nuisance. A licensed business is or creates a nuisance if: (i) within any consecutive 12 months, not less than three separate incidents occur on the licensed premises... The licenses of any business that is or creates a nuisance under clause (i) of this subsection (a) shall be subject to suspension or revocation pursuant to Section 4-4-280.

4-4-313 (f)(1) - it shall not be a defense that the licensee or the licensee's employees or agents were not personally involved in the commission of the illegal acts...

4-4-313 (f)(4) - any evidence on which a reasonably prudent person would rely on may be considered without regard to the formal or technical rules of evidence, and the commissioner may rely upon police reports, official written reports, affidavits and business records submitted by authorized city officials or employees charged with inspection or enforcement responsibilities to determine whether such illegal acts...occurred. If during any 12-month period three separate incidents of illegal acts occur on the licensed premises...a rebuttable presumption shall exist that the licensed business is or creates a nuisance in violation of this section.

4-4-313 (h)(2) - “Illegal acts” means any conduct or activity that violates any federal or state law defining a felony, or any federal or state law or municipal ordinance regulating narcotics, controlled substances or weapons.

4-4-280 (a) - The Mayor shall have the power to fine a licensee and/or suspend or revoke any license issued under the provision of this Code for good and sufficient cause if he determines that the licensee shall have violated any provisions of this code or any of the statutes of the state.

1-20-090 - The failure to pay any debt due to the city...after the period granted for payment has expired shall constitute a violation of this Code.

4-4-084 - If a person fails to pay any...sum of money owed to the city pursuant to an order of the department, a court order or an order of the Department of Administrative Hearings, within 30 calendar days of such sum of money becoming a debt due and owing to the city; such person’s license may be suspended or revoked by the department in accordance with the requirements set forth in Section 4-4-280.

4-060-030 (1) - No license for the sale of alcoholic liquor shall be issued to a corporation unless it is incorporated in Illinois.

235 ILCS 5/6-2 (10a) – No license of any kind issued by the State Commission or any local commission shall be issued to a corporation or limited liability company unless it is incorporated in the State of Illinois.

ANALYSIS

Since this is a case dealing with the revocation of a liquor license, the review of this Commission is limited to these 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.

The record, in this case, shows that the Licensee received due and adequate notice of the date, time and location of the hearing and of charges filed against it seeking revocation. Paragraph (a) has been complied with.

Substantial evidence has been defined as any evidence that supports the finding of the Deputy Hearing Commissioner. The ordinance at issue allows for these cases to be prosecuted by police reports. In this case, police reports documenting four separate incidents of criminal conduct were in the record as well as affidavits establishing that there was cocaine delivered on those four occasions. That is substantial evidence to support the finding.

As to the debt owed to the city, the Licensee did not deny he owed the city the money.

With respect to whether the Order of Revocation is supported by the findings, the Licensee had the opportunity to present evidence of what it would do to stop the sale of cocaine. This evidence was not presented, and the only mitigating evidence was a promise to work with the City to avoid these problems in the future. While members of this Commission might look at the facts and felt that discipline other than revocation was appropriate, the findings of four separate sales of cocaine in a licensed liquor establishment support a finding of revocation of the license.

DECISION

The revocation of the liquor license issued to Frank and Rose Tavern, Inc. is **AFFIRMED**.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: September 7, 2018

Dennis M. Fleming
Chairman

Donald O'Connell
Member

Cynthia Cronin Cahill
Member