

**LICENSE APPEAL COMMISSION
CITY OF CHICAGO**

El Tropico, Inc.)	
Angel I. Rivera, President)	
Licensee/Suspension)	
for the premises located at)	Case No. 07 LA 21
3933-35 North Sheridan)	
)	
v.)	
)	
Local Liquor Control Commission)	
Department of Business Affairs & Licensing)	
Scott V. Bruner, Director)	

ORDER

OPINION OF CHAIRMAN FLEMING

This Commissioner having considered the appeal of EL TROPICO, INC., ANGEL I. RIVERA, PRESIDENT, from the order of a 21-day suspension entered by the Mayor, as Local Liquor Control Commissioner of the City of Chicago, entered and taken MAY 8, 2007, and the Commission having reviewed said appeal and the transcript of the proceedings taken before the Mayor, as Local Liquor Control Commissioner and the parties having made oral argument and now being fully advised of the premises, DOTH FIND:

- A) That the Mayor, as Local Liquor Control Commissioner, has proceeded in a manner provided by law.
- B) That the findings of fact of the Local Liquor Control Commission in paragraphs 1 through 7 of the order of suspension are supported by the substantial evidence in light of the whole record.
- C) That the order of a 21-day suspension is not supported by the findings of the Local Liquor Control Commission.

235 ILCS 5/7.5 authorizes a local liquor commissioner to revoke or suspend any license issued by him if he determines that the licensee has violated any of the provisions of this act or any valid ordinance...enacted by the particular city council. This provision has been broadly construed to mean

the violation of any ordinance on the licensed premises is cause for suspension or revocation. This provision has also been held to require a reasonable construction with its application being limited to violations of statutes, ordinances or regulations that are fairly related to the control of liquor. This point was specifically mentioned in the case of Askew vs. Daley, 63 Ill App. 3d 370 which the City cited in its closing argument. Askew dealt with a licensee that repeatedly violated the weights and measures and meat grading ordinances and was deceiving the public. The Court upheld revocation of the licensee since the unlawful sale of food was closely related to public health and welfare and where unlawful sales of food are conducted on the same premises where liquor is sold the public needs to be protected as to all areas of the licensee's premises.

The ordinance that the licensee has violated in this case deals with a lack of a permit for a canopy which extended over the public way. The notice of hearing does not allege that the canopy was a danger to the health and safety of pedestrians; the violations are the lack of a permit on two separate dates. The Municipal Code calls for fines of no more than \$50.00 for each offense. While this Commissioner understands that the Local Liquor Control Commission is not limited to seeking fines for violations of ordinance violations this type of ordinance violations are not sufficiently related to the control of liquor so as to justify a 21-day suspension.

The decision of the Local Liquor Control Commission of the City of Chicago should be reversed.

COMMISSIONER KOPPEL'S CONCURRING OPINION

This violation was for failure to obtain a license to install a canopy and an order of suspension was issued. This licensee has been in business for several years without incident. A 21-day suspension for failure to have a canopy license is inappropriate. The Courts have clearly stated that this is not a liquor violation. The penalty could have been a fine, but not a 21-day suspension. The penalty in this action was harsh and inappropriate and is an abuse of discretion. The City is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of El Tropico, Inc., for TWENTY-ONE days (21) 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: October 18, 2007

Dennis Michael Fleming
Chairman

Irving J. Koppel
Commissioner

Note: Commissioner Schnorf did not participate in hearing