

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

George Michael)
d/b/a Brudder's Lounge)
Licensee/Suspension)
for the premises located at) Case No. 12 LA 30
3600 North Pulaski)
)
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/Licensee received a First Amended Notice of Hearing in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued to it for the premises located at 3600 North Pulaski. The charges alleged in the First Amended Notice of Hearing were that on March 9, 2012, the licensee, by and through its agent:

1. Interfered with City of Chicago building inspectors in the performance of their duties, in violation of the Municipal Code of Chicago 13-12-100.
- 2-4. Committed the offense of aggravated assault in that while on the licensed premises and without lawful authority said agent engaged in conduct which placed Kenneth Buehring, Nicholas Chirikos, and Patrick Haran, City of Chicago building inspectors engaged in the performance of his authorized duties, in reasonable apprehension of receiving a battery, in violation of 720 ILCS 5/12-2(a)(10).
5. Failed to cooperate with identified police officers, and to fully and truthfully answer all questions posed by those officers, in the investigation of illegal activity upon the licensed premises, in violation of the Municipal Code of Chicago 4-60-141.

6. Knowingly possessed a controlled substance on the licensed premises, to wit: cocaine, in violation of 720 ILCS 570/401(d).

The respondent/licensee filed a written response denying each of the allegations and also asserted additional affirmative matters. Specifically, it was denied that Anthony Gonzalez was ever an agent of the respondent/licensee.

Deputy Hearing Commissioner Raymond Prosser entered Findings of Fact that the City of Chicago met its burden of proof on charges one through five, but failed to meet its burden of proof on Count 6. He further found a ten-day suspension concurrent on all sustained charges to be the appropriate penalty. Gregory Steadman, the Local Liquor Control Commissioner, and Rosemary Krimble, Commissioner of the Department of Business Affairs and Consumer Protection, adopted the findings of the Deputy Hearing Commissioner and imposed a ten-day suspension on Counts 1 through 5.

The respondent/licensee filed a timely Notice of Appeal with this Commission. A synopsis of the evidence is helpful in understanding this decision.

Kenneth Buehring has been a carpenter inspector with the Department of Buildings for nine years. He was working in that capacity on March 9, 2012, with electrical inspector Nicholas Chirikos, and plumbing inspector Patrick Haran. At approximately 11:45 a.m. they arrived at 3600 N. Pulaski to conduct a follow-up inspection related to a pending court case. When the inspectors walked to the back of the property, they noticed three people coming out of

the back walkway area. Buehring and the plumbing inspector went to the front, knocked on the door, and were let in to do the inspection.

The person who let them in identified himself as a bartender/night manager of the Vibe Lounge Tavern. It did not appear that he was open for business. As they walked to the back of the bar, there was a knock on the rear door. Since Buehring knew the electrical inspector was out back, he opened the rear door and another man, who they had earlier seen walking out of the bar area, entered the tavern. That man, later identified as Anthony Gonzalez, approached and started questioning the plumbing inspector. Buehring approached Gonzalez and asked if he owned the bar or worked for the bar. Gonzalez said no. When Buehring told Gonzalez he had nothing to do with the case, Gonzalez continued to follow and verbally harass him. Gonzalez was swearing and seemed agitated. Gonzalez demanded to see the court order authorizing the inspection. The inspectors went to the pool table area and Gonzalez followed them. The witness was worried Gonzalez was going to attack them. Gonzalez continued to follow him as the inspectors left the premises. The witness was nervous and a little scared and thought the gentleman was going to attack him at some point in time. Subsequently, the bartender explained to the police who had arrived that Gonzalez worked security at the bar.

Nicholas Chirikos has been a City of Chicago electrical inspector for five years. On March 9, 2012, he was working in his official duties with Mr. Buehring and Mr. Haran. At approximately 11:45 a.m. they went to 3600 N. Pulaski to do an inspection. He went to the rear of the property to inspect some electrical work and encountered Mr. Gonzalez. Gonzalez was exiting the rear of the property with two other people. Gonzalez told Haran in a stern voice that

the store was closed. Chirikos gained entry through the side door of the property. Inside the premise were Gonzalez, the bartender, Buehring, and Haran. The place did not seem to be open and there were no patrons. Mr. Gonzalez kept questioning Inspector Buehring as to why they were conducting the inspection. The bartender told Gonzalez to leave them alone but he did not physically try to stop Gonzalez. Gonzalez made threatening statements to Buehring. Chirikos left the bar because he felt Gonzalez was ready to physically assault him or Buehring. The police arrived at the scene and the inspectors reentered with the police officers. The bartender stated Mr. Gonzalez was security for the bar.

Chirikos agreed that the bartender told Gonzalez to leave the inspectors alone and never directed Gonzalez to interfere with the inspection. He also agreed Gonzalez was not acting rationally.

Patrick Haran has been a plumbing inspector for the City of Chicago for five years. He was working in his official capacity as a plumbing inspector on March 9, 2012, at about 11:45 a.m. at 3600 N. Pulaski. He and the other inspectors were there to do a court ordered inspection of the building. He was allowed entry to the building by the person who identified himself as the bartender and manager. As he conducted his inspection, he heard a knock on the back door. Haran opened that door and Gonzalez came into the bar. Gonzalez cornered him and demanded to know what he was doing. Gonzalez then proceeded to approach Inspector Buehring and started to ask similar questions about why they were doing an inspection. Gonzalez demanded to see a court order signed by a judge. That conversation became heated and Gonzalez was basically threatening to beat up Buehring. At that time, Haran called the police.

Haran stated Gonzalez never threatened to beat him up. Gonzalez did say to Buehring that he was going to “fuck him up.” Gonzalez was just a couple of feet from Buehring when this comment was made.

John Valencia has been a Chicago Police Officer for thirteen years and was working as a member of the 17th District Tactical Unit on March 9, 2012. He and his partner, Gil Ruiz, received a call to assist city inspectors related to a confrontation with bar security who prevented them from performing an inspection of the building and that they felt they were about to receive a battery. He entered the bar and met David Organav who identified himself as the manager of the bar. When questioned, Organav said the bar security officer had left the bar and there had been no argument. The officer then found a person under a table. That person identified himself as Anthony Gonzalez, security for the bar. Gonzalez refused to comply and the officer conducted a pat-down of Gonzalez. A plastic bag containing white powder suspect PCP was recovered from Gonzalez. The substance was inventoried and sent to the Illinois State lab where it was found to be positive for cocaine residue.

Mirina Akopian has managed the Vibe Lounge at 3600 N. Pulaski since September of 2010. George Michael is the owner of the building and the liquor licenses. She managed the bar until it was closed on March 9, 2012. During that time, she had primary responsibility for hiring people. She is not familiar with Anthony Gonzalez and never hired him to act as bar security. On March 8, 2012, the Vibe Lounge had three employees. They were David Organav, Yana Hardsova, and Gita Fotina. David Organav is her son and was hired as a bartender with no authority to hire or fire employees. She was never contacted by anyone from the City seeking to

confirm Anthony Gonzalez was an employee of the Vibe Lounge. The bar was only open for business in the evenings because of the business.

RELEVANT STATUTES AND ORDINANCES

Municipal Code of Chicago 13-12-100 - The appropriate officials charged with the administration of any of the provisions of this Code enumerated in 13-12-010, or any of them and their respective assistants, shall have the right to enter any building, or premises, and any and all parts thereof, at any reasonable time, and at any time when occupied by the public in order to examine such buildings or premises to judge of the condition of the same and to discharge their respective duties, and it shall be unlawful for any person to interfere with them in the performance of their duties.

235 ILCS 5/12-3 - Every Act or omission of whatsoever nature constituting a violation of any of the provisions of this Act, by any officer, director, manager or other agent or employee of any licensee, shall be deemed and held to be the act of such employer or licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.

720 ILCS 5/12-1 – Assault – (a) A person commits assault when, without legal authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.

720 ILCS 5/12-2(a)(10) – Aggravated Assault – A person commits aggravated assault when, in committing an assault, he knows the individual assaulted to be an employee of the State of Illinois, a Municipal Corporation therein, or a political subdivision thereof, engaged in the performance of his authorized duties as such employee.

Municipal Code of Chicago 4-60-141 –

- (a) No licensee shall permit or allow any illegal activity on the licensed premises.
- (b) 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; to answer fully and truthfully all questions of an identified police officer who inquires or investigates concerning persons or events in or around the licensed business...
- (c) For purposes of this section, “licensee” includes an employee or agent of a licensee.

The Deputy Hearing Commissioner found the City of Chicago met its burden of proof on Counts 2, 3, and 4. In order to sustain these charges, there must be substantial evidence in the record that:

1. Anthony Gonzalez was an agent of the licensee on the date and time in question, and;
2. That the actions of Anthony Gonzalez were such that they placed Kenneth Buehring, Nicholas Chirikos, and Patrick Haran in reasonable apprehension of receiving a battery.

With respect to the first issue, there is not substantial evidence in the record as a whole to support a finding that Anthony Gonzalez was acting as an agent of the licensee on March 9, 2012, when he confronted the three inspectors. There is substantial evidence in the record that Gonzalez worked security at the bar, but the fact that he might have worked security at the bar

for other occasions does not make him an agent for the bar in all his actions that happened at the bar. All the evidence in this case is that the bar was closed at the time of the inspection. There was no need for security. In fact, it was Buehring that let Gonzalez in the bar. The testimony in this case is also consistent in that the bartender orally attempted to tell Gonzalez to stop harassing the inspectors. While the definition of an agent under the Illinois Liquor Control Act is broad, there must be a showing of some work for a prima facie finding of agency. There is no evidence of any work done by Gonzalez for the licensee on March 9, 2012. Byrne v. Stern, 103 Ill.App.3d601, 431N.E.2d1073 at 1076.

Assuming a reviewing court feels there was sufficient evidence of work to support a finding of agency on March 9, 2012, not all acts of an agent are attributable to a licensee. If the actions of an agent are not within the scope and course of employment, or not performed in furtherance of the licensee's business those actions are not attributable to the licensee. There is not substantial evidence in the record that the actions of Anthony Gonzalez were within the course and scope of employment as security for the licensee and there is no evidence on the record his actions were in furtherance of the licensee's business. These bizarre acts appear purely personal and cannot be attributed to the licensee. Nappi v. License Appeal Commission of Chicago, 50 Ill.App.3d 329.

In the event a reviewing court feels there was substantial evidence in the record as a whole to find that Anthony Gonzalez was an agent of the licensee on March 9, 2012, this Commission must review whether the actions of Anthony Gonzalez placed the inspectors individually in reasonable apprehension of receiving a battery. The fact that one of the

inspectors may have been in reasonable apprehension of a battery does not mean that reasonable apprehension extends to the other two inspectors. In this analysis, one must be aware that words alone are not usually sufficient to constitute assault. People v. Floyd, 278 Ill.App.3d568, 663 N.E.2d 74.

Inspector Haran called the police because Gonzalez was threatening to beat up Inspector Buehring. On cross-examination, Haran specifically testified Gonzalez did not say anything to him threatening to beat him up. The fact he may have felt threatened when Gonzalez threatened Chirikos is not sufficient for an assault/aggravated assault.

Inspector Chirikos testified that when Gonzalez said “I’ll beat your ass” to Buehring, Gonzalez was definitely threatening and that he left the bar because he felt Gonzalez was ready to physically assault him or Inspector Buehring. There is substantial evidence to support a finding that Inspector Chirikos was in reasonable apprehension of receiving a battery from Anthony Gonzalez.

Inspector Buehring’s testimony was that Gonzalez was verbally harassing him as he walked through the location. This persisted to the point that Buehring was worried Gonzalez would attack him at some point in time. This is substantial evidence on the record to support a finding that Inspector Buehring was in reasonable apprehension of receiving a battery.

Based on this analysis, the decision of the Deputy Hearing Commissioner on Counts 2, 3, and 4 is reversed.

With respect to Counts 1 and 5, there is no dispute that the bartender David Organov was an agent of the licensee in the cause and scope of his employment on March 9, 2012.

The finding by the Deputy Hearing Commissioner with respect to Count 1 is not based on any specific misconduct by David Organov that interfered with the performance of their duties as building inspectors. The basis for finding the City met its burden on Count 1, was that David Organov permitted and allowed Anthony Gonzalez to harass in a menacing manner to the three inspectors.

The finding must be reversed. There is not substantial evidence in the record as a whole that David Organov permitted or allowed Anthony Gonzalez to act in the manner he did that morning. The testimony from the three inspectors all show that Mr. Organov was willing to cooperate with the inspection. It further shows he verbally told Mr. Gonzalez to stop harassing the inspectors. While Organov did not physically attempt to remove Gonzalez from the premises, the description of Gonzalez that morning would suggest not attempting to physically remove Gonzalez was a rational act, not an act performed to permit and allow Gonzalez's actions. As pointed out earlier, there is not substantial evidence in the record that Gonzalez was acting as an agent for the licensee. Without that relationship it is questionable that Organov had any authority to stop Gonzalez.

The testimony of Officer Valencia that David Organov answered untruthfully that Gonzalez had left the building and that there had been no argument stands uncontradicted. The evidence in the record is that Gonzalez was still in the bar and that there had been arguments.

There is substantial evidence in the record as a whole to affirm the finding of the Deputy Hearing Commissioner on Count 5.

The Deputy Hearing Commissioner found a ten-day suspension concurrent on all charges was appropriate. Based on the past history, such a 10-day suspension is not so arbitrary or capricious as to require reversal.

The findings of the Deputy Hearing Commissioner on Counts 1, 2, 3, 4, and 5 are reversed. The finding on Count 5 with a 10-day suspension is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for TEN (10) days 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: April 2, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member