

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Lucky 7 Foods, Inc.)
Zafar Sheikh, President)
Licensee/Revocation)
for the premises located at)
4256 West Fullerton Avenue)
v.)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)

Case No. 07 LA 46

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

This matter comes to be heard on licensee's appeal of an order dated September 21, 2007, revoking the City of Chicago Retail Liquor License and all City of Chicago licenses issued to Lucky 7 Foods, Inc. for the premises located at 4256 W. Fullerton. This matter proceeded to a contested hearing on June 4, 25, 2007 and August 13, 2007, at the Local Liquor Control Commission before Deputy Hearing Commissioner John F. Lyke, Jr. After the hearing concluded Commissioner Lyke prepared Findings of Fact which stated that all witnesses were credible except for the licensee's witnesses and also found that the City met its burden of proof that the licensee sold liquor to a minor in violation of the Illinois State Statute and the Municipal Code of the City of Chicago. Based on this finding and the prior history of the licensee which included four previous sales to minors dating from December 22, 1995 through May 12, 2003, and previous closings of 30 days, 14 days and 3 days, the Deputy Hearing Commissioner

recommended revocation. Scott Bruner adopted this recommendation and on September 21, 2007, the revocation was entered.

The City filed an initial Motion to Dismiss the appeal on the theory that the appeal was untimely since it was filed 21 days after the mailing of the order of revocation. That issue was fully briefed and argued and this Commission entered a unanimous opinion denying the Motion to Dismiss on January 31, 2008. This Commission specifically stated that the order of January 31, 2008, was not a final and appealable order. This Commission finds that the order denying the initial Motion to Dismiss is incorporated into this opinion and that either party may appeal that decision as part of this opinion.

The City filed a second Motion to Dismiss the appeal which was entered and continued for argument with oral argument on the issue of revocation. This motion was based on the licensee's failure to comply with procedures set out in the handbook of the License Appeal Commission of the City of Chicago. The procedure in question requires a licensee who is appealing a suspension or revocation to file a notarized statement stating the court reported transcripts of the proceedings before the Department of Business Affairs & Licensing have been ordered. In capital letters the handbook states that failure to file this affidavit will result in the dismissal of the appeal. The notice of appeal in this case was filed on September 19, 2007, and the affidavit was not filed until March 5, 2008. This filing clearly was not timely under the rules of this Commission. The City asks that the appeal be dismissed for this rule violation and the licensee argues that dismissal would be inequitable since the parties and this Commission were

involved in resolving the first Motion to Dismiss. This Commission derives its authority from state statute. While the statute is silent on whether the Commission has the power to implement rules which would allow for a dismissal of an appeal for violating a procedure, it would seem that under certain circumstances the Commission would have that power. The question is really whether the circumstances in this case dictate dismissal before a hearing. This Commissioner says no. While the affidavit was filed untimely, the parties and the Commission were involved in the briefing, arguing and deciding of the first Motion to Dismiss. If the Commission had ruled against the licensee on that motion there would have been no need for the licensee to order and pay for the transcripts. Procedurally if such a motion to dismiss for failure to file an affidavit was granted, the licensee would be able to file a motion to vacate and if an affidavit has been subsequently filed, the motion to vacate would probably be granted. The job of this Commission is to rule on the matters set out in the state statute and not to dismiss appeals for procedural differences except in extreme circumstances. The Motion to Dismiss the appeal for failure to file the affidavit in a timely manner is Denied.

Under the state statute the review by this Commission in revocation cases is limited to these three questions:

1. Whether, the Mayor, as Local Liquor Control Commissioner, has proceeded in the manner provided by law;
2. Whether the order is supported by the findings;
3. Whether the findings are supported by substantial evidence in light of the whole record.

Over the objection of the City, counsel for licensee was allowed to make an oral argument on constitutional questions and issues. Allowing this argument was done to have a complete record and should not be construed by a reviewing court as this Commission stating that such constitutional arguments were proper on that the licensee did not waive any such arguments not made before the Local Liquor Control Commission. Counsel for both parties did argue that this Commission does not have the power to rule on these constitutional issues. Accordingly, the arguments are placed on record for any reviewing court.

There was no argument presented that this matter did not proceed in the manner provided by law. This Commissioner finds it did so proceed in the manner provided by law. The order of revocation is supported by the findings. There is no question that there was a sale to a minor. The licensee's argument defense that said minor had been at the store and carded on those previous occasions is not a defense. If believed by the Hearing Commissioner at best it would be mitigation. The fact that the Hearing Commissioner did not find this testimony credible is a matter that was in his province and will not be reviewed by this Commissioner. The history of this establishment shows four previous sales to minors over an eight year period and also shows previous suspensions of 3 days, 14 days and 30 days. The order of revocation is supported by the findings and the findings are supported by substantial evidence in light of the whole record.

The revocation of the retail liquor license and all city licenses issued to Lucky 7 Foods, Inc., Zafar Sheikh, President for the premises located at 4256 West Fullerton Avenue is sustained.

OPINION OF COMMISSIONER KOPPEL

The record in this case is quite clear. The licensee has a history of selling liquor to minor. It is the responsibility of the License Appeal Commission to determine if the revocation of the license was appropriate. My colleague's statement concerning the jurisdiction was proper. This Commission is a creature of state statute that specifically states the authority it has on appeals of revocation or suspension. In this case, the order of revocation is supported by the findings of fact which include the history of this license. Based on its continuing history the License Appeal Commission appropriately affirms the many violations of serving liquor to minors. The City is hereby 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: August 20, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Member

Stephen B. Schnorf
Member

