

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Ambrosia Nectar, LLC)
Paul Tsakiris, Managing Member)
Applicant (COP-IA))
for the premises located at) Case No. 06 LA 16
4431 North Milwaukee Avenue)
)
vs.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)
)
)

ORDER

COMMISSIONER KOPPEL'S OPINION

This matter comes before the License Appeal Commission on the denial of an incidental liquor license to what is known as 'Frappe Coffee Shop'. It serves sandwiches, coffee and a variety of desserts.

The charging document is 'that the issuance of this license would cause a deleterious impact upon the community'. The area has been plagued with problems including late night noise, traffic parking congestion, public fighting, urination and public drunkenness.

The applicant is a respected businessman in the community. He is 36 years old and has been successful in dealing with commercial property. The licensee was approved by the police.

His character was not in question as part of the charging document.

The City tried to prove that he was incompetent because another piece of property that he leased was a massage parlor of ill repute. The evidence showed that as soon as he found out, an eviction suit was filed and is now pending in court. Again, it should be noted that the applicant's character was not part of the charging document.

The law is quite clear. This is a question of due process. The many witnesses for the applicant liked the ambiance of the place and said it was a nice gathering place.

There are many ways to legally deny a license. A moratorium on the area could be passed. This was not done. The location, including other nearby licenses, could be voted dry. There is a complaint procedure (4-60-190 - City Ordinance) which says that any resident of the City of Chicago shall have the right to file a complaint with the Local Liquor Control Commission stating that the license is a nuisance and should be revoked. This is part of the due process law. The City tried to indicate that the liquor sales would be more than the coffee and food sales, thereby violating the incidental license. This is conjecture, the City knows that it has the right to examine the books of any incidental liquor licensee to determine if there are more liquor sales than food. This is due process.

The applicant has invested a substantial amount of money and needs to increase his sales. To punish the applicant whose record will reflect for no legitimate reason that he has been

denied a retail liquor license.

This is of real consequence for an applicant (who has not been charged with any violations) to secure a liquor license. He would have to disclose that he previously sought and had been denied such a license.

If problems do exist, it is the responsibility of law enforcement agencies to monitor and control this problem. The Mayor's License Commission denying this license is a back doorway of revoking a license. It is based on conjecture. Again, this place is zoned properly and as previously stated there are due process procedures to close a bad place and there are methods via due process to prevent the opening of liquor stores (local options). To deny this license is improper. The City is reversed.

OPINION OF COMMISSIONER ADAMS

The applicant seeks a Consumption on Premises - Incidental Activity liquor license for the captioned location. The Local Liquor Control Commission denied the application solely on the basis that the issuance of the license would have a deleterious impact on the surrounding community. The denial letter did not allege any grounds for denial of the application based upon the character of the applicant. The denial letter also did not allege any subterfuge regarding the application for an 'incidental' versus a 'tavern' license. The denial letter did not allege that the applicant had begun operations or served liquor without a license. Rather, the denial letter listed specific problems in the community, late night noise, traffic congestion, parking congestion,

public fighting, public drunkenness, public urination, liquor bottle littering and other acts of public nuisance that the City suggests plagues the community in which the license is sought. The applicant denies that the issuance of the license would be deleterious and appeals the denial.

During the course of the hearing, only a small minority of the City's witnesses testified regarding the allegations in the denial letter. Husband and wife Augustine J. Napoli and Katherine Marie Napoli, were credible witnesses. Mr. Napoli testified about an undue concentration of liquor establishments in his community. He believed, as a result of the number of liquor licenses, that too many 'drunks' were in his neighborhood. Parking is at a premium in the neighborhood and he is opposed to the issuance of another liquor license. Mrs. Napoli echoed his opinions and concerns.

The vast majority of evidence presented against the application was regarding allegations that were not alleged as a specific basis for the denial. A great deal of evidence was presented that the applicant was combative and lacked the temperament to possess a liquor license. There was testimony regarding properties owned and or rented out by the applicant. It was alleged that tenants leasing property from the applicant were causing problems in the community. The City witnesses laid the blame for the activities of the tenants at the feet of the applicant. Tenants that rented property from the applicant were engaged in running a prostitution ring on leased premises. City witnesses believed that the applicant was not quick enough to respond in an effective way to remedy the problems. For his part at hearing, the applicant denied these

allegations and spent a good deal of time defending his business practices and his reputation. In my opinion, the denial letter sets the parameters of our inquiry, since the denial letter did not include these allegations little of the evidence presented was relevant to our determination.

I chose to decide the case solely on whether it is likely that this particular establishment 'Frappe' would have a deleterious impact on the community. I don't believe that the City has proven that it will. While weighing the evidence presented at the hearing, the minimal evidence presented on that issue by the City was speculative and not convincing. In response, the applicant's witnesses testified in relevant portion credibly that the plan for this establishment, its small capacity and target clientele is simply not of a character to inflict a deleterious impact on the surrounding community. Based on the credible evidence on the issue charged, we have no choice but to reverse the City's decision to deny the application.

OPINION OF CHAIRMAN CALABRESE IN DISSENT

Of critical importance in determining whether an establishment will have a deleterious impact on the community is the ability of the licensee to deal with the problems inherent in the business of the sale of liquor. Invariably conflicts arise between the best of licensees and the community. Whether those inherent problems rise to the level of the establishment having a deleterious impact on the community, depends in great part on the willingness of the licensee to effectively communicate with the community in which the licensed premises is located, a willingness to recognize his and his businesses' short comings, to reach a resolution to the problems and thereby reach an accord with that community.

The evidence demonstrated overwhelmingly that the applicant lacks the unique skills necessary to hold a liquor license. Almost every witness who testified for the City from policeman to neighbor to tenant, had a story of conflict and confrontation with the applicant. The evidence demonstrated an unwillingness to effectively move to resolve business problems as they became apparent. During the course of discussions regarding addressing those business problems, the applicant was characteristically argumentative and combative. When faced with unrelenting opposition, he became confrontational and intimidating. These confrontations came in regards to both his business dealings and regarding his neighbors response to his desire to acquire a liquor license.

While the business plan, as testified by the applicant, does not demonstrate an inherent likeliness of a deleterious impact, there is no question that the execution of the plan by this applicant is likely to create that deleterious impact. The City's denial of the license in the instant case is reasonable and should have been affirmed.

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