

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Fine Fair Food & Liquor)
Ghazy Salman, President)
Licensee/Fine)
for the premises located at) Case No. 10 LA 08
3357-59 West 16th Street)
)
vs.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Norma I. Reyes, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND
O'CONNELL

Respondent received a first amended notice that a hearing was to be held in connection with license disciplinary proceedings regarding the City of Chicago liquor license and all the other City of Chicago licenses issued to it for the premises located at 3357-59 West 16th Street, Chicago, Illinois. The charge was that on or about September 8, 2008, the Licensee, by and through its agent, sold, gave, delivered, offered or exposed for sale an individual can or bottle of beer, malt liquor or ale with a capacity of 16 ounces or less, not for consumption on the licensed premises, in violation of Title 4, Chapter 60, Section 140(i) of the Municipal Code of Chicago. This matter proceeded to hearing at the Local Liquor Control Commission before Deputy Hearing Commissioner Stratton on October 30, 2009. The City of Chicago was represented by Daniel Rubinow and David Frueh from the Corporation Counsel's office. Fine Fair Food and Liquor was represented by attorney Vivian R. Khalaf.

A summary of the evidence may assist in understanding the issues before this Commission.

Officer Mary Legittino has been a Chicago Police Officer for twenty-two years and has worked as a License Investigator for the Vice Control Section of the Organized Crime Division on and off for the last ten years. On September 8, 2008, she and her partner Jamie Benvenuti were assigned to do an on-site inspection of Fine Fair Food and Liquor at 3357 through 3359 W. 16th Street. This assignment was made due to the fact that there had been an incident involving a violent crime inside or around this location. She and her partner responded to insure compliance of their license, and they do no investigation into the violent act that took place. When they entered the premises, Officer Benvenuti interviewed the owner or owner's agent and Legittino did a physical inspection of the premises. As part of this inspection she observed in the middle of the floor by the cash register a three foot tall cooler filled with ice and standard size single bottles of beer. She believes standard size is under 16 ounces. The witness identified City's Exhibit A & B, in evidence, without objection as pictures of a single bottle of beer obtained from the cooler, and the cooler itself City's Exhibit 6, A, B, C & D, in evidence without objection are pictures of more of the product removed from the cooler. They were taken from the cooler and put on a cutting board countertop. The cans are the same product which consisted of three cans of Colt 45. The bottles were not the same product. (As a note, the cap on the bottle in 6(b) reads Aspen Edge and a cap on a bottle on 6(d) is for Pabst Blue Ribbon). Officer Legittino estimated the total of the cans and bottles she found without packaging was maybe 6 to 8, if even that much. None were over 16

ounces. The premises had a Packaged Goods license and no place of consuming alcohol on the premises.

On cross, the witness described the premises as a small grocery store. She could not recall the time they arrived but it was in the morning. She admitted she personally did not interview anyone as to why the loose cans were there and whether they were for sale. She could not recall if she removed the cans from the cooler or who photographed the cans.

Mohammed Hmoud has been the manager of Fine Fair Food and Liquor for four years. Neither he nor any other person responsible for this establishment sold or produced for sale single cans of beer. No single cans of beer are contained in the coolers. Two officers arrived at the store on August 31, 2008, a little after he opened at 8:00 a.m. One of the officers proceeded to walk around the store but she found nothing strange. The single cans of beer are from damaged four packs. The Colt 45 comes in four packs. One of the cans was broken and put in the sink. Defendant's Group Exhibit 1, was identified as a picture of three bottles from a six pack dropped by a customer. A customer dropped a six pack on the floor and three bottles broke and were taken to the garbage. The other three were up front but not for sale. Broken bottles happen almost everyday and they are placed in a "buggy" in the back room. Defendant's Exhibit 2, in evidence, is a picture of the "buggy" which is filled with broken beers. The other items had not been put in the back because the store has just opened. They forgot to pick them up the night before. These items were not for sale or priced or marked. The cooler

contained legal 24 ounce cans of beer and some Arizona Ice Tea. Nothing under 22 ounces was for sale. The officer looked at all 20 cooler doors and did not find a single loose can. On top of the cooler were three cans of Colt 45 together and three bottles of Pabst. They have never carried Aspen Edge beer in stock.

On cross, the witness stated he had not been working the night before and could not recall when the officers arrived but it was a short time after opening. It might have been a half-hour.

The record is somewhat confusing about the marking of the licensee's exhibits allowed in evidence over City objection. They include these photos:

- a. a picture of garbage with a Pabst Blue Ribbon six pack container
- b. a picture of a grocery cart filled with bottles and cans of beer and/or malt beverages.
- c. a picture of a single damaged can of Colt 45 in a sink
- d. a picture of three cans of Colt 45 still attached to the plastic holder.

The witness took these pictures a little while after the officers left.

City Exhibit 7, was allowed in evidence as prior orders of disposition. It reflects a voluntary fine of \$500.00 for a sale of alcohol to minor on December 10, 2001, and a voluntary fine of \$1,000.00 for a sale of alcohol to minor on February 24, 2005.

Deputy Hearing Commissioner Stratton made Findings of Fact that the City met its burden of proof on the charge against the licensee. In light of the present violations

and the prior disciplinary history a \$2,500.00 Fine was found to be an appropriate penalty. Commissioner Norma Reyes adopted the findings of the Hearing Commissioner as those of the Department of Business Affairs and Licensing/Local Liquor Control Commission. A timely appeal was filed with this Commission and oral argument took place on May 4, 2010.

Since this appeal is from the issuance of a fine imposed by the local liquor control commissioner of a city of 500,000 or more inhabitants the review by this license appeal commission shall be limited to the questions:

- (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 does not seem to be any argument as question (a). While there was argument over evidentiary rulings at the hearing, the issue of review of the evidentiary rulings at an administrative tribunal is limited to cases where the rulings were clearly an abuse of discretion. This is not the fact in this case.

The issue with respect to question (c) revolves around what prohibited actions are encompassed within the language of Title 4, Chapter 60, Section 140(i) of the Municipal Code. There are no real disputes on the facts of the case. The dispute is whether these facts were sufficient for the findings that a violation of this section of the code occurred.

As set out earlier this section prohibits not only the sale of individual cans of beer, malt liquor or ale with a capacity of 16 ounces or less, but also bars the giving, offer or exposure for sale of such products. There is no evidence of a sale of these products and no advertising or promotion of the sale of these products. There is evidence that the individual cans and bottles were in or about a cooler that contained legal 24 ounce cans of beer as well as iced tea. From the evidence the Hearing Commissioner made the finding that a violation had been proved. Under the substantial evidence standard applicable to this case this finding must be affirmed if there is any evidence supporting the finding. There is such substantial evidence in the record as a whole to support this finding.

The issue in this case with respect to question (b) is whether this finding supports the imposition of a \$2,500.00 Fine in light of the facts of the case and the prior disciplinary history of the establishment. It is not within the power of the Commission to remand for a lower fine or to impose a lower fine on its own. The only option this Commission has would be to reverse outright the \$2,500.00 Fine. Reversal by this Commission on these types of cases are limited to factual situations where the fine or other penalty would be considered so arbitrary or capricious that it could not stand. While this Commissioner may have felt a lower fine was adequate the fine as imposed was no so arbitrary and capricious as to require reversal. The order of a \$2,500.00 fine is supported by the findings.

The decision of the Local Liquor Control Commission is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order to Fine the Licensee the sum of \$2,500.00 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: July 15, 2010

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member