

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Rendezvous, Inc.)
Javier Navarro, President)
Licensee/Revocation)
for the premises located at)
3500 West 47th Street) Case No. 12 LA 21
)
)
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

Rendezvous, Inc. received notice that pursuant to Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago, a hearing was to 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 3500 West 47th Street, Chicago, Illinois. The charges at this hearing were that on March 31, 2011, April 13, 2011, and June 4, 2011, the licensee:

1. By and through its agent, established, operated, or permitted the establishment or operation of an adult use, to wit: an adult entertainment cabaret as defined in the Municipal Code of Chicago – 16-16-30, without first having properly registered and received notification of approved registration from the Department of Business Affairs and Consumer Protection, in violation of Municipal Code of Chicago – 16-16-060 and 16-16-070.
2. Failed to display a copy of the adult use registration form approved by the Department of Business Affairs and Consumer Protection in a conspicuous place on the premises, in violation of the Municipal Code of Chicago – 16-16-080.

3. By and through its agent, conducted an activity requiring adult use registration and certification in violation of Municipal Code of Chicago – 4-156-650(c).
4. By and through its agent, conducted an amusement for gain or profit on the licensed premises, to wit: charging patrons to watch female dancers perform, that was not set forth in its application for a Public Place of Amusement license, in violation of Municipal Code of Chicago – 4-156-310.

A hearing on these charges was held on February 14 and March 27, 2012, before Deputy Hearing Commissioner Robert Emmett Nolan. Assistant Corporation Counsel Maggie Shiels represented the City of Chicago and attorney Barry Holt represented the licensee.

Subsequent to the conclusion of the hearing, Deputy Hearing Commissioner Nolan entered Findings of Fact that the City had met its burden of proof on all twelve charges. He further found that based on the totality of the circumstances, including a previous 14-day suspension for public indecency, that the appropriate punishment was revocation. Gregory Steadman, in his position as the Local Liquor Control Commissioner of the City of Chicago, adopted these findings. Since this was a second suspension/revocation within one year the revocation became effective immediately. The licensee filed a timely appeal with this Commission.

Since this is an appeal of a revocation review by this Commission is limited to the following questions:

- (a) Whether the local liquor control commissioner has proceeded in a 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 MUNICIPAL CODE SECTIONS:

16-16-060 - The owner of a building or premises, his agent for the purpose of managing, controlling or collecting rents, or any other person managing or controlling a building or premises, any part of which contains an adult use shall register with the department of business affairs and consumer protection of the City of Chicago the following information:

- a. The address of the premises;
- b. The name of the owner of the premises and names of the beneficial owners if the property is in a land trust;
- c. The address of the owner and the beneficial owners;
- d. The name of the business or the establishment subject to the provisions of Section 16-16-040;
- e. The name(s) of the owner, beneficial owner, or the major stockholders of the business or the establishment subject to the provisions of Section 16-16-040;
- f. The addresses of those persons named in paragraph e;
- g. The date of initiation of adult use;
- h. The nature of the adult use;
- i. If the premises are leased, a copy of the said lease shall be attached.

16-16-070 - It is unlawful for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate an adult use without first having properly registered and received certification of approved registration.

16-16-080 - The owner, manager or agent of a registered adult use shall display a copy of the registration form approved by the department of business affairs and consumer protection in a conspicuous place on the premises.

16-16-030 - “Adult entertainment cabaret” means a public or private establishment which... (iii) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or entertainers who engage in, or engage in explicit simulation of “specified sexual activities.”

“Specified sexual activities” means and is defined as:

- 1. Human genitals in a state of sexual stimulation or arousal;
- 2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

16-16-040 - Regulated uses include all adult uses which include, but are not limited to the following...

- Adult entertainment cabaret

4-156-310 - The application shall set forth the location and description of the property used or intended for use as a public place of amusement, indicating the seating capacity and the floor area or ground area of the place, the type of amusements which the applicant intends to conduct on the property...

A synopsis of the evidence will be beneficial to understanding the reasoning behind this decision.

Prior to the start of testimony, City's Exhibit 3 was allowed in evidence without objection. It is an affidavit from Edward Paddock who is a Deputy Commissioner with the Department of Business Affairs and Consumer Protection. That affidavit asserts that Rendezvous, Inc. did not have and has never had a certificate authorizing it to conduct Adult Use Activity at 3500 West 47th Street. In particular, Rendezvous, Inc., was not registered as an Adult Use on March 31, 2011, April 13, 2011, or June 4, 2011. That affidavit also identifies Exhibit A as a true and correct copy of the application for a Public Place of Amusement License for Rendezvous as it appeared when submitted. It additionally asserts the business activity that Business Affairs and Consumer Protection authorized Rendezvous, Inc. to conduct. The business activity is stated – "3000 SQ FT – TAVERN W/FOOD, TOBACCO, AND AMUSEMENT – MUSIC AND DANCE, OCCASIONAL COVER CHARGE."

Steven Lugo has been a Chicago Police Officer for thirteen years and had been assigned to licensing for a year and three months. He was assigned to investigate the Rendezvous Bar at 3500 West 47th Street in December of 2010. The establishment had a tavern license, a retail food license, and a Public Place of Amusement license. It was not registered for adult use activity.

He and Officer James Gallagher first went to the bar on March 31, 2011 around 10:00 p.m. They were in an undercover capacity. As he entered he was stopped by a gentleman with a t-shirt with "Security" on the back. He paid a cover charge to security but was not told what the cover was for. There were ten customers who were all male Hispanic. There were females behind the bar acting as bartenders. The other females in the bar that were not tending bar were in their 20's and all were dressed in either bikinis or lingerie-type apparel. There were about nine females dressed that way on March 31, 2011.

Those nine women were walking around the club and approaching patrons and asking them if they would like a dance. As the witness and Gallagher paid the cover, they sat at a table. They ordered two drinks. A female Hispanic, in her 20's, approached and asked if he wanted a dance. She was wearing some type of thong underwear with a small bikini top and high heels. The dance would cost \$10 and would last approximately the length of one song. He did not buy a dance. Lugo did observe the nine dancers interacting with the male patrons.

They would approach the men and ask if they would like a dance. If so, they would start to dance on the patron's lap. The males were touching the female around the hips and directly on the buttocks. With one particular dance, he saw a female Hispanic in her 20's, sit down on

the lap of an older white guy in his 50's and start to perform. That dance lasted about ten to fifteen minutes. She started by sitting on his lap, facing away from him, grinding her buttocks and genitalia on his. Then she turned around, facing him, and began to straddle him and grind again. She was grinding her genitalia on his lap. She was thrusting forward and backward in a manner suggesting sexual intercourse. At the end, he gave her United States currency. There was no disc jockey performing. The music was playing from a laptop continuously. No one made any announcements over the music. He did not believe the person resetting the music was a DJ performance. There was no live band and no other entertainment other than the girls. The female dancers would interact with the security guards, the bartenders, and this one female waitress. The dance he described was indicative of the other dances that he saw that night. Others were simulating sexual intercourse.

Officer Lugo and Gallagher returned to the Rendezvous Bar on April 13, 2011, at approximately 10:25 p.m. They were again in an undercover capacity. They paid a cover to enter but were not told why they paid the cover charge. There was no DJ performing and there was no live band or entertainment. They sat at a table and had two drinks. There were ten to twelve male patrons and no female patrons. There was one female bartending and one female waitressing. There were also six to nine scantily clad dancers. They would come and go from a backroom. He saw no customers go into that room. A male patron sitting next to him interacted with a female dancer. She began sitting on his lap facing him. For about ten minutes, she was grinding her genitalia by thrusting forward and back on top of him. He was rubbing his face in between her breasts and rubbing her hips and buttocks with his hand. After the dance was completed, the patron gave the dancer United States currency. The dance simulated the

appearance of intercourse. On the same night, the witness observed a dancer brace herself on the ground and wrap her legs around a patron's head and thrust her genitalia on the patron's chin. Other patrons were touching the dancers' buttocks. In this visit, he saw the dancers interact with the bartenders and security guards and the waitresses. They were talking and having a beverage.

Officer Lugo returned to Rendezvous for a third time on June 4, 2011, at around 11:30 p.m. He and Officer Golucki were in an undercover capacity. They paid a cover to the security guards but were not told why they needed to pay the cover charge. There was no DJ, no live music, and no entertainment other than the dancers. It was jam packed with standing room only. All the patrons were men. He and Golucki went to the bar and ordered two drinks. There were at least a dozen dancers that night and all were wearing bikini, lingerie-type apparel. One dancer approached his partner. This night there was a make shift stage in the rear of the location with six to eight folding-type chairs set up. The dancers would take the patrons to the stage and perform up there. He was about fifteen to twenty feet away and observed the girls simulating intercourse by thrusting their hips backward and forward on the men's genitalia area. The men would rub their faces between the girls' breast and would rub on the girls' buttocks and hips. He was there not more than an hour. He saw the girls interact with the bar employees. One individual seemed to be directing the dancers to a particular table.

Lugo returned on June 25, 2011, to perform a license investigation. He checked the licenses and did not see an adult use certificate displayed in a conspicuous place inside the bar. He never saw an adult use certificate displayed conspicuously when he was at the bar. Lugo identified City's Exhibit 4, as a picture of the front of the bar. It was taken on June 25, 2011, and

truly and accurately represents what the outside of the bar looked like on March 31, April 13, June 4, and June 25, 2011. City's Exhibit 5 is a picture taken on June 25, 2011 of the sign outside the bar that says *live dj's, live shows*. Lugo never saw a DJ and never saw a live show or performance at Rendezvous.

The longest Lugo was present on his four appearances at the bar was a little over an hour. He did not know when it opened or closed. He never took any identification from the dancers or spoke to the dancers. No arrests for illegal activity were made during his three visits. The nipples and genitalia remained covered. There were prohibited activities going on but no arrestable offense. The activities violated licensing provisions.

The licensee did not present any witnesses or offer any evidence in its defense.

Prior to oral argument on this appeal the City moved to withdraw Charges 3, 7, and 11. The Notice of Hearing reflected a charge of conducting an adult activity requiring adult use registration and certification in violation of 4-156-650(c) of the Municipal Code of Chicago. That section applies only to licensees that hold an Indoor Special Events license which Rendezvous, Inc., did not. It was noted that despite this fact, Deputy Hearing Commissioner Nolan sustained those three charges and arguably considered his findings on these charges as part of the totality on which he found revocation to be the proper penalty.

Case law defining the substantial evidence standard reflects that any evidence in support of findings of the deputy hearing commissioner is a basis to sustain those findings.

The first question is whether there is substantial evidence that the licensee, by and through its agent, established, operated, or permitted an adult entertainment cabaret as defined in 16-16-030 of the Municipal Code of Chicago. The language of 16-16-070 does not require that licensee actually operate the adult use; it is sufficient to permit the adult entertainment cabaret. The relevant section seems to 16-16-030 (iii) which has been set out earlier in this opinion. The evidence from Officer Lugo is undisputed that on March 31, 2011, April 13, 2011, and June 4, 2011, the scantily clad female dancers were entertainers who were performing in a manner primarily to appeal to the prurient interest of the patron and who were engaging in simulation of acts of sexual intercourse. The affidavit of Mr. Paddock, in evidence without objection, establishes that Rendezvous, Inc., has never had an Adult Use Activity Certificate. Based on these facts, there is substantial evidence in the record as a whole to sustain the findings of the Deputy Hearing Commissioner on Counts 1, 5, and 9. The testimony of Officer Lugo was that he did not see an adult use registration certificate conspicuously displayed on any of the dates he was at Rendezvous, Inc. That is not surprising since no such certificate was ever issued to Rendezvous, Inc. These facts are sufficient to find there is substantial evidence in the record as a whole to sustain the findings on Counts 2, 6, and 10.

The application for the Public Place of Amusement license does list in the business activity section “music and dance, occasional cover charge.” It does not state the business activity would be to conduct an adult cabaret or to watch dancers. The actual application indicated an adult use affidavit was to be submitted with the application but there is no evidence of any such affidavit being filed. While one could argue that the term “music and dancing” could be interpreted broadly to include the activities that Officer Lugo witnessed, that would be a

strained interpretation. There is substantial evidence in the record as a whole that the licensee conducted an amusement for gain or profit that was not set out in its application for Public Place of Amusement license. The findings on Charges 4, 8, and 12 are sustained.

The final issue is whether the order of revocation is supported by the findings. With respect to the three charges erroneously found to have been proven the actual charge of conducting an activity requiring adult use registration and certification was contained in Charges 1, 2, 5, 6, 8, and 9. It is not like a separate basis for discipline was relied on by the Deputy Hearing Commissioner. If that was the case reversal might have been appropriate. While this Commissioner might not have imposed revocation in this case, it is not our role to substitute our opinion for that of the Deputy Hearing Commissioner unless the punishment is so arbitrary and capricious as to require reversal.

The revocation of the liquor license issued to Rendezvous, Inc., for the premises located at 3500 West 47th Street 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: September 26, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member