

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

El Guerro Liquors, Inc.)	
Ricardo Garcia, President)	
Applicant (Packaged Goods))	
for the premises located at)	Case No. 05 LA 49
2101 West Cermak Road)	
)	
vs.)	
)	
Local Liquor Control Commission)	
Department of Business Affairs & Licensing)	
Scott V. Bruner, Director)	
)	
)	

ORDER

COMMISSIONER KOPPEL'S OPINION

The applicant was denied a packaged goods liquor license. The City contends that the store is less than 100 feet from a church. It should be noted that this store is located within a large grocery store and is a separate entity from the grocery store. It basically rents space from the grocery store. It has its own door and is a store within a store. The measurements from the door of the applicant is over 100 feet.

But more important is the fact that this store has had a packaged goods liquor store license for many years. They held a license without incident with no violations. The new owner of the store is the husband of the woman who seeks the new license. The intent of the new applicant is to operate this location in the same manner as the licensee now operating the

business. This is similar to a shopping center when the center is less than 100 feet, but the store within the center is more than 100 feet away. Again, this is a separate business with the present licensee being permitted to operate for many years. Now, the City upon investigation negates its previous approval. This applicant is a decent person and meets the qualifications of a person who should possess a liquor license.

The City contends that it made a mistake many years ago and should not have issued the license. It seems to this Commissioner that the applicant has met the 100 ft. rule. This place has operated as a separate entity for many years, without complaint or incident. This is obviously a store within a store, with an existing license which the City has continued to renew. The proof is that they are over 100 feet from the church. The City kept renewing licenses well aware of the facts. This is not an estoppel case, but it could be considered one. The City is reversed.

OPINION OF COMMISSIONER ADAMS

This application for a packaged goods license was denied by the City in that they allege that the applicant's premises is within 100 feet of St. Paul - Our Lady of Vilna School. Testimony showed that the entrance to the building in which the applicant's establishment is located is on Cermak Road, while the entrance to the church school is located on 22nd Street. The distance between the entrances is over a city block. However, the rear of the school and the rear of the building in which the store is located are across an alley from one another. For many years, the City has allowed the sale of liquor at this location.

The City did not present any objection to the license from the church or school. The City presented no evidence of even one incident over the many, many years that the church school and the store have coexisted. The City presented no citizen testimony in opposition to the license. To the contrary, it appears that the community is in favor of the continuation of alcohol sales at this location.

The husband of the applicant, Mr. Ricardo Garcia, operates a large grocery store at this location. It is one of four stores that he owns and operates. He was a very credible witness. He is a self made man and is impressive in his success. He has operated at this location apparently without incident. The measurements relied on by the City to deny the license are from the property line of the school to the rear of his store. He is married to Bertha Garcia.

The applicant, Ms. Bertha Garcia, testified credibly. She testified that she holds no office in her husband's corporations. She testified that she wishes to run her own business. Ms. Garcia, has created her own business independent of her husband. She owns 100% of the shares of that business. Ms. Garcia is the sole operator of the business. She, in furtherance of that plan, has leased a portion of the grocery store owned and operated by her husband. Her business is located entirely within her husband's store. Her business is separately contained with walls running from floor to ceiling and with its own cash registers and door. It will have its own employees. It is only her self contained business that would sell liquor. The applicant presented credible testimony that the measurement from the applicant's self contained business to the

property line of the church school is over 100 feet. Ms. Garcia, testified credibly that the store would be independent of her husband's business.

I view this case with an eye on the fact that liquor has been sold at this location for years without incident, to the remoteness of the entrances of the respective locations, and with an eye on the lack of apparent complaint from the community. More importantly was the unrebutted credible testimony of the applicant that she will run an independent business and that the premises of that liquor establishment is beyond 100 feet from the property line of the school. As such, the City has not proven that the applicant's premises is within 100 feet of the property line of the school. The City's denial of the license is reversed.

OPINION OF CHAIRMAN CALABRESE IN DISSENT

The equities of this case are all in favor of the applicant. The applicant appears to be a good person and her husband is to be admired as a successful self made man. Liquor has been sold at this location for years without incident and it was obvious at the hearing, that the community supports the applicant. In addition, the front entrances of the buildings do not appear to be within 100 feet of one another. All of these facts are in favor of the application.

However, recognizing that the distance between the locations when measured property line to property line, not entrance to entrance, would run afoul of the law, the applicant created a business mechanism that would expand the distances and adhere to the strict letter of the law. Hence, the business within a business was created. While this 'solution' to the 'problem' is

ingenious and creates a 'happy ending' for all involved its acceptance by the City would create a precedent that could have unfortunate and unmanageable enforcement consequences.

The City is not required to accept the notion of a store within a store to defeat the spirit of the law requiring separation of school; churches and liquor licensees. I believe the City was within its right to deny the license and this novel and ingenious solution. I would have affirmed the City's denial.

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 REVERSED.

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

Irving J. Koppel
Commissioner

Don W. Adams
Commissioner

Anthony J. Calabrese
Chairman – IN DISSENT

