

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Green Dolphin, Inc. )  
Sam Menetti, President )  
Licensee/Suspension-Fine )  
for the premises located at )  
2200 North Ashland Avenue ) Case No. 09 LA 29  
)  
v. )  
)  
Local Liquor Control Commission )  
Department of Business Affairs and Consumer Protection )  
Norma I. Reyes, Commissioner )  
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The Licensee received a Notice of Hearing that was to be held in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other City of Chicago licenses for the premises located at 2200 N. Ashland. The charges were:

1. That on February 9, 2008, the licensee, by and through its agent, allowed the number of persons in the licensed establishment to exceed the occupancy limit certified by the building commissioner in violation of Section 13-36-020, Municipal Code of Chicago.
2. That on February 9, 2008, the licensee, by and through its agent, placed an encumbrance before or in an exit way; to wit, blocking of emergency exits, in violation of Section 15-4-880, Municipal Code of Chicago.
3. That on April 27, 2008, the licensee, by and through its agent, knowingly or intentionally committed a battery on the licensed premises, in that without legal justification he caused bodily harm, upon Nelly Gonzalez, in violation of 720 ILCS 5/12-3(a)(1).

The matter proceeded to hearing on November 24, 2008, December 8, 2008, and January

12, 2009. At the conclusion of the hearing Deputy Hearing Commissioner John F. Lyke, Jr. found in favor of the City on counts 1 and 3 and against the City on count 2. He further found that the appropriate discipline would be a 3-day suspension and a \$1,000.00 fine. These Findings of Fact and recommendations were adopted by Commissioner Norma Reyes. The Licensee filed a timely notice of appeal.

Section 13-36-020 of the Municipal Code of the City of Chicago deals with occupancy of public rooms. It states:

The building commissioner shall determine the number of persons which every building or room used for public purposes may accommodate according to the provisions of Chapter 13-56 of this code, and shall certify the same to the bureau of fire prevention and the city clerk. No more than the number so certified shall be allowed in such room at any one time, in any building used for a hospital, business unit, theater, open air assembly unit, church or school.

720 ILCS 5-12-3 (a)(1) states a person commits battery if he intentionally or knowingly without legal justification and by any means causes bodily harm to an individual.

Since this case deals with an appeal of a suspension and fine the jurisdiction of this Commission is limited to these 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.

With respect to this charge of exceeding the occupancy limit the City called Officer Demetrios Xentaras and Fire Captain Michael Norris. Officer Xentaras was detailed to the 14<sup>th</sup>

District on February 9, 2008, and was assigned to the area of the licensee to investigate a complaint about traffic. After he cleared up the traffic he entered the Green Dolphin. He entered a room that seemed crowded and located the occupancy card for the room that listed occupancy at 204. He did a head count and when the count reached 200 there were still other people in the room. The fire department was called. After the fire officials did their count he had the premises closed down. There were other rooms in the establishment but there were no patrons in those rooms and the rooms were not occupied. Officer Xentaras did his count at the top of a stairway by himself without a mechanical clicker. He did not direct the people to file out in a single file as he did the count. He did not know the total capacity of its interior of the licensed premises. There were no obstructions barring people from entering the other rooms but there were no people in them. Officer Xentaras did not observe any employees or patrons in those other rooms and everybody he observed was in the west room of the Green Dolphin or the main entry way. He estimated there were at least 100 to 150 people over the 200 he counted.

Michael Norris was a Captain on the Chicago Fire Department and was assigned to weekend duty on February 9, 2008. Pursuant to that assignment he responded to an overcrowding issue at the Green Dolphin at that date at about 12:30 a.m. He spoke with a Louie Menetti who identified himself as the manager. Menetti told Norris the counters the Green Dolphin employees had at the door gave a count of 460 in the club which had a total posted occupancy of 358. While the club did not seem crowded to Norris, it was decided to shut the club down since it was one hundred people over occupancy. As the people exited two of the firefighters did their own count on Fire Department counters which had been cleared. The

results of that count was 490. Management was very cooperative and there were no issues. Norris on cross stated the total occupancy of 358 were the rooms he added up and he did not know the total interior capacity. There were other rooms available to patrons and it would not have been a problem if other patrons had been directed to those rooms. Fire Department procedures require the use of counters in an overcapacity investigation and one reason is for reliability. Firefighter Frye had a count of 312 and Firefighter Jones had a count of 178 for a total of 490. Captain Norris originally testified the firefighters were at the same location counting customers exiting the premises but later stated he could not recall where they were standing.

In its defense to the overcrowding charge the licensee called Salvatore Sproviero who is the General Manager of the Green Dolphin. The Deputy Hearing Commissioner sustained an objection to his testifying. The licensee was allowed to make an offer of proof that Sam Sproviero would testify.

- a. He is an employee of the Green Dolphin
- b. He holds the position of General Manager for eight years;
- c. He sold a restaurant to Officer Consentino's family;
- d. That restaurant failed;
- e. As a result of that failure Officer Consentino had a visceral animus towards Sam Sproviero.
- f. On February 9, 2008, Officer Consentino stormed into the establishment, using vulgar language; demanding to know where the owner was, believing that it was Sam Sproviero;
- g. Officer Consentino was tacitly directing the investigation that night in an

unprofessional manner which affected the reliability of the investigation and the count of patrons in the establishment.

Louie Menetti has been a supervisor at the Green Dolphin for ten years. He was working there on February 9, 2008, when Chicago Police and Fire Department officials came to the premises. A Police Officer named Michael Consentino asked to see the occupancy placards for all the rooms. Menetti went to each of the rooms and got the placards for Officer Consentino. Menetti knows their overall interior capacity for the Green Dolphin was 558. There is 204 capacity for the club, 104 for the patio, 50 for the lounge, 50 for the green room and 150 for the dining room. Captain Norris from the Chicago Fire Department was present on February 9, 2008, and he did not give the Green Dolphin employees an opportunity to move people from the west room to other rooms. Menetti would have done so if given the chance. Menetti denied all patrons were in the west room and stated patrons were scattered throughout the establishment.

Ken Stephens was with the Chicago Fire Department for twenty-eight years and nine months and was a Captain almost four years. He retired from the Fire Department on November 16, 2008. His last assignment was as a supervisor in the Fire Prevention Bureau on the North Side. He conducted between 1 and 200 overcapacity investigations. When he was working these overcapacity investigations there were guidelines. If you feel there is an overcapacity, you request the placards and add them up to reach a total number. The people are then counted with calibrated counters by fire personnel at the exits. Captain Stephens stated he was not paid for his testimony. He also admitted the Fire Department guidelines for closings for overcapacity allowed for subjective decisions based on assessments of the situation as they are occurring. He did read a narrative of this incident written by Captain Norris but is not aware of the full facts

with regards to 2200 N. Ashland on February 9, 2008. His recollection was that the total occupancy was 558 and there was less than 558 on the premises. If he was faced with a situation where there was an overcapacity in one room but the capacity was less than the allowable total capacity he would have removed some the patrons to a room with lesser capacity. Stephens explained it is the building Department that requires occupancy placards for each individual room. He did acknowledge such occupancy lists the number of people certified by the Building Department as safely occupying that space and if the Fire Department finds more patrons in a room than what is on the placard, that room is technically overcrowded.

With respect to the battery by an agent charge the City called Nelly Gonzalez and the licensee called Sabrina Torres. Nelly Gonzalez arrived at the Green Dolphin about 11:00 p.m. on April 27, 2008. She and a friend waited for a half hour to get into the establishment. While waiting she saw employees who were bouncers wearing all black. They were keeping security. Once inside she ordered an Absolute and Red Bull. A girl hit her on the face with a Heineken bottle and they fell to the floor while fighting. Each had a grip on the other and a bouncer tried to separate them by stomping on her arm. He stomped about six times. They were finally separated and two other bouncers threw her outside. Gonzalez had a gash on her face from the bottle and she was bleeding a lot. She told the bouncers her arm was hurting and they kept yelling at her that she was drunk. She had a broken arm. She knows the person who stomped on her arm was a bouncer because the security people outside were dressed in all black and the people inside patting people down were dressed in all black. She had a clear view of the person when she was lying on the ground and he was a bouncer. Gonzalez admitted she is suing the

Green Dolphin for money based on this battery. The person she was fighting was Sabrina Torres, a former friend. Ms. Torres just came up and hit her on the head with a beer bottle for no reason. Gonzalez refused treatment from an ambulance but went for treatment at the University of Chicago at 57<sup>th</sup> and Maryland because her insurance was on record at that hospital.

Sabrina Torres was called by the licensee. She saw Nelly Gonzalez at the Green Dolphin on April 27, 2008. Gonzalez is the ex-girlfriend of Torres' boyfriend. As she passed by her, Gonzalez hit her a couple of times. Torres then hit Gonzalez. She did not observe any Green Dolphin security stomping on Ms. Gonzalez's arm. She had one drink before the altercation. Torres denied hitting Gonzalez with a Heineken bottle but admitted she hit her with her hand. Both fell to the ground during the fight because they were wearing heels. They were fairly close on the ground and security guards grabbed both of them but she did not see security stomp on Gonzalez's arm.

There was no argument made that the local liquor control commissioner did not proceed in the manner provided by law.

The next issue to be considered is whether the findings are supported by substantial evidence in light of the whole record. The substantial evidence standard requires only that the City present some evidence to support the findings of the Deputy Hearing Commissioner. This Commissioner is fully aware of that standard and realizes that it is not his role to substitute his judgement for that of the Deputy Hearing Commissioner. While he did not reference credibility

in his findings of fact the Deputy Hearing Commissioner was in the position to observe the demeanor of the witnesses as they testified and to determine which witness was to be believed.

With respect to the charge of exceeding the occupancy limit, in addition to the estimate of the crowd given by Officer Xentaras, there was evidence of the counts of the firefighters of 312 and 178 for a total of 490 people and a statement from Mr. Menetti to Captain Norris that the count from the Green Dolphin employees was 460. It should be noted that while a previous objection to testimony on this count was sustained, the objection on the specific testimony was overruled. While it would have been preferable to have testimony better explaining how the firefighters did their counts and came to two different totals, the evidence was allowed in the record without that explanation and without objection. This evidence combined with testimony that people inside the Green Dolphin were in a room with an occupancy of 204 more than meets the substantial evidence standard. The fact that total occupancy of the establishment was 558 is immaterial and irrelevant to the violation. The ordinance refers to a room used for public purpose. It is also not relevant that another manner of dealing with over occupancy would have been to divert some of the crowd to the empty rooms. It appears to have been a discretionary call for Captain Norris and there is insufficient evidence that his decision to close the Green Dolphin was an abuse of discretion.

The evidence as to the battery by an agent is completely contradicting. Ms. Torres and Ms. Gonzalez disagree on who started the fight and if a bouncer stomped on the arm of Ms.



Gonzalez. There was no evidence from any of the bouncers denying any such contact. While this Commissioner may very well have ruled differently, again that is not the standard to be dealt with as to this issue. The Deputy Hearing Commissioner heard the evidence and saw the witnesses testify and found the City met its burden. There is substantial evidence in the record to support that decision.

The order of a three day suspension and a \$1,000.00 fine is supported by the findings of the Deputy Hearing Commissioner.

The decision of the Local Liquor Control Commissioner is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order suspending the liquor license of the Appellant for THREE (3) days is AFFIRMED. FURTHER IT IS ORDERED that

the order to Fine the Appellant the sum of \$1,000.00 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: August 27, 2009

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member