

LICENSE APPEAL COMMISSION

CITY OF CHICAGO

Ricardo and Martha Villalobos)	
d/b/a Villalobos Lounge)	
Licensee/Revocation)	
for the premises located at)	
2234 South California Avenue)	Case No. 11 LA 36
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Gregory Steadman, Commissioner)	

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

The licensee received a 1st Amended Notice of Hearing that a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued to Villalobos Lounge. There were twenty allegations arising out of four separate sales of a controlled substance by alleged acts of the licensee. The dates of the alleged incidents were March 12, April 8, and April 10, 2011. It was alleged that these drug transactions were in violation of the following statutes:

1. 720 ILCS 570/401(d) - knowingly delivering or possessing with intent to deliver a controlled substance.
2. 720 ILCS 570/406.1 - permitting or making a building available for the unlawful use or delivery of a controlled substance.
3. 720 ILCS 5/37-1 - maintaining a public nuisance on the licensed premises in that the premises were used for commission of offenses prohibited by the Illinois Controlled Substances Act.
4. 720 ILCS 570/407(b)(2) - knowingly delivered a controlled substance while within 1,000 feet of real property comprising any school.

5. 720 ILCS 570/407(b)(2) - knowingly delivered a controlled substance while within 1,000 feet of the real property comprising any church, synagogue, or other building, structure, or place used primarily for religious worship.
6. Title 8, Chapter 4, Section 090(b) of the Municipal Code of Chicago - through an agent encouraged or permitted illegal activity (possession or delivery of a controlled substance) to occur or continue on the licensed premises.
7. Title 4, Chapter 60, Section 141(a) of the Municipal Code of Chicago - through an agent permitted or allowed on the licensed premises an illegal activity (possession or delivery of a controlled substance; cocaine).
8. 720 ILCS 570/401(c)(2) - knowingly delivered or possessed with intent to deliver a controlled substance, between one and fifteen grams.

It was alleged in each of the 22 counts that the licensee violated these statutes and ordinances by and through its agent.

At the hearing before the Local Liquor Control Commission evidence was presented concerning sales of suspect narcotics to Chicago Police Officer Emerico Gonzalez that occurred on March 12, April 8 and April 10 of 2011. There is no dispute that Officer Gonzalez testified that the suspect cocaine was purchased at the licensee's location and that field tests and lab reports from the Illinois State Police Lab confirmed the substances were positive for cocaine. There was also testimony from Investigator Joseph Sneed of the City's Department of Business Affairs and Consumer Protection, Enforcement and Investigative Unit. On April 15, 2011, he went to the Villalobos Lounge at 2234 S. California and performed certain measurements. Using a rotor ruler measuring wheel he measured 640 feet from the Villalobos parking lot to the parking lot of Saucedo School, and also measured 781 feet from Villalobos to the Saucedo School. Both measurements were under 1000 feet. He also conducted measurements from the lounge to a church located at 2225 South California and 2301 South California. He measured

119 feet to the 2225 South California church from the lounge, and 364 feet to the church located at 2301 South California. Both churches were within 1000 feet of the licensee's establishment.

Based on this evidence in the record it is clear that there is substantial evidence in the record as a whole to affirm the findings of the Deputy Hearing Commissioner as to the aspect of the charges alleging sales or delivery of controlled substances on March 12 and April 8, 2011. The fact that these findings are affirmed is insufficient on themselves to affirm the revocation of this license. The issue that must be decided is whether these sales were made by individuals who were agents of the licensee. If they were agents of the licensee it is responsible for their actions. If they were not agents the licensee is not responsible for their actions.

A review of the evidence in the record on this issue will aid in analyzing the facts that will resolve this question.

With respect to the transaction that occurred on March 12, 2011, Officer Gonzalez testified he entered the licensee's bar about 9:08 p.m. in plain clothes for the purpose of doing undercover purchase of narcotics. He observed a female bartender talking to a male Hispanic later identified as Epifanio. Epifanio was on the customer side of the bar and he talked to the security guard. Gonzalez entered the men's washroom and purchased two bags of cocaine for \$40.00 in prerecorded funds. Epifanio later was observed talking to the female bartender. They were talking about change. She gave Epifanio a bundle of United States currency. Epifanio left the bar and when he returned he gave the bartender another small bundle of United States currency. Epifanio was never behind the bar and was not seen in a uniform or shirt that said

Villalobos Lounge. Gonzalez returned to the licensee's bar on March 19, 2011. He saw a glass jar behind the bar counter with a photograph of Epifanio taped to the jar and some money. The female bartender said Epifanio had passed away and the employees were collecting money for funeral expenses. She told Gonzalez his name was Epifanio. Gonzalez remembers this bartender said Epifanio, whose real name was learned to be Venestiano Rodriguez, was an employee of the bar. On the dates he was in the bar the officer found no documentation that Epifanio was an employee of the lounge.

Frances Lara started working at the Villalobos Lounge between two and three years ago. The other employees in that period of time were Rosa Juela and David Rodriguez. She knows of no other bartenders. Epifanio was never an employee of the Villalobos Lounge while she worked there. If she ran short of change she would go and ask someone else to get change. She had asked Epifanio to get change because she trusted him to come back. She would give Epifanio a beer or two for the favor. She worked on March 12, 2011, but does not remember if she asked Epifanio to get her change on that date. She collected money for Epifanio's family after he died. She had a little box with Epifanio's picture on it which was kept over the counter of the bar. She never had a conversation with anyone in which she said Epifanio used to be an employee of the bar.

Rosa Juela started working at the Villalobos Lounge in January or February of 2011 and worked afternoons until closing. The other employees were Francesca and David Rodriguez. She knew Epifanio as a customer at the bar but he did not work at the bar when she was there. She never sent Epifanio out on errands.

Cesar Gonzalez lived with Epifanio for about four years. Epifanio worked construction and he did not think he ever worked at the Villalobos Lounge. Epifanio died on April 15, 2011. A number of businesses took up collection for his family including San Pedro, Villalobos and the Copa Cabana.

Cecilio Fuentes knew Epifanio and worked construction with him two or three days a week for around ten years. After Epifanio died the Copa Cabana, San Pedro and Villalobos Lounge took up collections for Epifanio. He never knew Epifanio to work at the Villalobos Lounge.

Saul Perez knew Epifanio as his friend. Epifanio worked construction with Cecilio. He went to Villalobos every day and never saw Epifanio work there. On occasion he has been asked by a bartender to get change. Epifanio also did this. They would get change from the currency exchange at Cermak and Rockwell and would receive a beer. The Copa Cabana, San Pedro and Villalobos collected money to help Epifanio's family with the costs. No one other than David, Rosita and Francesca worked at the Villalobos.

The evidence with respect to the issue of the agency of Monica Aranda will also be summarized to help understand this decision. Officer Gonzalez was at the Villalobos Lounge on April 8, 2011 at about 11:20 p.m. He was approached by a Monica Aranda who took his drink order. He asked Aranda for three pases which is a Spanish street term to describe small bags of cocaine. She asked for \$60.00 which he gave her and she returned with three bags. He stayed at

the bar and Arenda brought him a second drink. On April 10, 2011, Gonzalez returned to the Villalobos Lounge at about 12:21 a.m. on April 10, 2011. He saw Monica Aranda who was getting drink orders from the customers and receiving payment for the drink. She did not go behind the bar. She approached the table where he was sitting and he gave her a drink order. She came back, received payment and sat down with him. They had a conversation in which he requested two pases. She asked for \$40. After a period of time she came back and said she could not get the cocaine and she returned the money.

Officer Gonzalez never saw Epifanio on the service side of the bar on March 12, 2011, and the only thing he observed was a bartender give him an undetermined amount of U.S. currency and Epifanio returned later with an undetermined amount of U.S. currency. The woman he referenced to as Monica was never on the service side of the bar where the drinks are poured. Monica would walk to the bar with his drink order and pay the lady the money. Gonzalez insisted an unknown female bartender told him Epifanio was an employee of the lounge but he never found any documentation that would indicate that. He did admit it was not uncommon in Hispanic neighborhoods for people to take up collections for funeral expenses for families.

Gonzalez stated Monica did not have on any kind of uniform identifying her as an employee of the lounge on the first date in April. She came up and asked him if he wanted a drink. This is not a common occurrence to him. He believes that Monica was taking drink orders from others sitting at the table but no specific incident is listed in his report. This was the night he made two separate purchases. The first was for \$60 and the second was for \$40. The

\$10 tip he gave Monica is not reflected as his prerecorded funds sheet and the money spent for drinks is also not recorded. He could not see where Monica received the cocaine on the first transaction but he received the cocaine for the second transaction from the man known as Mocho. Mocho does not work for the bar.

Gonzalez clarified his testimony by saying the bartender told Epifanio she needed change and then gave her the U.S. currency. He could not remember what day it was exactly that he saw Monica get drinks for other customers but it did happen. Other girls were working as waitresses getting drinks for customers. Monica would drink with him but he did not think that happened each occasion. It did happen on two separate dates where Monica sat down and drank alcohol with him that he purchased for her. The female employees get a miniature beer.

David Rodriguez has been manager of the Villalobos Lounge located at 2234 S. California for almost three and a half years. Since he assumed that position he has put up 11 lights and 12 audio/video surveillance cameras. He also hired a full-time security guard from 9:00 p.m. until closing. The guard checks for id's and searches for weapons and ensures patrons do not leave with open alcohol. The camera plays via internet at his house and he can save footage on his laptop. He tried but was unable to retrieve footage from March 12 and 19, 2011. He has attended CAPS meetings and has cooperated with police recommendations at those CAPS meetings.

Prior to the lounge closing on April 15, it has three employees besides himself there was Francesca and Rosa. He knew Epifanio but he never employed him while manager of the

lounge. Epifanio died on March 15. Neither Ricardo nor Martha Villalobos ever employed Epifanio while he managed the bar. One of the employees, Frances, took up a collection and they have done this on other occasions. Since he has been the manager he has not employed waitresses. Monica Aranda has not been employed as a waitress or a bartender. He knows who Monica Aranda is from the video footage.

The video footage from April 8 shows Officer Gonzalez entering the tavern wearing a big Mexican cowboy hat. This is approximately at 10:45 p.m. Gonzalez is accompanied by an individual. Rodriguez had no inside footage of April 8. The request to show inside footage from April 9 was denied by the Deputy Commissioner.

Officer Gonzalez entered the lounge on April 9 around 9:20 p.m. and left about 12:16 a.m. He was with the same individual as on April 8. During that time period Gonzalez and that individual have five beers and two tequilas. Monica Aranda spends about 90% of her time with Gonzalez and did not serve beer or drinks to any other customer. The witness identified Respondent's Exhibits 6 (a-d), in evidence, without objection:

- 6a - Officer Gonzalez drinking tequila
- 6b - Officer Gonzalez with his friend and Monica Aranda
- 6c - Officer Gonzalez leaving bar at 12:16:13 a.m.
- 6d - Monica Aranda standing at the bar

Mr. Rodriguez denied knowledge of Epifanio or Monica Aranda selling cocaine in the lounge. He is aware women approach men for drinks but those woman are not waitresses. He was not surprised to learn Epifanio obtained change for the bar. This happened once a week.

Since there is no evidence in the record challenging whether the drug transactions took place the factual issues in this case with respect to charges one through twenty-one are whether Epifanio and/or Monica Aranda were agents of the licensee. Count 22 must be reversed because it alleges an illegal activity (i.e. the possession or delivery of a controlled substance) occurred on April 10, 2011. There was no evidence of any drug transaction on that date and Officer Gonzalez testified that while he asked for cocaine and paid Aranda, she gave the money back and did not deliver cocaine to him.

The traditional approach on agency law is that an employer or principal is not liable or responsible for the actions of an employee or agent if those acts are beyond the scope of the agency. In general, an employer or principal would not be responsible for the criminal conduct of an employee or agent.

This traditional approach does not apply to liquor cases since 235 ILCS 5/10-3 states in relevant part that:

Any act of whatsoever nature constituting a violation of this act, by an agent or employee of the 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 by him personally.

The questions before this Commission is whether there is substantial evidence in light of the whole record to affirm the findings of the Deputy Hearing Commissioner that Epifanio and Monica Aranda were agents of the licensee. The issue of agency in these cases is guided by case law that states that the performance of work by one party is prima facie evidence of employment

and, in the absence of contrary evidence, supports a presumption that the person is a servant. Byrne v. Stern, (1981) 103 Ill.App.3d 601, 431NE2d 107, Maldonado v. License Appeal Commission, (1981) 100 Ill.App.3d601, 427N.E.2d 725; Anderson v. Illinois Liquor Control Commission, (1984) 105 Ill.App.3d924, 435N.E.2d 192. Since there is no contrary evidence in this case any presumption would not apply. This case is also unusual since the Deputy Hearing Commissioner states in her findings that “while no evidence was presented indicating that either Epifanio or Ms. Aranda were being paid by the establishment, this does not mean no agency existed. Further, the real question is whether an agency relationship existed with Epifanio and Ms. Aranda and Villalobos Lounge, not necessarily an employer-employee relationship. While it may not have been a formal or expressed agency agreement, it is more likely than not that entrusting these individuals to leave the premises with money and take and serve drink orders would at least give rise to implied agency.”

This statement suggests that the Deputy Hearing Commissioner found no evidence of a traditional employer-employee relationship. This Commissioner agrees with that finding and also finds there is not substantial evidence in the record as a whole to support as finding that Epifanio or Ms. Aranda were employees of the Villalobos Lounge.

While the Deputy Hearing Commissioner uses the term implied agency it seems that the actual term would be apparent agency or conduct of a putative.

The mere fact that Epifanio left the premises with paper money and returned with change in exchange of a beer is not substantial evidence in light of the whole record that he was an apparent agent of Villalobos Lounge when he sold drugs to this undercover police officer.

There is a conflict in the testimony of the licensee's witnesses and the undercover officer as to the actions of Monica Aranda on April 8, 2011. If she is not an agent on the traditional employer-employee relationship then the fact that she went to the bar and ordered drinks and paid for the drinks with money prerecorded given to her by the undercover police officer is not substantial evidence in the record to establish she was an apparent agent of the Villalobos Lounge. It should be noted that the video of Ms. Aranda's actions and interface with the undercover officer on April 9 and 10 of 2011 do not show a person who was acting as an apparent agent of the lounge. She is seated with the undercover officer and his friend through most of the video. She goes to the bar and brings back drinks for them and for herself. Since the undercover officer's description of the events on April 8, 2011, with respect to Monica Aranda getting drinks for him, mirrors his testimony of what she did on April 9 and 10, 2011. It is proper to assume what she did on April 8, 2011, was not sufficient to meet the burden that there was substantial evidence to show she was an apparent agent for the lounge when she conducted the sales of narcotics to the undercover officer.

This Commission is fully aware of the law standard of evidence needed to affirm a revocation based on the substantial evidence standard. This is one case where it is proper not to affirm.

The revocation of the license issued to Ricardo and Martha Villalobos, d/b/a Villalobos Lounge is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT is REVERSED.

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: March 26, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member