

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Enriquita's Restaurant, Inc.)
Segundo J. Romero, President)
Applicant (COP-IA))
for the premises located at)
3835 West North Avenue) Case No. 06 LA 38
)
vs.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)
)

ORDER

COMMISSIONER KOPPEL'S OPINION

This case comes before the License Appeal Commission for a trial de novo on the question of whether or not the applicant has satisfied and met the requirements for obtaining a liquor license in the city of Chicago. The applicant's application was denied on the belief that the premises would create a deleterious impact upon the community. It should be noted that the applicant applied for a license to serve alcohol in his full service restaurant.

The applicant who has 20 years of experience as a chef for a major restaurant purchased the property in question for several hundred thousand dollars. It is an apartment building. He and his family live on the premises. He remodeled the store portion of the property at great expense to open an Ecuadorian restaurant.

It should be noted that the applicant met with people in the area who objected. The

community organization who originally objected changed their mind and withdrew their objection in writing (the applicant arranged meetings with the community organizer and because of the applicant's cooperation she approved the issuance of the license). Further, it should be noted that the witnesses who testified against liquor being sold ate at the restaurant and enjoyed the food.

When the case came to trial the community organizer who approved the issuance of the license changed her mind again and said we do not want liquor to be sold in this community.

It seems that after hearing all the evidence that this is a nice restaurant. It would be a stretch of the imagination to attribute incidents of liquor sales (drinks only served in conjunction with food) to cause a deleterious impact.

To say that a licensee could contribute to a bad situation is not enough to say that it's a deleterious impact upon the community. If problems do exist (and there are not any) it is the responsibility of law enforcement agencies to monitor and control the problem. This place is properly zoned. The licensee is credible and responsible. The Mayor's License Commission denying this license is a back doorway of revoking. To punish the applicant whose record will reflect for no legitimate reason that he has been denied a retail liquor license in the city of Chicago is unfair.

There are due process procedures to close a bad place down and there are methods to prevent openings of liquor stores (local option, moratoriums). To deny this license on the

testimony that something might go bad is not enough. The City is reversed and the license should be issued.

COMMISSIONER SCHNORF'S OPINION

This case comes before the License Appeal Commission for a trial de novo on whether the issuance of a Consumption on Premises - Incidental Activity license to the applicant would cause a deleterious impact on the community and/or create a law enforcement problem for the police department.

The City failed to present any real evidence that the issuance of this license would cause a law enforcement problem for the police department. No representative of the Police Department testified in opposition to the license and no one from the Police Department even testified as to crime in the area of these premises. The Alderman did not testify as to specific law enforcement problems he has or feels he would have in the future if the license was issued. When told there were only two 911 calls for service at that address the Alderman was not surprised. He and his staff have worked hard to keep crime down. The community representatives that testified in opposition to the license referred to prostitution and recalled problems with the old owner. None of the witnesses related any law enforcement problems to the licensee.

There was inadequate evidence presented on the issue of how the issuance of this license would cause a deleterious impact to the community. Alderman Reboyras opposed the issuance

of the license but did so because his constituents were against the license. The Alderman had no particular personal opinion but added he had no problems with the applicant or how the applicant ran this establishment. The Alderman was not aware of whether there had been a previous liquor license at this address.

Leticia Orta and Katie Artzer testified against the license. The gist of their opposition was that they had problems with the previous owners who had a similar license and that they did not feel the applicant needed to sell alcohol. The testimony of Katie Artzer lacks credibility since she continues to change her opinion from opposition to favorable to opposition again.

The testimony in the respondent's case shows that the applicant is a hard worker with 20 years in the restaurant business. His dream in life was and is to operate his own restaurant. He and his family purchased the building and live above the restaurant. They have made a substantial financial investment in the property and the community.

It is important to note this is not an application for a packaged goods liquor store with the potential for problems arising from the sale of half pints or 24 ounce cans of beer. This license will serve to supplement the existing business by allowing the incidental sale of alcohol.

No one testified that the applicant and his family are not presently running a good operation. There has been no mention of littering, garbage or rodent problems from the operation of the restaurant. While that does not insure that problems from the sale of liquor will

not arise, it is strong evidence to this Commissioner that it is more likely than not that those types of problems will not occur.

This Commissioner believes that the Local Liquor Control Commission has great discretion in determining whether to issue a liquor license but that great discretion does not mean that it can deny a license for deleterious impact without sufficient proof. The City did not present sufficient proof to show the issuance of a consumption on premises - incidental activity license to this applicant would cause a deleterious impact to this community.

I join with Commissioner Koppel in reversing the denial of this license.

OPINION OF CHAIRMAN FLEMING - DISSENTING

The issue before this Commission is whether the City met its burden at this trial de novo that the issuance of an incidental activity - consumption on premises license to the applicant would cause a deleterious impact on the community.

Alderman Reboyras testified in opposition to the issuance of this license. While he has no personal problem with the owner or the establishment the fact his constituents are opposed has led him to testify in opposition to this license. The restaurant is located within the busiest CAPS beat in the police district and issues concerning gangs and drugs are in the vicinity. While he admitted on cross-examination only two 911 calls were made concerning that address from April through August of 2006, he shared his constituents concern of what might happen.

Leticia Orta has lived in the community for thirty years. She is not familiar with the applicant and has never been inside the restaurant. Previously there was another restaurant with an incidental activity license. When that restaurant was open there were problems with litter, garbage and public intoxication. When that restaurant closed, these problems disappeared.

Katie Artzer testified individually and is Executive Director of the United Neighbors in Action block club. Its difficult to give much credibility to the testimony since she has changed her position on the issuance of the license from against to favorable to against. The gist of her present opposition was a fear that Mr. Romero would not comply with promises he made and that nothing could be done if those promises were not kept. This testimony does not deal with specific facts in which an inference of deleterious impact can arise.

The Local Liquor Control Commission has broad discretion in determining whether the issuance of a license would cause a deleterious impact on the community. The evidence of the past problems of littering and public urination that existed when the previous restaurant was open and ended when the previous restaurant closed is sufficient for the City to have met its burden on the case. I would affirm the decision of the Local Liquor Control Commission.

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: December 13, 2007

Irving J. Koppel
Commissioner

Stephen B. Schnorf
Commissioner

Dennis M. Fleming
Chairman – IN DISSENT

