

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Skyline Management, Inc.)
John Loumbardias, President)
Licensee/Suspension)
for the premises located at) Case No. 14 LA 49
303 West Erie Street)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER ON REHEARING

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

This Commission entered a ruling on September 21, 2015 affirming the 30-day suspension imposed on the licensee. The gist of the sustained charges was that the licensee, by and through its agent, knowingly delivered a controlled substance to undercover Chicago Police Officers on three separate dates. These actions violated two separate section of 720 ILCS, to wit; 70 ILCS 570 (401)(d) 720 ILCS 570/402(c) and 720 ILCS 5/37-1. Of note, in the decision of the Deputy Hearing Officer in the facts he made specific findings that the person who sold and possessed the controlled substances was not an employee of the license and that the same person was the “apparent” agent of the licensee. The licensee filed a timely request for rehearing and that request was granted. The oral argument on rehearing was held on November 17, 2015.

The history of the case and a summary of the proceedings were set out in the original decision and order. For purpose of this decision upon rehearing, these matters are adopted by this Commissioner.

The review of this License Appeal Commission in this case is limited to the following questions:

- a. Whether the Local Liquor Control Commission 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.

Since the propriety of the finding by the Deputy Hearing Commissioner that Jerome Phillips was not an employee of the licensee, the primary question is whether there is substantial evidence in the record as a whole to support the Deputy Hearing Commissioner's finding that Jerome Phillips was the "apparent agent" of the licensee. The secondary issue becomes what is the significance in this particular case if there is not substantial evidence in the record to support a finding of "apparent authority" but there is sufficient evidence to support a finding of implied agency.

The licensee argues that the use of the term "apparent agent" should be strictly construed and if the facts do not prove "apparent agency," this Commission must reverse on two bases. The first being that the Commission did not proceed in the manner provided by law and the second basis being that there is not substantial evidence in the record as a whole to prove "apparent agency." The decision shall address the latter argument first.

The theory of apparent agency is one that applies in tort actions. If one holds himself out as an agent of a principal in a manner in which the principal is aware of such activity, the person can be considered the principal's apparent agent and the principal can be held responsible for the acts of the apparent agent.

The doctrine of "apparent agency" does not apply to the facts of this case and the use of the adjective "apparent" by the Deputy Hearing Commissioner was a mistake. The City does not dispute this finding and agreed at oral argument that the use of the term "apparent agency" was the wrong word.

The previously mentioned secondary question now must be addressed. In the use of the wrong adjective to describe the actions of Jerome Phillips in this case sufficient for this Commission to so find the City did not meet its burden of proof of substantial evidence with respect to the specific charges.

The Illinois Liquor Control Act sets out the liability of a licensee for the acts of an agent or employee. It states that:

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Act by an officer, director, manager, or other agent (emphasis added) or employee of any licensee shall be punishable in the same manner as if said act or omission had been done or omitted him directly.

This act does not distinguish the various types of agency it encompasses and does not require a city to prove a specific type of agency.

The charges in this case allege that “the licensee, by and through its agent,” did acts that violated section of 720 ILCS 570. The charges did not allege the acts of a specific type of agency relationship. Since no specific type of agency relationship was alleged in the charges, the City was not required to prove by substantial evidence a specific type of agency relationship. If there was substantial evidence in the record as a whole to prove agency, the City would have met its burden.

The Deputy Hearing Commissioner set out several facts supporting a finding of an agency relationship between the licensee and Jerome Phillips. Those matters are substantial evidence to support the finding that Phillips was an agent of the licensee and that the licensee was responsible for these actions. The mistaken use of the adjective “apparent” does not change that fact.

The second issue before this Commission upon rehearing is that the Local Liquor Control Commission did not proceed in the manner provided by law. Historically, this section of the Illinois Liquor Control Act has addressed questions of procedural and substantive due process. Has the licensee been given due and adequate notice of the date, time and location of the hearing and of the reasons alleged as the bases for the discipline? If so, the hearing proceeded in the manner provided by law. If not, the hearing did not proceed in the manner provided by law.

Counsel for the licensee argues that this concept should be expanded to include the concept that due process rights include the right to have a decision made according to law. If the

law does not allow a finding of apparent authority under these facts it would violate due process to uphold the decision of the Deputy Hearing Commissioner.

This Commissioner declines to state whether such an expanded concept of due process is needed since the facts in this case did establish by substantial evidence that Jerome Phillips was an agent of the licensee.

For these reasons it is the decision on rehearing of this Commissioner to affirm the decision of the Local Liquor Control Commission.

Notice is hereby given that any party has THIRTY- FIVE (35) days after service of this order upon said party, to commence an action for administrative review in the Circuit Court of Cook County, Illinois, (Ill. Rev. Stat., (1985) Ch. 110 S3-103). The date of the mailing of this order to a party is deemed to be the date of service. (Ill. Rev. Stat., (1985)Ch. 43, S154).

Dated: January 28, 2016

Dennis M. Fleming
Chairman

Donald O'Connell
Member