

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

3755 W. Armitage, Inc.)
Jose Cortes, President)
Licensee/Revocation)
for the premises located at)
3755 West Armitage Avenue) Case No. 08 LA 67
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The Licensee received a Notice of Hearing advising that a hearing was to be held in connection with license disciplinary proceedings regarding the City of Chicago liquor license and all other City of Chicago licenses issued for the premises at 3755 W. Armitage. That notice contained the following charges:

1. That on July 16, 2004, the licensee corporation became ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030(k), because its president, Jose Cortes, was convicted of a felony and is thus ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030(e), of the Municipal Code of Chicago.
2. That on July 16, 2004, the licensee corporation became ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2(a)(4), because its president, Jose Cortes, was convicted of a felony and is thus ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2(a)(10).
3. That on December 10, 2004, the licensee corporation became ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030(k), because its president, Jose Cortes, was convicted of a felony and is thus ineligible to hold a liquor license pursuant to Title 4, Chapter 60, Section 030(e), of the Municipal

Code of Chicago.

4. That on December 10, 2004, the licensee corporation became ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2(a)(4), because its president, Jose Cortes, was convicted of a felony and is thus ineligible to hold a liquor license pursuant to 235 ILCS 5/6-2(a)(10).
5. That on July 26, 2004, the licensee corporation failed to notify the Director of Revenue of the City of Chicago of the felony conviction as required by Title 4, Chapter 60, Section 040(b)(8) within 10 days of the effective date of such change, in violation of Title 4, Chapter 60, Section 040(k), of the Municipal Code of Chicago.
6. That on December 20, 2004, the licensee corporation failed to notify in writing the Director of Revenue of the City of Chicago of the felony conviction as required by Title 4, Chapter 60, Section 040(b)(8) within 10 days of the effective date of such change, in violation of Title 4, Chapter 60, Section 040(k), of the Municipal Code of Chicago.
7. That since 2004, the licensee, by and through its agent, knowingly included false or incomplete information on the license application, in violation of Title 4, Chapter 4, Section 050, of the Municipal Code of Chicago.

This case proceeded to hearing before Deputy Hearing Commissioner John Lyke on July 28 and August 18, 2009. Subsequent to the hearing he entered Findings of Fact that the City met its burden of proof on each of the charges and the Licensee's liquor license be revoked. He also made a specific finding that the licensee is not sufficiently rehabilitated to retain a liquor license. Mary Lou Eisenhauer, the then Acting Director of the Department of Business Affairs and Licensing/Local Liquor Control Commission adopted each of the findings of Deputy Hearing Commissioner Lyke. The Licensee filed a timely Notice of Appeal at this Commission and oral argument was heard on March 17, 2009.

For easier reference the above listed ordinances and statutes are set:

235 ILCS 5/6-2(a)(4)...no license of any kind issued by the State Commission or any local commission shall be issued to a person who has been convicted of a felony under any Federal or State law, unless the Commission determines that such person has been sufficiently rehabilitated to warrant the public trust after considering matters set forth in such person's application and the Commission's investigation. The burden of proof of sufficient rehabilitation shall be on the applicant.

235 ILCS 5/6-2(a)(10)...no license shall issue to a corporation or limited liability company, if any member, officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license, hereunder for any reason other than citizenship and residence within the political subdivision.

Title 4, Chapter 60, Section 040 (b)(8) Municipal Code of Chicago.
...The application shall be verified with an affidavit and shall include the following statements and information:
a statement as to whether the applicant has ever been convicted of a felony...

Title 4, Chapter 60, Section 040(k) Municipal Code of Chicago.
If a change in any information required in subsection (b) 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 the change. The supplemental statement shall be filed within ten days after the changes take effect.

Title 4, Chapter 4, Section 50 - Municipal Code of Chicago.
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.

At the hearing the City introduced certified statements of convictions of Jose Cortes, the President of the licensee corporation, for felony aggravated DUI on December 10, 2004, and for a felony weapons charge on July 16, 2004. The City also introduced by stipulation City Exhibit #5, the signature page of the Liquor License Renewal for the period of November 16, 2004, through December 15, 2005. Jose Cortes signed this document on November 4, 2004. The other

document in evidence by stipulation, City Exhibit #6, is a signature page for a renewal application signed by Jose Cortes on November 13, 2006. Language in the November 8, 2004, document has Mr. Cortes attesting that the licensee has committed no act which disqualifies the licensee from being issued a city retailer's license for sale of alcohol at the subject premises. The November 13, 2006, document has Mr. Cortes attesting that the answers in the original application are still true and correct. One of the questions on the original application asked if Mr. Cortes has any felony convictions. At that time he had none. As of the date of the hearing he had two felony convictions. It was stipulated that notice of those two felony convictions was never given to the Department of Revenue.

The Licensee testified that he successfully completed his term probation on both felony convictions. He also testified he never read City Exhibits #5 and #6 before signing them and that his accountant filled out his liquor license application.

The Licensee also introduced evidence from Maria Lembessis, Paul Kotowski, Steve Garcia and Mageli Santana. Each of them stated they feel Mr. Cortes is a good person despite the convictions for the two felonies.

Since this is an appeal of an order of revocation review is limited. The initial issue is the question of whether the findings of the Deputy Hearing Commissioner are supported by substantial evidence in light of the whole record. There is no dispute that Mr. Cortes was convicted of two felonies and failed to notify the Department of Revenue of those convictions.

The dispute is over the question of whether there is substantial evidence in light of the whole record to support the finding that Jose Cortes was not rehabilitated. The question of rehabilitation would apply to Charges 1, 2, 3 and 4. A reading of the Municipal Code the applicable State Statute, and the case of *Ryan v. Verbic*, 97 Ill.App.3d 739, 423 N.E.2d 534, establishes the concept that conviction of a felony by a licensee does not disqualify the licensee from holding a liquor license in itself but such felony conviction will disqualify a licensee unless the local liquor control commissioner determines that such person has been sufficiently rehabilitated to warrant the public trust. State Statute places the burden of proof of sufficient rehabilitation on the applicant.

The Licensee argues that *Ryan v. Verbic* holds successful completion of felony probation is prima facie evidence that the licensee has been rehabilitated. This Commissioner feels that is not accurate. Successful completion of felony probation is evidence that the Local Liquor Control Commissioner can weigh in making a determination of whether a party is rehabilitated. It does not require a finding that one that has successfully completed felony probation is considered rehabilitated. It was the burden of the Licensee to prove he was sufficiently rehabilitated. The record as a whole contains substantial evidence to support the finding by the Deputy Hearing Commissioner that the licensee did not meet that burden. That finding is affirmed and with that finding affirmed the finding as to Counts 1, 2, 3 and 4 are affirmed.

The Licensee has stipulated that he failed to notify the Director of Revenue of the City of

Chicago within 10 days of his felony convictions. It seems clear the Municipal Code mandated disclosure of these felony convictions and the licensee did not disclose them. The Licensee may claim he did not know of this responsibility but such ignorance of the requirement is not a defense. Counts 5 and 6 are supported by substantial evidence and affirmed. It is the position of this Commissioner that the revocation of the liquor license would be affirmed with the findings on these counts alone. If timely notification of the felony convictions had been made one can assume that proceedings to revoke would have been started earlier.

There is substantial evidence in the record as a whole to affirm the finding on Charge 7. While the Licensee asserts that a renewal application is not an application under this section such application would seem to suggest that false or incomplete information on renewal applications do not violate the Municipal Code. Jose Cortes signed and attested in City Exhibit #5 on November 8, 2004, that he had committed no disqualifying act. That was not true. Jose Cortes attested on City Exhibit #6 on November 13, 2006, that the answers on his original application were still true and correct. That was not true. This Commissioner also feels that the revocation of this license could be upheld solely on the affirming of this finding.

The revocation of the liquor license issued to 3755 W. Armitage, Inc. 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: April 30, 2009

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member