

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Kiercul, Inc.)
Chester Kiercul, President)
Licensee/Revocation and Fine)
for the premises located at)
4244-48 North Milwaukee Avenue) Case No. 12 LA 45
v.)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING

The licensee received notice that a hearing would be held in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued to it for the premises located at 4244-48 North Milwaukee Avenue. The three charges alleged were:

1. That on December 13, 2009, the licensee, by and through its agent, failed to cooperate with identified police officers, and to fully and truthfully answer all questions posed by those officers, in the investigation of illegal activity upon the licensed premises in violation of Municipal Code of Chicago 4-60-141.
2. That on or about February 16, 2012, the licensee, by and through its agent, permitted the installation or use of an automatic amusement device, namely: a pool table, in the licensed premises without having a valid tax emblem affixed thereto, in violation of Municipal Code of Chicago 4-156-180.
3. That on or about February 16, 2012, the licensee, by and through its agent, constructed, installed or maintained a structure, to wit: three signs, on or above the public way without a public way use permit, in violation of Municipal Code of Chicago 10-28-010(b)(10).

After the hearing, Deputy Hearing Commissioner Gary Chan entered Findings of Fact that the City of Chicago sustained its burden of proof on all three charges. He further entered Findings of Fact that the appropriate disposition would be revocation on Count 1, a \$500 fine on Count 2, and a \$1500 fine on Count 3. The licensee filed a timely appeal of that decision with the License Appeal Commission.

Since this is an appeal of a revocation and fine, the inquiry of this Commission is limited to the following 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.

RELEVANT CODE SECTIONS:

Chicago Municipal Code 4-60-141(b) – It is the affirmative duty of a licensee to report promptly to the police department all illegal activity reported to or observed by the licensee on or within sight of the licensed premises; to answer fully and truthfully all questions of an identified police officer who inquires or investigates concerning persons or events on and around the licensed premises; to cooperate with the police in any such inquiry or investigation including the giving of oral or written statements to the police at a reasonable time and location in the course of investigations and to sign a complaint against any person whom the licensee observes in illegal conduct or activity on or within sight of the licensed premises.

A summary of the proceedings will aid in understanding this decision.

Sergeant Gregory Hoffman has been a Chicago Police Officer for eighteen years and has been assigned to the 16th District for the last 3 years. On December 13, 2009, while on duty, he went to the bar/night club at 4244 North Milwaukee Avenue in response to a call of a battery victim. On arrival, he saw the battery victim outside the Capital Club. The licensee was open for business when he entered the bar. He saw a barmaid and an individual known as Chester (Chester is Chester Kiercul who is an officer of the licensee). Chester was the manager of the bar during the course of the incident. The name of the barmaid was Marya Sulchotskaya.

Hoffman interviewed Marya who related she did not see a battery occurrence on the premises. She added there was blood on the floor which she had cleaned up. Hoffman considered the cleaning of the blood to be a contamination of a crime scene and a failure to cooperate.

Hoffman also interviewed Chester who stated the battery victim was struck outside and not inside the club. Hoffman then asked Chester for any videotape evidence of what might have occurred inside the club. Chester replied he was unable to obtain video images because the cameras were dirty. When the witness followed up that he would still like to see the video images, Chester was uncooperative in providing the video images. He was never able to obtain video of what happened inside the club despite directly asking Chester to allow him to view the footage. Hoffman did not consider Chester to be cooperative. He learned no other information about the battery from Chester and the barmaid.

Hoffman did learn the name of the victim and the name, address, and phone number of a witness. The description of the two individuals involved in the incident was also generated. The police reports reflect the barmaid stated she did not see the battery and that she did not see it in the establishment.

Officer Bubalo had arrived at the scene before the witness. Hoffman has no information to suggest the barmaid was told not to clean up the blood. Hoffman repeated that Chester stated he was unable to obtain the films because the cameras were dirty and admitted neither police reports state Chester refused to give Hoffman the videos. The reports do reflect Chester said he did not want to talk about the videotapes anymore.

Chester Kiercul has owned and managed the Capital Club at 4242-44 North Milwaukee Avenue for 26 years. It is a bar with a night club and was operated as such on December 13, 2009. On February 16, 2012, he had a PPA license for amusements such as a pool table and a boxing machine. Those machines require a City of Chicago Tax Stamp that expires on February 15 of each year. The machines are owned by J& R Amusement and they purchase the stickers and put them on the machines. On February 16, 2012, J & R had purchased the tax stamp for the pool table and it was displayed on a plastic part on the machine. He identified Defendant's Exhibit 2, as a picture of the City Tax License for the pool table effective through February 15, 2013. It is presently attached in the proper place on the pool table.

Kiercul stated two of the three signs on his property have been there for 26 years and one for 17 years. He has never been inspected before. He was never told to get permits for the sign.

He identified Defendant's Exhibit 3, as the application he filed with the Alderman of the 45th Ward for those signs.

Kiercul was present at the bar at about 1:00 a.m. on December 13, 2009. After he was told there was a guy lying on the floor, he reported that fact to 911. He did not tell Sergeant Hoffman that this did not happen inside the establishment. He did tell Sergeant Hoffman the guy who was hurt, Maka Goukovski, was his friend for 30 years. He believes Sergeant Hoffman was the first police officer he spoke to that morning. Hoffman asked if there were cameras inside and the witness explained yes, but some of them are very dirty. Hoffman never asked to see the videos and he never refused to give Sergeant Hoffman a copy of the video.

The witness denied ever seeing City's Exhibit 7, a Notice to Correct before but he did recall a conversation with an inspector in May of 2010. In that conversation, the inspector told him a permit was needed for a plastic sign hanging over the fence. That sign was removed the next day. The inspector did not tell him permits were needed for the three other sign and was not told he needed a permit for the sign over the sidewalk.

The witness did not know who actually hit his friend because he did not see the incident. He knew his friend went to the hospital. He did give the videos to his insurance company after Mr. Maka sued the bar.

There is no need to review the testimony of Investigator Miguel Campos from Department of Business Affairs and Consumer Protection since the licensee is not disputing the

findings of the Deputy Hearing Commissioner with respect to the signs and permits, and with respect to the lack of a current tax emblem on the pool table.

RELEVANT ORDINANCES

Chicago Municipal Code 4-60-141(b) – It is the affirmative duty of a licensee to report promptly to the police department all illegal activity reported to or observed by the licensee on or within sight of the licensed premises; to answer fully and truthfully all questions of an identified police officer who inquires or investigates concerning persons or events in and around the licensed premises; to cooperate with the police in any such inquiry or investigation including the giving of oral or written statements to the police at reasonable times and locations in the course of investigations; and to sign a complaint against any person whom the licensee observes in illegal conduct or activity within sight of the licensed premises.

The Deputy Hearing Commissioner found that the licensee failed to cooperate with the police because Kiercul ordered the bartender to mop up the blood which contaminated the crime scene. The problem with that finding is that the licensee was not charged with contaminating the crime scene. There is no evidence that any police officer instructed the licensee or the bartender to not clean up the floor. There is no evidence that cleaning up the blood impeded any criminal investigation. Everyone knew whose blood was on the floor. There was no need for this blood to prove any criminal case. The finding of the Deputy Hearing Commissioner that cleaning up the blood was a failure to cooperate under the Chicago Municipal Code is reversed.

The second reason the Deputy Hearing Commissioner ruled that the licensee failed to cooperate with the police by its refusal to turn over to the police copies of the video tape. There is a conflict in the evidence over whether there was a request for the video tapes. That conflict was resolved in favor of the City and it is not the function of this Commission to reweigh evidence. There is substantial evidence in the record as a whole to affirm the Deputy Hearing Commissioner's finding that the licensee failed to cooperate by not producing the video tape.

The Deputy Hearing Commissioner found revocation was the appropriate penalty for the two failures to cooperate. He did not indicate if this recommendation was based on the two separate failures to cooperate or if his recommendation of revocation would have remained for either one of the failures to cooperate. The failure of the Deputy Hearing Commissioner to indicate whether revocation was appropriate on either of failure to cooperate charges could be a basis for a reversal or remand by the Circuit Court. This is a case that would be remanded for clarity if this Commission had the power to remand. Since this Commission cannot remand, it must affirm the revocation or reverse outright. An outright reversal would allow the licensee to avoid any penalty for the proven failure to cooperate. A reversal of this type can be sustained only if the revocation would be unconscionable. While this case is close to that standard, there is past history of discipline in evidence sufficient to find that revocation is not unconscionable.

The decision to revoke the liquor licenses issued to Kiercul, Inc., for the premises located at 4244-48 N. Milwaukee is affirmed.

COMMISSIONER O'CONNELL'S CONCURRING OPINION

Once again, the lack of authority on the part of this Commission to either alter the penalty or remand the case to the local forces a decision amounting to the lesser of two inappropriate rulings. The State Commission, which hears all appeals outside the city of Chicago, has both of the authorities mentioned above and it is this Commissioner's hope that the legislature will extend those authorities to this Commission. I reluctantly concur with Chairman Fleming's opinion in this matter.

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: April 3, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member