

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Jose Rodriguez)
d/b/a Humboldt Liquors)
Licensee/Revocation)
for the premises located at) Case No. 13 LA 43
3017 West Armitage Avenue)
)
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

Respondent received a notice that a hearing was to be held pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued to him for the premises located at 3017 W. Armitage Avenue, Chicago, Illinois. There were originally five charges but since the City has withdrawn Charges 3 and 5, and the Deputy Hearing Commissioner found the City failed to meet its burden on Charge 2, there are only two charges remaining relevant to this appeal. These are:

1. That a change in the information required on the Municipal Code of Chicago 4-60-040(b) occurred to-wit: the residence address of the sole proprietor, and the licensee failed to notify by writing the Department of business Affairs and Consumer Protection of the City of Chicago of a change within ten days of their effective date of such change, as required by Municipal Code of Chicago 4-60-040(k).
4. That the licensee, Jose Rodriguez, is not a beneficial owner of the licensed premises in violation of 4-60-030(r). (This count was amended orally at the hearing but the amendment was not made on the copy of the charges in the record)

This case proceeded to hearing before Deputy Hearing Commissioner Robert Emmett Nolan. He entered Findings of Fact that the respondent failed to notify the City of a change in his address within ten days of the effective date as alleged in Count 1, and that the Licensee, Jose Rodriguez, is no longer the beneficial owner of the business licensed to him as alleged in Count 4. The Deputy Hearing Commissioner made no finding as to the appropriate punishment for the violation of Charge 1. He did that since Jose Rodriguez is no longer the owner of the business, the license should be revoked. The respondent filed a timely appeal with this Commission.

A synopsis of the relevant portions of the record will assist in an understanding of this decision. Since the Deputy Hearing Commissioner ruled in favor of the respondent on Count 2 which alleged the licensee allowed the business to be conducted by a manager, Wilson Torres, who did not have the qualifications to obtain a license, evidence in the record with respect to Wilson Torres will be reviewed in this decision only as it would impact the ruling that the respondent is not the beneficial owner of the business.

Craig Golucki has been a Chicago Police Officer for 21 years and has been assigned to the licensing unit of the Vice Control Division for three years. In that position, he investigates businesses in the City of Chicago with licenses. He was assigned to do an investigation into Humboldt Liquors at 3017 West Armitage. He researched the premises by reviewing the information on the IRIS system which is the official record from the Department of Business Affairs and Consumer Protection. The ownership structure for this license is a sole proprietorship in the name of Jose Rodriguez. City's Exhibit 3, in evidence without objection, is a printout from IRIS showing a Jose Rodriguez with an address of 6211 West Addison as the

owner. City's Exhibit 4, in evidence, was identified as a printout from IRIS showing Hector Rodriguez and William Sepulveda as managers of the licensed premises.

On February 14, 2013, Golucki and his partner Officer Lugo went to 3017 West Armitage to conduct a subterfuge investigation. They were dressed in plain clothes; Golucki wore a police vice jacket and had his police ID around his neck. He spoke to the bartender, a Ms. Gonzalez, and asked her to produce the business license which she did. When told he wanted to speak with the owner, Ms. Gonzalez said she would call a person name Kato who she knew as the owner. She made a call and gave him the phone. Kato whose real name was Wilson Torres said he was not the owner just a manager, but that he could get a message to the owner. Golucki then gave the bartender documents in evidence as City's Exhibit 6, which consist of requests for the licensee to produce documents.

On February 22, 2013, Golucki received a phone call from Hector Rodriguez who identified himself as the manager of Humboldt Liquors. He stated he is the son of Jose Rodriguez and he takes care of the business six months of the year when his father is in Puerto Rico. He reported he received the request for documents and was working on obtaining those documents. Golucki later did receive a response to the document request from Hector Rodriguez. The records requested were substantially complete. As part of that response, Golucki received a federal tax return for 2010 in the names of Jose and Dominga Rodriguez with an address of 3011 West Armitage. This is City's Exhibit 8, which was allowed in evidence. City's Exhibit 9, in evidence, are documents provided by Hector Rodriguez concerning the bank accounts affiliated with Humboldt Liquors at 3017 West Armitage. These documents show the

authorized signatures on the Humboldt Liquors account are Manish Patel, Wilson Torres, and Hector Rodriguez. As part of his investigation, Golucki learned that Manish Patel was the bookkeeper.

Golucki never spoke with Mr. Torres personally and had only one phone conversation. He did not see Mr. Torres at the bar. It was Hector Rodriguez who produced all the records. Hector Rodriguez is listed as a manager of the bar in the City's IRIS system. Golucki reviewed the 2010 Income Tax Return for Jose and Dominga Rodriguez. Schedule C of that return lists Jose Rodriguez as the proprietor of Humboldt Liquors at 3017 W. Armitage. Golucki had two conversations with Hector Rodriguez. These were about the documents which were produced by Hector Rodriguez. Wilson Torres was not discussed in these calls. Golucki never looked at the mailboxes to determine who the tenants were at 3017 W. Armitage and never went to 6211 W. Addison.

The City rested its case.

Hector Rodriguez is Jose Rodriguez's son. His father has operated a business at 3017 W. Armitage for 40 plus years as a sole proprietorship. Hector is listed as a manager, as is a Juan Sepulveda. Hector applied for the manager's position with Business Affairs, was fingerprinted, and certified. His father has lived in one of the apartments connected to the building at 3009 W. Armitage since 2000. His parents moved from 6211 West Addison in 2000.

Hector Rodriguez stated his father spends half his time in Chicago and the other half in Puerto Rico. His father is not a signatory on the bank account but Hector and Manish Patel are signatories. This account was opened in late 2011 when his father was out of town.

Wilson Torres was a signatory on the account but was removed after it was learned that Torres had a felony record. The bills from Commonwealth Edison and People's Gas are addressed to Jose Rodriguez at the bar at 3017 West Armitage. Hector said his father is 72 years old and has no employment other than the bar. His income is from the bar business and from his rental income.

The testimony from Hector Rodriguez was that his father moved from 6211 West Addison to 3009 W. Armitage in 2000. The documents in evidence from the City's IRIS system show that the address in the City's records for Jose Rodriguez was 6211 W. Addison. This change of address was not reported in writing to the Department of Business Affairs and Consumer Protection of the City of Chicago within ten days of the effective date of the change of address as required by the Municipal Code of Chicago, 4-60-040(k). The decision of the Deputy Hearing Commissioner on this charge is affirmed. Since the Deputy Hearing Commissioner failed to state his recommendation for the ordinance violation, this Commission cannot determine if his finding supports any discipline.

Charge 5, as amended in the transcript but not on the Notice of Hearing, alleged and the Deputy Hearing Commissioner found that Jose Rodriguez is no longer the beneficial owner of the licensed business in violation of the Municipal Code of Chicago 4-60-030(r). That section of

the Municipal Code prohibits the issuance of a liquor license to “a person who is not a beneficial owner of the business to be operated by the licensee.” It must be noted that the Municipal Code of Chicago does not define the term “beneficial owner.” The State Liquor Control Act does give a definition of beneficial owner.

This Commission was presented with the case of Haggerty v. License Appeal Commission 390 N.E.2d 89, as a reference point for a definition of beneficial owner. In Haggerty it was found that Larry Haggerty, the licensee, was not the sole beneficial owner but held the license as a subterfuge for his brother Tommie Haggerty. The evidence presented at the hearing before the Local Liquor Control Commission was that Tommy Haggerty was ineligible for a liquor license because he had a conviction for gambling. A bank account was opened by Tommie Haggerty posing as Larry. Larry and Tommie both testified it was Tommie who opened the account. The evidence was that Tommie signed most of the checks using Larry’s name although Larry did sign a few. The reason given for this was that Larry was for all purposes illiterate. The Appellate Court found this evidence and entitled the Commission to conclude Tommie Haggerty was the “real operator and beneficial owner of the business, merely using his brother’s name because he could not obtain a license.”

In addition to that evidence, the Appellate Court noted in the Haggerty case that there was overwhelming evidence that Tommie Haggerty acted as the manager or the agent of the licensee in conducting the business in violation of the State Liquor Control Act.

The Appellate Court in Haggerty seems to make the term “beneficial owner” synonymous with the issue of a subterfuge. The fact that the liquor license was in Larry’s name was a subterfuge for the fact that Tommie was the real owner. Since Tommie was ineligible for a license, revocation was the proper disposition.

The Deputy Hearing Commissioner in this case made a specific finding that Jose Rodriguez was no longer the beneficial owner of the business licensed to him. While the Deputy Hearing Commissioner did not state any facts in his finding to clarify that decision, a review of the transcript reflects that the basis for the finding arises from the evidence that Jose Rodriguez was not a signatory on the business account. On several occasions, the Commissioner noted that Jose Rodriguez could not write a check on the business account.

The other evidence in this case is that Hector Rodriguez has been approved by the Local Liquor Control Commission to be a manager. In his testimony, Hector Rodriguez testified that his father appointed him as the manager and that he did the application, was fingerprinted, and did the certification. The records of the City showed Hector Rodriguez was an approved manager of the premises. There was no evidence presented by the City to establish what are the powers and duties an approved manager can exercise on behalf of a licensee. There was no evidence presented by the City as what duties and powers cannot be executed by an approved manager. There was no evidence presented by the City with respect to the authority of a licensee to revoke or terminate an approved manager. The bills in the record for the business are in the name of Jose Rodriguez and the 2010 Tax Return filed by Jose Rodriguez reports income from the tavern business.

The standard for this Commission in this case is whether the findings are supported by substantial evidence in light of the whole record. This Commission is aware that the amount of proof needed to sustain the finding of the Local Liquor Control Commissioner is low and that any evidence that suggests that decision can be the basis to affirm the Local Liquor Control Commission. While the amount of proof needed to meet the substantial evidence burden is low, the fact remains in that there must be some evidence that Jose Rodriguez is no longer the beneficial owner of Humboldt Liquors.

Unlike the Haggerty case, the managers of the licensee filled out the appropriate forms and were approved by the City to manage the business on Jose Rodriguez. The evidence is that Hector Rodriguez was appointed a manager by Jose Rodriguez. In this case, no one denied or tried to hide the fact Hector managed the business for his father who is out of state for six months to a year. The evidence on which the Deputy Hearing Commissioner seems to have made his finding is that Jose Rodriguez is not an authorized signor on the business account for Humboldt Liquors. This was explained by Hector Rodriguez as being due to the fact that his father was not in Chicago when this account was opened. That fact is Jose could not sign checks but it is not substantial evidence to support the finding that Jose Rodriguez is no longer the beneficial owner of the business.

The revocation of the liquor license issued to Jose Rodriguez for the premises located at 3017 West Armitage is reversed. Since the Deputy Hearing Commissioner failed to state a recommendation for discipline on Charge 1, it is impossible for this Commission to determine

what discipline, if any, is appropriate for Charge 1. Since this Commission cannot remand, this Commission finds that the charges on Count 1 are affirmed with no discipline imposed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order revoking the liquor license of the appellant is hereby REVERSED.

Pursuant to Section 54 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 20, 2014

Dennis M. Fleming
Chairman

Donald O'Connell
Member