

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Llano Corp.)
Mynor Guerra, President)
Applicant (Packaged Goods))
for the premises located at)
1010 South Western Avenue) Case No. 07 LA 02
)
vs.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)
)

ORDER

OPINION OF CHAIRMAN FLEMING AND COMMISSIONER SCHNORF

This matter comes before the License Appeal Commission for a hearing “de novo” as to whether the City has proved by preponderance of the evidence that the issuance of a packaged goods liquor license would “have a deleterious impact on the health, safety and welfare of the surrounding community and create a law enforcement problem for the local police department”. Section 4-60-040 (h) of the City of Chicago Municipal Code specifically provides that the local liquor control commissioner may deny an application if the issuance of such a license would tend to create a law enforcement problem or have a deleterious impact on the health, safety and welfare of the community in which the licensed premises is to be located.

The City has presented numerous witnesses that testified that while the neighborhood is

in transition, problems remain. These problems include loitering, vagrancy, public drinking, public intoxication and littering. Testimony was that the cause of many of these problems are people coming into the area and frequenting a liquor store that presently has a license and is within one block of the applicant's establishment. The residents feel another liquor store would exacerbate the existing criminal activity.

In addition to the community residents, Commander James Jackson of the 11th Police District testified in opposition to the issuance of this license. In his 25 years as a police officer and four years as the District Commander he testified there is a direct correlation between packaged goods liquor stores and crime. Package goods liquor establishments attract customers that cause criminal activity. Commander Jackson further testified that there were 130 calls for service on this block from June 2006 through December 2006.

The Applicant presented testimony that it would be selling only high-class wine. The reference is that since half-pints or 40 ounce bottles or single cans will not be sold, the issuance of this license would not add to the criminal problems. The problem is such a restricted license cannot be issued by the City or this Commission. The promise is not enforceable and is really not material to these proceedings.

The City has met its burden that the issuance of a packaged goods license at 1010 S. Western would tend to create a law enforcement problem.

Similarly, the City produced numerous witnesses that testified on the issue of whether the

issuance of this license would cause a deleterious effect on the health, safety and welfare of the community. All testified in opposition to the issuance of the license. Again, each referenced incidents of littering, vagrancy, public intoxication and criminal acts that they personally observed. Most, if not all related the bulk of area problems to the existing packaged goods liquor store and opined that a new packaged goods liquor store would add to the problems. One witness used the term that the issuance of this license would be “double-trouble”. It should also be noted that unlike other cases before this Commission where a community is split, no one from the community testified in favor of the issuance of this license.

The factual testimony of these witnesses is sufficient for the City to have met its burden of proof that the issuance of a packaged goods license to 1010 S. Western Avenue would cause a deleterious impact on the health, safety and welfare of the community in which this premises is located.

The decision of the Local Liquor Control Commission is affirmed.

COMMISSIONER KOPPEL’S OPINION IN DISSENT

The facts in this case are similar to many of the cases the Commission has heard. The applicant owns a sandwich type restaurant along with other food items. The applicant wishes to obtain a packaged goods liquor license and testified that the packaged goods liquor would be fine wine.

Many of the witnesses who testified indicated that they enjoyed going into the

establishment for sandwiches. They testified that the place was well run and they enjoyed going there for a snack. It should be further noted that the applicant is a decent man operating two other stores with liquor licenses without incidents. The owner is an architect and will operate this business with his brother. The Alderman is opposed to another liquor license primarily because of a packaged goods liquor store which still has its license and is a bad place.

To say that a licensee could contribute to a bad situation is not enough to say it is a deleterious impact upon the community. 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. There are due process methods to prevent openings of liquor stores (local options and moratoriums).

Illinois Courts regard as "fundamental that the authority to revoke a license for cause is limited to conduct on actions 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 vs. Illinois Liquor Control Commission 67 Ill App 2d 107.12, Easy Life Club Inc. 18 Ill App 3rd and Beer and Brat 44 Ill App 3rd.

The same fundamental notions of fair play and justice which govern licensing authority in revocation proceedings apply with equal force to proceedings arising in the context of the refusal by a licensing authority to grant a license application. Just as a liquor license may not be denied based on the alleged wrongful act of others nor may speculation surmise and conjecture

from the basis of an application denied Redzovic vs. LAC No. 1-913448, Ill App. April 23, 1993. The City should have been 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: October 4, 2007

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Commissioner

Irving J. Koppel
Commissioner – IN DISSENT

