

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Green Dolphin, Inc.)
Sam Menetti, President)
Licensee/Revocation)
for the premises located at)
2200 North Ashland Avenue) Case No. 11 LA 63
)
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 Local Liquor Control Commission gave an Amended Notice of Hearing to the Licensee that a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other licenses issued for the premises located at 2200 N. Ashland. This hearing was brought pursuant to 235 ILCS 5/7-5 and 4-4-280 of the Municipal Code of Chicago.

The Amended Notice of Hearing alleged eight charges. Charges one through four dealt with issues of occupancy and a proper occupancy card. Since the Deputy Hearing Commissioner ruled that the City had not met its burden on these charges and since the City has not appealed this findings there is no reason to address those matters.

Charges five through eight alleged the following:

5. That since 2004, the Licensee failed to report a change in information required on the liquor license application within ten days after the change took effect: to wit, expansion of premises, in violation of Title 4, Chapter 60, Section 040(k) of the Municipal Code of Chicago.
6. That since 2004, the Licensee corporation changed the premises, place or location, without obtaining an expanded liquor license, in violation of Title 4, Chapter 60, Section 110 of the Municipal Code of Chicago.
7. That since 2004, the Licensee sold, offered for sale, kept for sale or exposed for sale alcoholic liquor at retail without first having obtained a city retailer's license to sell liquor in an expanded portion of the premises, in violation of Title 4, Chapter 60, Section 020 of the Municipal Code of Chicago.
8. That since 2004, the Licensee by and through its agent, knowingly included false or incomplete information on license renewals, in violation of Title 4, Chapter 4, Section 050 of the Municipal Code of Chicago.

The Deputy Hearing Commissioner found the City sustained its burden of proof and found revocation to be the appropriate penalty on each of these charges. The licensee filed a timely Notice of Appeal with this Commission.

Relevant Ordinances:

In order to help one reading this opinion, the relevant portions of the referenced ordinances will be set out.

Section 4-60-040(k) – If a change in any information required in subsection (b) of this section occurs at any time during a license period, the licensee shall file a statement, executed in the same manner as an application, indicating the nature and effective date of charge. The supplemental information shall be filed within ten days after the change takes effect. One of the items which must be disclosed under subsection (b) is the location and description of the premises or place of business which is operated under such license.

Section 4-60-110(c) – If the licensee expands the licensed establishment, the licensee shall, prior to occupying or using the expanded for any activity regulated under this chapter, file an expanded establishment amended liquor license application with the department of business affairs and consumer protection. It shall be unlawful for a licensee to conduct any activity regulated under this chapter in any expanded space at a licensed establishment without first having obtained an expanded establishment amended liquor license.

Section 4-60-020(a) – No person shall sell at retail any alcoholic liquor without first having obtained a city retailer’s license for each premises where the retailer is located to sell the same.

Section 4-4-050(a) – It shall be grounds for revocation of any license issued under the provisions of this Code whenever the license applicant knowingly includes false or incomplete information in the license application.

As this is an appeal of a revocation the scope of review of this Commission as set out by state statute is:

- 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 the light of the whole record.

A synopsis of the evidence is helpful in resolving the issue of whether there is substantial evidence in the record as a whole to affirm the decision.

Althea Cotton is Assistant Commissioner with the Department of Business Affairs and Consumer Protection. Her office keeps records with respect to city business licenses. The records for 2200 N. Ashland shows that address has issued to it a tavern license, a patio license, a late hour license, and a public place of amusement license. The department also maintains copies of renewal forms. City’s Exhibit 7, in evidence, are the renewal forms of this licensee

from 2003 through 2011. All these forms are signed and all the forms contain a paragraph that the licensee needs to confirm there have been no material changes to the licensed premises since the issuance of the current license. At no time did Green Dolphin file for an expansion of liquor license application. The outdoor patio license is what used to be called a beer garden. Green Dolphin has had an outdoor patio license as far back as 1997.

Kenneth Buehring is a conservation inspector who does general building inspections for the strategic task force. He is familiar with the licensee's location. He identified City's Exhibit 5, in evidence, as a permit issued on February 14, 1995, for interior alteration to restaurant/bar addition per plans. City's Exhibit 6, in evidence, is a permit issued on May 21, 2004, to erect a new frame addition, 1 story per plans. After comparing the floor plans, Buehring noticed the 2004 plans show a storage area, a bar area, and a tented rear area not on the 1995 plan. This is the way the space looked at the time of his investigation in November of 2010. Both the new bar area and the tented area were set up for liquor service.

Sam Menetti is president of Green Dolphin, Inc. which he owns with his brother. The premises opened up in 1994 or 1995. He agreed he applied for the 2004 permit, City's Exhibit 6. The permit was for the storage area, the bar area, and the rear seated area which is covered by a tent. He has been using the rear space as a beer garden since he opened in 1995. He later built the tent after he received the permit in 2004. Menetti agreed the areas marked on City's Exhibit 6, were the things he encompassed in the permit applied for in 2004. He also admitted he has used these areas for the sale of liquor since 2009. He had asked his architect to get a permit for

the tent to make the beer garden/patio smaller. His architect came up with a hard construction permit and confusion started.

When Green Dolphin opened it had a tavern license, a beer garden license, and a “music and dance” license. The parameter of the beer garden in 1995 included what is now called the “green room.” The area where the “green room” is located was always part of the beer garden. The permit in 2009 was to downsize the beer garden. To do so, he enclosed the beer garden and the “green room.” He never expanded the area of the beer garden. He would willingly file an expansion of use application. In his mind, there has not been a material change at the licensed premises.

Based on the evidence in the record there is substantial evidence in the record as a whole to affirm the findings of the Deputy Hearing Commissioner in Counts five through eight.

The next issue is whether revocation is the proper disposition in this case. This Commission does not have the authority to lower a revocation to a suspension or to remand the matter to the Local Liquor Control Commission. If it did have that authority, this is not a case which would warrant such action.

The revocation of the liquor licenses for Green Dolphin, Inc., at 2200 North Ashland 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: June 1, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member