LICENSE APPEAL COMMISSION
CITY OF CHICAGO

1000 Liquors, Inc. John Plewa, President Licensee/Suspension for the premises located at 1000-1012 West Belmont Avenue	)	
	)	Case No. 07 LA 12
v.	)	
Department of Business Affairs & Licensing Local Liquor Control Commission Scott V. Bruner, Director	)	

ORDER

OPINION OF COMMISSIONER KOPPEL

This matter comes on an appeal of a 21 day suspension for failure to notify the police of a fighting incident that took place in the establishment. The record shows that the Licensee has been in business for thirty years. The Hearing Commissioner found that the incident was not properly reported to the police. In addition, as part of the penalty the Hearing Commissioner included three violations that took place during the history of this establishment when considering the penalty. The Licensee's prior disciplinary history includes:

1. 3/24/94 - Gambling charge which resulted in a $500.00 voluntary fine
2. 5/24/96 - Charge of sale to minor which resulted in a $1,000.00 voluntary fine
3. 12/12/98 - Charge of sale to minor which resulted in a 10-day closing.

There also was some question regarding testimony that police cars were outside the establishment.

The law is quite clear. Violations that occurred within a three year period can be considered but they cannot be considered for a ten year period. Section 4-60-181 of the Municipal Code states that if the Licensee was disciplined for three incidents for the prior three years, then they can be considered in issuing a penalty, if the period is over three years they cannot be considered. This Licensee has not had a violation for over ten years. The 21 day penalty is too severe and the City should be reversed.

COMMISSIONER SCHNORF'S CONCURRING OPINION

This matter comes before the License Appeal Commission on the Licensee's appeal of a 21 day suspension imposed based on the Hearing Commissioner's finding that the Licensee, by and through its agents, failed to notify the police in regard to a battery committed on Rocco Rinaldi, a patron on the licensed premises, in violation of Title 4, Chapter 60, Section 141 of the Municipal Code. In assessing the 21 day closing the Hearing Commissioner took into consideration the Licensee's previous disciplinary history which consisted of:

1. A 3/2/94 charge of gambling which resulted in a voluntary fine of $500.00;
2. A 5/24/96 charge of a sale to minor which resulted in a $1,000.00 fine; and
3. A 12/12/98 charge of sale to minor which resulted in a 10 day closing

The applicable portion of the Municipal Code states that "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."

Since this is an appeal of a suspension the License Appeal Commission is limited to reviewing the facts of this case to ascertain the following:

A. Did the Mayor, as Local Liquor Control Commissioner proceed in the manner provided by law?

B. Were the findings of the Local Liquor Control Commission as set forth in the order of suspension supported by substantial evidence in light of the whole record?

C. Was the order of a 21 day suspension supported by the findings of the Local Liquor Control Commission?

There is no dispute as to the fact that the Mayor, as Local Liquor Control Commissioner proceeded in the manner provided by law.

There is a conflict in the evidence as to whether the Licensee violated the applicable section of the Municipal Code. Rocco Rinaldi testified he was struck twice on the left side of his head in his ear. The person who beat him used his hand or fist. Immediately after this happened, the assailant was escorted out of the bar by employees of the bar and a female server approached the area where Mr. Rinaldi and his group were seated and she apologized on behalf of Big City Tavern. As Mr. Rinaldi was leaving he approached an employee of the bar, not a bartender or server, and requested to speak to a manager. Mr. Rinaldi was told to call back the next morning. Mr. Rinaldi assumed the employees of the bar could see what happened. Mr. Rinaldi did not know if anyone alerted the employees of the bar that he had been hit. Mr. Rinaldi's account of his conversation with bar employees prior to leaving when he asked to speak to a manager is not specific as to whether he reported being hit by the unknown man. Mr. Rinaldi did not call the police. Mr. Rinaldi also stated that a doorman approached him and his party to assure them the situation had been taken care of.

The Licensee John Plewa testified he was not told of a disturbance that happened on December 29, 2005, and first knew of possible criminal activity on his premises when notified by the City a few months later. He related disturbances such as arguments between patrons are not reported to the police but a fight would be reported to the police.

Richard Federer was working as a doorman and bouncer at the licensed premises on December 29, 2005. He noticed a commotion between a man on his own and a group of people at a table. He decided that the man needed to leave since he was causing a commotion. He never saw that person hit anyone. The person escorted out did not admit to hitting anyone and no one at the table reported he had hit anyone. The person who may have been hit never reported that he had been hit to Mr. Federer. He never saw any physical altercation between the people at the table and the man standing alone. The practice at Big City Tavern is to call the police if there is a physical altercation. If no physical altercation is noted, you resolve it by asking someone to leave.

Mr. Federer did further testify that Brandon, the other bouncer, told him somebody had been hit and that he talked to the cops. The cops said not to worry about it because there was no person at the bar involved in the incident. The person allegedly hit had left the bar with Brandon and the person who hit him was gone from the premises.

It is not the function of this Commission to reweigh the evidence and to reverse findings of fact made by the Hearing Commissioner if there is substantial evidence supporting those

findings. The evidentiary standard is not high and any evidence supporting those findings is sufficient for these findings to stand. While it may not be overwhelming evidence there is enough evidence that the Licensee, through its agents, were aware of a battery on a patron and that this criminal activity was not reported to the police to meet the substantial evidence standard of proof. While this Commissioner may have made different factual findings, that is not his role on these proceedings.

The final issue to be determined is whether a 21 day suspension was supported by the findings of the Local Liquor Control Commission. This Commissioner says no.

The Local Liquor Control Commissioner has broad discretion in determining what is a proper penalty for licensees that violate the Municipal Code but that discretion does have boundaries. The penalty that is imposed cannot be arbitrary, capricious or unreasonable. If it is, as in this case, it must be reversed. Since this Commission does not have the power to modify, the 21 day suspension must be reversed outright.

I must address the fact that it was proper for the Hearing Commissioner to take into consideration the past history of the Licensee. The rules of the Department of Business Affairs and Licensing as well as the court in the ***Childers*** case allow such consideration. That consideration should be done with an eye on whether the type of past violation is similar to the violation presently alleged. If the type of violation alleged in a new case is similar to the type of violation in the past, a suspension of a greater length of time that was issued for those earlier

violations is proper. Revocation may also be proper in such instances.

The Municipal Code requires a Licensee to report all incidents of criminal activity to the police. There was sufficient evidence to prove that a battery was committed and the Licensee did not report the battery to the police. However the type of battery involved in this matter must be considered minor. The fact is that the victim of this battery did not report it to the police and apparently none of his companions reported it to the police. There was no history of any previous failure to notify the police of illegal activity. In fact the last discipline was in 1998, over seven years before this incident.

Under the circumstances, the 21 day suspension was so arbitrary, capricious and unreasonable that it cannot stand and should be reversed.

OPINION OF CHAIRMAN FLEMING IN DISSENT

After a hearing before the Local Liquor Control Commission, the Licensee received a 21 day suspension based on the finding of the Hearing Commissioner that the Licensee violated Title 4, Chapter 60, Section 141 of the Municipal Code of Chicago in that on December 29, 2005 he failed to notify the police in regard to a battery committed on Rocco Rinaldi, a patron on the licensed premises. In assessing a 21 day suspension for this offense, the Hearing Commissioner took into consideration the past disciplinary history of the Licensee: that history consisted of a $500.00 fine for gambling on March 2, 1994; a $1,000.00 fine for a sale to minor on May 24, 1996; and a 10 day closing on December 12, 1998, for a sale to minor.

The relevant portion of the Municipal Code states that "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." There is conflict in the evidence concerning whether the Licensee knew a battery had been committed and if that battery had been reported to the police.

It seems clear that there was a disturbance on the premises and that the unknown patron struck Mr. Rinaldi. That type of physical contact would be a battery which is an illegal activity. The issue is whether the agents of the Licensee were aware that a battery took place. Mr. Rinaldi assumed that the employees saw the battery. Mr. Rinaldi did not know if anyone else might have told the bar's employees about the battery. Mr. Rinaldi did not directly testify that he reported the battery to the employees when he asked for a manager: there is evidence, about hearsay, that Richard Eric Federer, a bouncer, was told by Brandon another bouncer, that somebody had been hit and that Brandon talked to the cops. While other hearsay testimony had been objected to and not allowed into the record, there was no objection to this testimony.

The standard review on this type of factual dispute is whether the findings of the Local Liquor Control Commission as set forth on the Order of Suspension is supported by substantial evidence in light of the record as a whole. The amount of evidence needed to the substantial evidence standard is minimal. Since there is some evidence that the Licensee through its agents were aware a battery was committed, that is sufficient to sustain the Hearing Commissioner's finding on that point.

The second prong of the violation was whether the Licensee reported this battery to the police. There was no evidence of a phone call to 911 or 311 from the Licensee. Richard Eric Federer did testify that in the same conversation he had with Brandon in which Brandon stated he had told the police about the battery. In turn the police decided to do nothing since both parties to the fight were no longer in the bar. The Hearing Commissioner states that less weight was given to this portion of Mr. Federer's testimony but she did explain why less weight was given. It is not the function of this Commission to reweigh evidence on contested issues of fact. The Hearing Commissioner had the opportunity to see Mr. Federer testify and to view his demeanor and weigh his credibility. The substantial evidence standard on the finding that the incident was not reported to the police has been met.

The final issue to be reviewed is the propriety of the 21 day suspension. I must primarily again express my specific dissent from Commissioner Koppel's position that the previous disciplinary history of the Licensee should not have been considered by the Local Liquor Control Commissioner when the penalty was imposed. The ***Childers*** case and the rules of the Department of Business Affairs and Licensing specifically allow this evidence. The ancillary issue of how much weight should be given to a Licensee's past history should be considered on a case by case basis.

Broad discretion is given to the Local Liquor Control Commissioner in determining a proper penalty when a licensee violates the Municipal Code. That penalty cannot be reversed unless it is arbitrary, capricious, unreasonable or unrelated to the regulation of the liquor

establishments. While this Commissioner would not have imposed such a suspension, that fact alone does not make the suspension arbitrary. There was a finding that this Licensee violated the Municipal Code by failing to report the battery to the police. There was previous discipline including a 10 day closing. With these facts as a basis for the 21 day suspension, it was unreasonable, arbitrary, capricious and was related to regulation of liquor establishments. I would affirm the 21 day suspension.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for TWENTY-ONE (21) days is hereby 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: January 11, 2008

Irving J. Koppel
Commissioner

Stephen B. Schnorf
Commissioner

Dennis M. Fleming
Chairman – IN DISSENT