

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Liquor Zone, Inc.)
Eyad Elayyan, President)
Applicant (Packaged Goods))
for the premises located at) Case No. 06 LA 55
5300 South Ashland Avenue)
)
v.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)
)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

This matter comes before this Commission for a trial de novo on whether this application for a packaged goods liquor store should be denied. After a review of reports and documents and other matters Director Bruner found the issuance of this packaged goods license at this location would not serve the public's interest. Director Bruner specifically found that the issuance of this license at this location would create a law enforcement problem for the local police department. Director Bruner also referred to the fact that if a license was issued to this applicant, the current owner, the grandfather of the applicant, would have a continued beneficial interest in the operation of the business which would hinder law enforcement efforts in the area. This is based on the fact that the present licensee has neglected public safety concerns by being cited and fined for three separate sales to minors.

At the outset it is important to focus on what is being decided in the trial de novo. The issue in this hearing deals with the issuance of a new packaged goods liquor license to this applicant. The issue before this Commission is not whether the City had specific grounds to revoke or suspend the existing license. The fact that if this license is denied to the applicant, the present licensee will be able to continue his existing business is not relevant to the issue in this case. The Municipal Code of the City of Chicago specifically allows the Local Liquor Control Commissioner to deny a license if the issuance of said license would create a law enforcement problem.

The City presented the testimony of Commander Ray. He is responsible for all aspects of operation of the police personnel in the district including deployment of police personnel and resources to address the issues of crime, public safety and quality of life. Commander Ray is opposed to the issuance of a packed goods liquor license to this applicant at this location. The bases for the Commander's opposition include:

- A. The continuous operation of a liquor store at this location is not in the best interests of the community.
- B. This is a high crime area with a large number of calls for service.
- C. The graffiti on the building signals gang turf and invites conflicts over gang turf.
- D. Its proximity to a number of schools.
- E. Problems created by liquor stores.

In support of these bases, the City introduced documents reflecting the calls for service at this address from November 1, 2006 through May 31, 2007, showed 192 calls for service and four

arrests. From June 1, 2007 through September 30, 2007, there were 72 calls for service at this location and nine arrests other documents in evidence reflected 85 arrests within a 1/8 mile radius of 5300 S. Ashland Avenue between July 3, 2007 and September 30, 2007. This liquor store was described as an attractive nuisance which draws people to the area.

Officer Garza testified in opposition to the issuance of this license in his role as the Business Officer/CAPS representative in the 9th District. He acts as the liaison between the Chicago Police Department and the business community. He reviews liquor applications and reviewed this application. He has personal knowledge of the present business and noted in his report in evidence that the coolers are filled with individual bottles of 24 ounce and 40 ounce liquor and ice beer and only sells fortified wine. Individual cigarettes were being sold. Officer Garza testified to the fact there is a privately owned telephone outside of the store on Ashland Avenue used in the evening hours for, in his opinion, narcotics sales.

Debbie Blair of Alderman Thompson's office testified that the Alderman has received complaints of negative activity at his located and that the Alderman opposes the issuance of this license.

Neither police officer could specifically testify to direct nexus between the criminal activity and the present owner and employees.

The applicant Eyad Elayyan testified his grandfather is the present licensee at this location. His grandfather does not own the building. His grandfather would hold a note for the business for \$50,000 for the inventory and the payment on the note would be \$5,000.00. The applicant has changes planned to clean the walls of graffiti, for landscaping and place police cameras outside the building. He does plan to initially keep the same manager, but he would eventually be the manager himself. He admitted he did not talk to police or the Alderman about this license but met with residents since he opened his restaurant across the street and that was after this application.

As stated previously, the issue is whether the City has presented sufficient evidence to show the issuance of this license at this location would cause a law enforcement problem. The evidence from the law enforcement experts is that the issuance of this license would cause a law problem. This evidence was not contradicted. There are currently law enforcement problems in the area of 5300 S. Ashland Avenue.

There is testimony that liquor stores are an attractive nuisance that draw people and there is testimony that the type of liquor sold is primarily single containers of malt or ice beer or fortified wine. The applicant did not testify that the product selection would change if he received the license. Issuing a license to this applicant for this address would contribute to a law enforcement problem. The City has met its burden of proof on this issue. The decision of the Local Liquor Control Commissioner denying this license is upheld.

COMMISSIONER KOPPEL'S OPINION IN DISSENT

This matter comes before the License Appeal Commission for a trial de novo on the question of whether the applicant has satisfied and met the requirements for obtaining a liquor license in the city of Chicago. The license was denied on the premise that it would cause a deleterious impact upon the community.

The facts are as follows: a license exists at this location. The licensee is the grandfather of the applicant. If the license is not granted the establishment (which also sells food) will still be in existence. In the last four years there have been no violations. The applicant testified before the Commission and he was credible. It should be noted that the place is zoned properly.

The primary objection to the transfer is the Commander of the area. The Commander testified that "liquor stores create a problem and this is a high crime area. We do not need anymore liquor stores". The City maintains that the license would (currently there is a license with no violations in the last four years) contribute to traffic congestion, loitering and criminal activity that plagues the area. If these problems do exist it is the responsibility of local law enforcement to address these issues. There are due process ways to eliminate bad establishments. The area can be voted dry or a moratorium could be issued. In addition, the Local Liquor Control Commission has improperly and unjustly punished the applicant whose record will reflect for no legitimate reason that he was denied a retail liquor license. As stated before, Section 4-60-190 of the City Code states that any resident of the city of Chicago shall

have the right to file a complaint stating that the licensee has been violating the law. No such charges have been brought upon the current licensee. There are due process laws to eliminate bad places. This establishment will still be in existence to deny a credible person is improper. The City should have been reversed.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local Liquor Control Commissioner of the City of Chicago be and the same hereby 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: March 21, 2008

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Commissioner

Irving J. Koppel
Commissioner – IN DISSENT

