LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Pub Festivals, Inc.	)	
d/b/a Lottie's Pub	)	
Licensee/Suspension	)	
for the premises located at	)	Case No. 13 LA 29
1925 West Cortland Street	)	
	)	
v.	)	
	)	
Department of Business Affairs and Consumer Protection	)	
Local Liquor Control Commission	)	
Gregory Steadman, Commissioner	)	

ORDER

OPINION OF COMMISSIONERS O'CONNELL AND SCHNORF

The licensee was served notice that a hearing was scheduled in connection with disciplinary proceedings regarding the City of Chicago Liquor License issued to it for the premises located at 1925 W. Cortland. The four charges alleged in the hearing notice are as follows:

1. That on or about November 21, 2012, the licensee, by and through its agent, did produce, present, or conduct upon the licensed premises, for gain or profit, an amusement, without holding a valid City of Chicago Public Place of Amusement license in violation of 4-156-300(a) of the Municipal Code of Chicago.

2. That on or about November 21, 2012, the licensee, by and through its agent, failed to display a Public Place of Amusement license in plain view in a conspicuous place on the licensed premise, in violation of 4-4-210 of the Municipal Code of Chicago.

3. That on or about November 21, 2012, the licensee, by and through its agent, operated in violation of a Cease and Desist Order #08116168M053, in violation of 4-4-015 of the Municipal Code of Chicago.

4. That on or about November 21, 2012, the licensee, by and through its agent, sold, offered to sell or served to a person an unlimited number of drinks of alcoholic liquor during a set period of time for a fixed price, in violation of 235 ILCS 5/6-28(b)(2).

This matter proceeded to hearing before Deputy Hearing Commissioner Raymond Prosser on May 20, 2013 at 1:30 p.m. Assistant Corporation Counsel Noel Quanbeck represented the City of Chicago and Thomas Carroll and Lema Khorshid represented the licensee.

The Deputy Hearing Commissioner issued Findings of Fact concluding that the City had met its burden of proof on Charges 1, 2, and 3, but failed to meets its burden of proof on Charge 4. Discipline imposed was a 10-day suspension of tavern and retail food licenses on Charge 1, and a 10-day suspension of tavern and retail food licenses on Charge 2 and 3 running concurrently.

An appeal was timely filed by the licensee to the City of Chicago License Appeal Commission and a hearing was held on November 7, 2013 at 1:30 p.m. The Chairman recused himself in this matter and the hearing was conducted by Commissioners O'Connell and Schnorf.

This case presents again the issue of the meaning of "for gain or profit" in the City of Chicago Public Place of Amusement ordinance. The difficulty experienced in attempting to clearly define these words in the context of the Public Place of Amusement ordinance may have been the cause for their subsequent removal by the City. These words were clearly law on

November 21, 2012, so once again this Commission looks for guidance as it must construe the meaning of the term "for gain or profit" so that each word is given reasonable meaning.

City of Chicago v. Severini, 91 Ill.3d 38, 414 N.E.2d 67, which we have cited in previous cases, although not directly on point, is instructive. This case dealt with the City's prosecution of the Candy Club and Cecil E. Severini for operating without a Public Place of Amusement license. The Candy Club provided performances of several females dancing on stage in various stages of dress and undress accompanied by music from a record player. Patrons entering were required to pay a $4.00 membership fee each time they entered and there was also a $6.00 per person table charge which allowed the patron to all the near beer and soda desired. The Appellate Court rejected the defendant's claim that since the Candy Club was a not-for-profit corporation, the amusement presented was automatically not "for gain or profit." The court specifically found that the $4.00 membership fee was indistinguishable from the customary entrance or admission charges required by establishments open to the public. The court then stated that the ordinance did not require proof that the amusement was successful in making a gain or profit since the ordinance applies to any amusement presented "for gain or profit." The evidence of a positive income resulting from money being paid each time an individual patronized the club from the $4.00 dues and $6.00 per person table charge without more supports a purpose and plan to have a profitable operation.

There is no evidence in the record that the licensee charged any admission or imposed a table charge or any other type of special charge on November 21, 2012. In fact, Police Officer Joseph Vancurek repeatedly answers that he saw no one charging admission at the front door.

Other witnesses testified that there was a fee being charged only to patrons going downstairs for a prearranged private party. The City stipulates on the record that "there was no cover charge being charged at the front door." The flier for the event admitted into evidence includes the words "free karaoke."

This Commission has consistently interpreted "for gain or profit" as having some type of indicator such as a cover or table charge. There was no evidence submitted that would show a profit or gain resulting from the karaoke. Another such indicator might be the comparison of receipts on nights without karaoke and nights with karaoke but nothing along this line was submitted.

The City has not met its burden of proof on Charge 1 that the licensee conducted an amusement on premises "for gain or profit" without holding a valid City of Chicago Public Place of Amusement license. There is nothing in the record that supports the charge that karaoke was presented for "for gain or profit."

Displaying a Public Place of Amusement license is only required if you present an amusement "for gain or profit." The City has not met its burden of proof on Charge 2 because it did not prove Charge 1. There cannot be a failure to display the PPA license if you have not been proven to have violated the PPA ordinance.

Charge 3 is operating in violation of a Cease and Desist order. It should be noted that the Cease and Desist order indicates that on January 1, 1900, the licensee was issued a cease and

desist order. This plainly is erroneous. It also indicates there was a failure to comply with the cease and desist order as of April 11, 2012, at 5:00 a.m. There apparently was no hearing on the facts alleged on the cease and desist order and the City failed to present any witnesses at the hearing about this cease and desist order to establish law the licensee violated Section 4-4-015 of the Chicago Municipal Code. That section deals with procedures to be followed and the applicable penalties for licensees who operate without a license. That section is not applicable to this case.

The cease and desist order does reference that the licensee is not to conduct entertainment including karaoke without the required Public Place of Amusement license as required by 4-156-300 of the Chicago Municipal Code. Since we have already ruled that the licensee did not violate that section of the municipal code, it cannot be held liable for violating a cease and desist order.

In the event a reviewing court would overrule our findings of fact, the record is clear that there was no intent to violate a cease and desist order on the public place of amusement ordinance. The licensee testified he consulted with counsel and believed he would not violate those ordinances and the cease and desist order if he did not operate for gain or profit. He was further advised that would be the case only if he imposed a cover charge or some other revenue generating activity like a drink minimum. Based on the totality of the record, we found that the imposition of a ten day suspension on those facts would be arbitrary and capricious and would be reversed.

There is not substantial evidence in the record as a whole to affirm the decision of the Deputy Hearing Commissioner on Counts 1, 2, and 3. The 10-day suspension is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for TEN (10) days is hereby REVERSED.

Pursuant to Section 54 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: December 10, 2013

Donald O'Connell
Member

Stephen Schnorf
Member

*Chairman Fleming did not participate in hearing/decision