

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Grand & Ashland Tap, Inc.)
Betty Stokes, President)
Licensee/Revocation)
for the premises located at)
1600 West Grand Avenue) Case No. 17 LA 10
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

Pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago, the Licensee was advised that a disciplinary hearing was to be held regarding the City of Chicago retail liquor license and all other City of Chicago licenses issued to it for the premises located at 1600 West Grand Avenue, Chicago, Illinois based on the following charges:

1. That 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 pursuant to Municipal Code of Chicago 4-60-030 (s), the licensee corporation is ineligible to hold a City of Chicago Retail Liquor License because the licensee no longer holds a valid liquor license with the State of Illinois.

The case proceeded to hearing at the Local Liquor Control Commission on March 21, 2017, before Hearing Commissioner Robert Emmett Nolan. Attorney Thomas Murphy represented the Licensee and Assistant Corporation Counsel Rachel Berger represented the City of Chicago. Hearing Commissioner Nolan entered Findings of Fact that the City proved both

charges and that based upon the totality of the circumstances, including this Licensee's prior record, that revocation was the proper punishment for each violation.

On May 8, 2017, Local Liquor Control Commissioner Shannon Trotter entered an Order of Revocation based on Charges 1 and 2 being sustained. The Licensee filed a timely Notice of Appeal with the License Appeal Commission on May 22, 2017. The hearing before the License Appeal Commission was held on August 17, 2017.

SUMMARY OF THE REVOCATION PROCEEDINGS

Prior to the start of evidence, the City introduced the following documents:

- City Exhibit 1 - Letter of Appointment of Hearing Commissioner Nolan
- City Exhibit 2 - Notice of Hearing as a charging document
- City Exhibit 3 - Order of Revocation from the State of Illinois Liquor Control Commission dated November 17, 2016

John Mariane has worked for the City of Chicago's Department of Business Affairs and Consumer Protection for twenty-five years. He holds pre-trial conferences, issues business licenses, and checks on debt due and owing to the City. He recently used a database named IRIS to check the department's records with regard to Grand & Ashland Tap, Inc. located at 1600 West Grand. He regularly uses IRIS in the normal course of his business. IRIS maintains records with regard to licenses issued by the department and those records are made at or near the time appearing in IRIS. IRIS also maintains records with respect to debt due and owing to the City of Chicago.

The witness recently checked the records for Grand & Ashland Tap and found there was debt due and owing to the City. The debt was more than 30 days old. City's Exhibit 4, in evidence, was identified by Mr. Mariane as a Hold Notice dated March 17, 2017, sent to the Licensee reflecting a breakdown of debt owed to the City. The total amount of debt was \$18,830.19.

On cross-examination, Mr. Mariane stated he had no idea if City's Exhibit 4 was mailed to the Licensee on March 17, 2017. The witness did produce this document which refers to Grand and Ashland Tap. That licensee holds a liquor license, a PPA license, and a food license, but the licenses have lapsed. There is no current liquor license, PPA license or food license. The last license date for all three license was November 15, 2016. It did not pay to renew any of the three licenses. He did not know if it was doing business.

Mr. Mariane described the first debt owed the City listed on Page 3 of City's Exhibit 4 as \$4,400 for renewal of a liquor license. He stated it did not renew the liquor license because they did not pay. Mr. Mariane assumed the license was in the liquor business because the license was not canceled. It also owed an \$1,100 late fee which is owed even if they are not licensed. If they do not notify the City they are closed, they owe the money. Mr. Mariane asserted that is the same for the late hour license fee and penalty, the PPA license, and the food license. The witness did not know if those debts were sent out for collection. These debts were due on November 16 and would have been 30 days on December 16.

Mr. Mariane was directed to debts related to an awning starting as the last item on Page 4 and continuing onto Page 5. It lists two debts of \$175 and two debts of \$44.00 late fee for annual billing for awning permit 1115039. He stated these were for different years but he could not tell what years were being referenced in this exhibit or when these debts became due and owing to the City.

Mr. Mariane asserted Grand & Ashland Tap, Inc. still maintains an awning because there was no cancellation notice from the applicant. He also explained there was no present debt due to the City with respect to the section on City's Exhibit 4 entitled License Adjudication. These sections reference proceedings at the Local Liquor Control Commission or at the Department of Administrative Hearings.

On redirect, Mr. Mariane stated there is other debt listed aside from the license fees. There is a cost recovery from Administrative Hearings for \$707.17, and a cost recovery for \$1,827.51 for Administrative Hearings - Health Department. There are five unpaid parking tickets issued to Betty Stokes.

On re-cross, Mr. Mariane stated one of the cost recovery items was from 2008 and one from 2016. It does not indicate the date of issuance of original liability and just gives the docket. The parking tickets do list a date of issuance.

Eugene Stokes was called as a defense witness. He is the son of Betty Stokes who is the President and 100% stockholder of Grand & Ashland Tap, Inc. She is presently in poor health.

The witness was a manager for Grand & Ashland Tap, Inc. when it had the liquor license, PPA license and the food license, and he filed a manager's statement. The tavern was located at that location for about thirty years and it had a 4:00 am tavern license. The last day of business for Grand & Ashland Tap, Inc. was November 15, 2016, and it closed because financially it ran out of money. There was a revocation of a State license for failure to pay sales tax. That revocation has been appealed.

On cross, the witness said his mother hired Tom Murphy to represent Grand & Ashland Tap.

The Licensee rested.

Over objection, City's Exhibit 6 was allowed in evidence as prior Orders of Disposition from the Department of Business Affairs and Consumer Protection.

The Licensee's Motion to Dismiss based on the City's failure to prove by a preponderance of the evidence their charges based on a failure to pay a debt due and owing to the City in a timely manner was taken under advisement.

It is necessary to address the Licensee's argument that this proceeding is moot since the Licensee did not renew its liquor license on November 15, 2016. The argument is that since the license expired on November 15, 2016, and the State liquor license was revoked for failure to pay taxes on November 17, 2016, the liquor license does not exist and these proceedings should

be dismissed on that basis. The issue is whether the Local Liquor Control Commissioner retains subject matter jurisdiction over a liquor license which has lapsed prior to the commencement of revocation proceedings.

The Illinois Appellate Court addressed this issue in the case of *Alpern V. License Appeal* Commission 38 Ill. App. 3d 565 (1976). In this case, the Appellate Court rejected the argument that proceedings on a lapsed license are moot based on the fact that the conduct for which the license was revoked took place while the license was in effect. Since the effect of a revocation continues in part past the date of revocation, the court ruled that:

...so long as the conduct causing the revocation proceedings to commence occurred during the life of a license and revocation proceedings are instituted in a reasonable time after the expiration of the license, the Local Liquor Control Commissioner has continuing jurisdiction over the license even though it expires before revocation proceedings begin.

Based on this case, this Commission finds there was subject matter jurisdiction so as to allow the Local Liquor Control Commissioner to proceed with the disciplinary proceedings.

This is particularly so based on the facts of this case. The Licensee has appealed the revocation of the State license and a ruling in its favor could lead to a refile for the lapsed liquor license. The debts due and owing the City could also be paid which could remove that basis of revocation of the license. Section 4-4-260 of the Chicago Municipal Code states renewal may be denied and a new license application required if the licensee fails to apply for renewal within the three months after the expiration date of the license. While the Licensee stated it has

no intention to apply for renewal, the fact remains there are procedures available to the Licensee to reapply for the existing license. That fact underlies this Commission's finding that there was subject matter jurisdiction for the Local Liquor Control Commission to proceed with this.

Since this is an appeal from an Order of Revocation of the liquor license the review by the License Appeal 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 Local Liquor Control Commissioner proceeded in the manner provided by law. All procedures required to ensure due process were followed in this case. As discussed earlier, the Local did have subject matter jurisdiction of this proceeding.

Substantial evidence to support the findings of the Local Liquor Control Commission has been defined as any evidence which supports the findings. With respect to the issue of revocation of the State license, the Licensee does not dispute the fact that its State liquor license was revoked. An appeal may be pending but the present status of the license is that it is revoked.

The second basis for revocation of the license was that debt was due and owing to the City. It is necessary to review the finding of the Hearing Commissioner on this point. He did not specifically list what debt was due and owing to the City; just that the Licensee failed to pay

a debt. Counsel for the Licensee argued that certain alleged debt testified to by Mr. Mariane should not be considered since the Licensee never filed for renewal of the license. Since it did not apply for renewal, it does not owe the City renewal fees of any of its liquor licenses. It is unnecessary to address that issue since counsel for the Licensee acknowledged there is some debt owed to the City. That admitted debt is substantial evidence to support the finding that the Licensee failed to pay a debt to the City.

The final issue is whether the findings of the Local Liquor Control Commissioner support the Order of Revocation. The lack of a valid liquor license from the State of Illinois not only supports the revocation of this liquor license but would mandate that revocation.

The revocation of the liquor license issued to Grand & Ashland Tap, Inc. for the premises located at 1600 West Grand Avenue is Affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the Order Revoking the liquor license of the Appellant 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: October 16, 2017

Dennis M. Fleming
Chairman

Donald O'Connell
Member