

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

World of Madhav's, Inc.)
Pruthviraj M. Chaudhari, President)
Applicant (Tavern))
for the premises located at) Case No. 05 LA 62
2951 North Pulaski Avenue)
)
vs.)
)
Local Liquor Control Commission)
Department of Business Affairs & Licensing)
Scott V. Bruner, Director)
)
)

ORDER

OPINION OF CHAIRMAN CALABRESE JOINED BY COMMISSIONER ADAMS

The applicant's request for a tavern license was denied by the City. The basis for the denial was that the issuance of the tavern license would have a deleterious impact on the community and would cause a law enforcement problem. The applicant denies these allegations and appeals.

The City, at the trial de novo, presented testimony of a local Alderman and a Chicago Police Officer in opposition to the granting of the license. Alderman, Ariel E. Reboyras, testified that he is the Alderman for the ward across the street from the ward in which the applicant's establishment is located. He has resided in his ward for 19 years. The applicant is attempting to take over ownership of a currently existing bar. That bar is called 'Nick's Place'

and is a problem for his community. He described the bar as a place 'you would not take your wife to'. The Alderman described problems of public urination, fighting, gun wielding, drug dealing, gambling and prostitution in and around the establishment. He is opposed to the granting of a new license to the applicant.

Chicago Police Officer, Julie Poore, testified in opposition to the license. She is familiar with the current licensed establishment known as 'Nick's'. While on duty, she would pass by the establishment 4-10 times a day. She has been inside the place on occasion. The officer described the establishment as dark and dirty. She described the patrons as homeless, intoxicated vagrants. She was called to a battery in progress at the location and observed a man on the ground being beaten by a man on top of him. Additionally, there is prostitution and drug dealing out of the establishment.

The officer described the location as a drain on police resources. She testified that from March 1, 2005 to March 1, 2006 in the 2800-3200 block of N. Pulaski (which includes the applicant's address) 1000 calls for police service were requested. The calls for police service included calls of shots fired, damage to property, assault, theft, domestic disputes and driving under the influence. In addition, from January 2005 to December 2005 at the 2900-3099 N. Pulaski address, 90 calls for police service were made including battery, shots fired, narcotics sales and person stabbed. At the specific location of the tavern, 2951 N. Pulaski from February 1, 2004 to February 1, 2006, 31 calls for police service were made including battery, drugs, person with gun, person shot and prostitution. Eight arrests were made at the bar since 2002 for

possession of cocaine, cocaine dealing and aggravated assault. The officer testified that the bar was a constant drain on police resources and the police department was in opposition to the license.

The applicant testified in opposition to the City's position. He was not particularly impressive. There was nothing about his testimony that would promote confidence in his ability to run the establishment without incident. He is currently working at 'Nick's' and yet seems oblivious to the problems that obviously exist there.

Based on the evidence presented, the City clearly proved that the issuance of this license would have both a law enforcement problem and a deleterious impact on the community. The denial of the application for a tavern liquor license is affirmed.

COMMISSIONER KOPPEL'S OPINION IN DISSENT

This matter comes before the License Appeal Commission upon a denial of a liquor license to the applicant predicated upon the evidence of two witnesses, the Alderman and a police officer. This place has been in existence for several years with one violation, gambling not liquor. The licensee served the suspension and has had no other citations issued. The licensee still has a valid license. The new applicant purchased the building and wishes to obtain a liquor license. He paid \$200,000 for the building and the business. The new owner testified and was credible.

The Alderman testified that this was a bad neighborhood and that the place was frequented by homeless and other unsavory characters and that the community would be better off without this place.

The police officer gave similar testimony indicating the area was zoned properly and that there have been many service calls for incidents that occurred outside and inside the bar. It should be noted that the present licensee was never cited for any other violation (gambling violation as previously stated).

The issue in this case is one of due process. In this case, the Alderman had the opportunity of passing a moratorium law that would have prevented the property from being sold. This was done in many areas of the city but not in this case.

The courts are quite clear that the proper way to close a place is by due process. It might take longer, but it's the proper procedure. Illinois Liquor Law states that a liquor license can be challenged with evidence that merits suspension or revocation. This means that due process must prevail. That means a trial for any violations that the owner was guilty of having. There were no liquor violation charges against the present licensee. The new applicant seems qualified.

The applicant notified all residents within 250 feet of the premises. No one issued a complaint. The only complaints were the Alderman and the police officer.

Illinois courts regard it as fundamental that the authority to revoke a license for cause is limited to conduct of the licensee or conduct or actions of others for which a licensee is deemed responsible or chargeable. Conversely, a licensee cannot be charged with conduct over which he has no control (Childers v. Illinois Liquor Control Commission).

Redzovic vs. License Appeal Commission, states “Just as a liquor license may not be revoked in the absence of wrongful conduct attributable to a licensee, so for a liquor license an application may not be denied based on the alleged wrongful conduct of others. Nor may speculation surmise and conjecture form the basis of an application denial”.

Section 5/7-7 - Complaint of Violation Hearing. (In addition) any 5 residents of the City shall have the right to file a complaint with the local commissioners stating that any retail licensee subject to the jurisdiction the local commission, has been or is violating the provision of this act or rules or regulations issued pursuant hereto. Such complaint shall be in writing in the form prescribed by the local commission and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule or regulation believed to have been violated and the facts indicated upon which behalf is based. If the local commission is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such behalf, it shall set the matter for hearing and shall serve notice upon the licensee of the terms and place of such hearing and the particular charge in the complaint. This is called due process. This place has never been cited except for the gambling charge.

The Alderman could have passed a moratorium on this property. This was not done. If there is loitering and unusual activity surrounding the area it is the responsibility of local law

enforcement agencies to address these issues. Again, there were no citations regarding criminal activity or selling liquor illegally. If such violation existed then due process would legally handle the situation. The community was properly notified, no objections. The new applicant was credible. He invested \$200,000 to buy the property. The place is still operating under the old owner. To deny this license is equivalent to revocation which should be done by due process - not by conjecture. 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

