

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Giannoulas Hospitality, LLC)	
Spiros Giannoulas, President)	
Licensee/Suspension)	
for the premises located at)	
935 West Webster)	Case No. 08 LA 38
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Mary Lou Eisenhauer, Acting Director)	
)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER KOPPEL

The licensee received a Notice of Hearing in connection with license disciplinary proceedings against the City of Chicago's liquor license and all other licenses issued for the premises located at 935 West Webster. The charges against the licensee were that the licensee, by and through its agent, gave or sold alcoholic liquor to a minor in violation of Title 4, Chapter 60, Section 140 (a) of the Municipal Code and in violation of Illinois Revised Statutes 235 ILCS 5/6-16(A). Deputy Hearing Commissioner Raymond J. Prosser was appointed as the Hearing Officer in this case and the matter proceeded to hearing on December 6, 2007 and February 21, 2008. After the hearing, Deputy Hearing Commissioner Prosser issued Findings of Fact that the City proved these two charges and that a three day suspension on each count concurrent on each charge to be appropriate. The Acting Director adopted these findings as the findings of the Department of Business Affairs and Licensing. The licensee filed a timely appeal before the

License Appeal Commission. Oral argument was heard at the License Appeal Commission on August 19, 2008.

In matters dealing with appeals of suspensions the scope of review of the License Appeal Commission is limited to these three issues:

- A. Whether the Local Liquor Control Commissioner 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.

There is no need to address question C, since the licensee does not dispute that liquor was sold to a minor in violation of the Chicago Municipal Code and the Illinois Statute. The bulk of the record set out factors that mitigate penalty to be imposed for the sale of alcohol to the minor.

Counsel for licensee argues that within the scope of issue is the question of whether the Local Liquor Control Commissioner's decision to adopt the findings of the deputy hearing commissioner that a three day suspension is an appropriate disposition. The argument suggests that since the ordinary penalty for a first time sale of alcohol to a minor is a fine, a three day suspension in this case means the Local Liquor Control Commissioner did not proceed in the manner provided by law. This Commissioner respectfully does not accept this argument. My interpretation of this issue is whether the case proceeded procedurally in the manner provided by the Chicago Municipal Code and the Illinois Revised Statutes. There is nothing in either the Municipal Code or the State Statute that requires that a first time sale to minor be fined five

hundred dollars and not receive a license suspension. The procedures required by the law were followed in this case.

The remaining question is whether the order of a three day suspension is supported by the findings. There does not seem to be an argument that the Local Liquor Control Commissioner did not have the authority to issue the three day suspension. Counsel for licensee's argument is that his client is being unfairly singled out because the discipline was not a five hundred dollar fine but a three day suspension. While it does seem this establishment has been subject to an unusual number of stings involving sales to minor, there is no evidence in the record to support that premise. The offer of proof in the record, taken in the best light to the licensee, does not establish this argument. The record is clear that the licensee never requested a pre-hearing meeting with the Local Liquor Control Commissioner to discuss a pre-hearing settlement. There is no question that a three day suspension is within the scope of the power of the Local Liquor Control Commission. Unless this decision is so arbitrary and capricious that it is unreasonable, this Commission cannot reverse the decision.

While this Commissioner may have felt that a fine would have been appropriate, discipline for this first time sale of alcohol to a minor that is not the standard of review.

The decision of the Local Liquor Control Commission suspending the liquor license for the premises located at 935 West Webster is upheld.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for THREE (3) days 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: November 4, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Member