

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Division Food & Liquor, Inc.)
Raed Musa, President)
Applicant (Packaged Goods))
for the premises located at)
3251 West Division Street)
) LAC Case No. 05 LA 31
vs.)
)
Local Liquor Control Commission)
Department of Business Affairs & Licensing)
Scott V. Bruner, Director)
)
)
)

ORDER

OPINION OF CHAIRMAN CALABRESE JOINED BY COMMISSIONER ADAMS

The City denied an application for a packaged goods liquor license at the above captioned location. The basis for the denial is that the issuance of the license would have a deleterious impact on the community and present a law enforcement problem. The applicant denies the allegation and appeals.

A packaged goods liquor store is currently operating at the location in question. The applicant seeks to acquire a new license and take over the existing operation.

Chicago Police Commander James B. Jackson of the 11th Police District, testified credibly for the City in opposition to the license. The Commander has been assigned to the 11th

District for two years. He has 24 years of experience as a police officer. He is familiar with the establishment in question and testified that he is opposed to the issuance of the license. He believes that a tavern at this location causes a problem for local law enforcement.

The Commander testified that for the 3200-3300 block of W. Division (a location including the licensed establishment) from January 1, 2005 to November 13, 2005 in excess of 80 calls for police service were requested. In the month of September of 2005, the particular location of the licensed establishment had 10 calls for service. Interestingly, in the next month, October of 2005 when the licensed establishment was closed serving a suspension, only one call for service was made and that call was made on Halloween. He testified that the number of calls and actual arrests had an impact on his ability to utilize manpower effectively in the district. In addition, community complaints and his own quality of life concerns over behavior at the location was instrumental in formulating his opposition to the license.

In addition to the persuasive testimony of the Commander, ten community members stepped forward and testified against the license. Two of the nine were police officers testifying as private citizens and residents of the area. As a group, the witnesses were very credible. They chronicled their opposition to the license. They pointed out the problems resulting from the presence of the liquor license. Public drinking, public intoxication, public urination, littering of liquor bottles and loitering inside and outside the store were common occurrences. Panhandling, gang activity, drug dealing and crimes of violence were common place. Witnesses testified that their children were approached by drug dealers operating and hanging out outside the store and

were offered drugs. A young college student testified in opposition to the license stating that she has been offered drugs right outside the store and has been the victim of verbal harassment from those who hang out at the store. A witness testified to crimes of violence perpetrated in and around the store by drug dealers and of shots fired at the drug dealers in front of the store. One of the police officer residents testified of gang members hanging out at the store, up to a dozen members strong. He took pictures of some of the occurrences. He also testified that when the store was closed in October of 2005 no one was hanging out, no littering, no public drinking, no public urination and no gang representation occurred. However, when the store resumed operation all the problems returned. Further, some of the witnesses testified that the applicant, Raed Musa, was working at the store during the troubles.

Musa himself admitted to working at the store since August of 2004. He was closely connected to the operation of the store during the past years. While some witnesses testified in support of the licensee, they were not as credible as the City's witnesses. The applicant's witnesses seemed unaware of problems that multiple credible City witnesses testified to in great and specific detail. The witnesses for the City were much more believable.

After a review of all the evidence, it is clear that the City proved that the issuance of this packaged goods liquor license to this applicant would present both a law enforcement problem and a deleterious impact upon the community. The decision of the City to deny the application is affirmed.

COMMISSIONER KOPPEL'S OPINION IN DISSENT

This matter comes before the License Appeal Commission on an appeal from the Mayor's License Commission denying a packaged goods liquor license because it would cause a deleterious impact upon the community. The police are concerned that this area is plagued with nuisance problems, including narcotics trafficking, gang violence and other incidents. Therefore, a liquor license should not be issued to the new applicant.

The Commander of the district was opposed to the issuance of a license because there were many calls for service in this area. The record shows that the applicant, a young man was credible and had a good record.

The law is quite clear in matters of this nature. There are due process ways to eliminate bad licenses. It is important to note that this location was within a moratorium area. This forbids the sale of the place to another liquor licensee. But the important fact is that the moratorium was lifted by the Alderman of the ward, which allowed such a transfer to take place. It should be further noted that the applicant's store is within half block from the Alderman's office. It should be further noted that evidence showed that the area was undergoing new resident construction.

While it is important to protect the public health, welfare and safety, there are legal due process remedies that exist to protect the community surrounding the licensed premises. If this establishment creates a nuisance or violates the law then the license can be revoked. Since the City has the due process remedy it should proceed in that fashion and not use a back doorway of

revocation by disallowing the application of a legitimate businessman.

The Courts have stated as law that the authority to revoke a license for cause is dependent upon conduct or actions of the licensee, or conduct or actions of others for which this licensee is deemed responsible. A licensee cannot be charged with conduct over which he has no control of (Childers vs. Illinois Liquor Control Commission 67 Il App. 2nd).

It should follow that the same reason should apply to proceedings arising out of a refusal to grant a license application and cannot be denied based on the conduct of others where he has no control.

A case in point is Redzovic vs. License Appeal Commission (April 23, 1993). In Redzovic, the Plaintiff, a restaurant owner applied for a liquor license. During the trial de novo, witnesses testified in opposition basically saying the area was crime ridden. No evidence was presented that the licensee was responsible for the problems. If they were, then due process would be invoked to charge the licensee and have his license revoked.

If there are problems that exist outside the premises it appears that this is the responsibility of local law enforcement agencies and not the licensee. In addition, the Local Liquor Control Commission has improperly and unjustly punished the applicant whose record will reflect for no legitimate reason that he has been denied a retail liquor license in the City of Chicago. This may have very real consequences for the applicant who should he endeavor again

to secure a license will have to disclose that he was previously denied a liquor license.

And I reiterate a previous statement, the Alderman lifted a moratorium law which would have precluded a transfer or license. Accordingly, considering all the facts the City should be 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: April 10, 2007

Anthony J. Calabrese
Chairman

Don W. Adams
Commissioner

Irving J. Koppel
Commissioner – IN DISSENT

