

**LICENSE APPEAL COMMISSION  
CITY OF CHICAGO**

Monsen's Tally-Ho Pub, Inc. )  
Peter Joseph Langhart, President )  
Licensee/Suspension )  
for the premises located at )  
1951 West Howard Street )  
v. )  
Department of Business Affairs & Licensing )  
Local Liquor Control Commission )  
Scott V. Bruner, Director )

Case No. 07 LA 24

**ORDER**

**COMMISSIONER KOPPEL'S OPINION**

This case comes before the License Appeal Commission on an appeal of a 30-day suspension arising out of two cases that were heard concurrently. The first case alleged that on August 2, 2006, the Licensee permitted the installation or use of a jukebox on the premises without having a valid tax emblem affixed to the jukebox in violation of Title 4, Chapter 156, Section 180, of the Municipal Code of Chicago. The second case alleged that on December 28, 2006, the Licensee failed to post a 14" x 14" exit warning sign in a visible location inside the tavern, a violation of Title 4, Chapter 60, Section 100 (d) of the Municipal Code of Chicago. After a hearing, the Deputy Hearing Commissioner found the City sustained its burden of proof on both cases and imposed a thirty day suspension to run concurrent on both cases.

The first issue to be addressed is whether it was proper for the Hearing Officer to

consider prior dispositions in recommending a 30-day suspension as an appropriate penalty. The Licensee argues that since he is a new stockholder and was not involved with the tavern when the previous discipline was imposed, it cannot be held against him. Judge Arnold in the case of Eddie Z's, Inc. v. Richard M. Daley et al, 01 CH 1231, held that since a person buying all the stock of an existing license must individually go through the same application process as a sole proprietor seeking a new license, "a liquor license is not treated like other corporate property and its owner is not treated as purely a corporation". The violations occurring before the purchase of the stock cannot be imputed to the new owner. The Hearing Officer should not have considered dispositions before Mr. Langhart purchased the stock of Monsen's Tally Ho Pub, Inc.

Section 4-60-181 dealing with revocation orders not stayed on appeal only allows review of prior disciplinary history which occurred within the prior three years. The last discipline in this case was more than three years ago. The past history should not have been considered by this Hearing Officer.

In cases dealing with suspension or revocations this Commission cannot modify the discipline imposed. It can reverse if the particular suspension is unreasonable or arbitrary. A 30-day suspension in this case is unreasonable and arbitrary. The 30-day suspension is reversed.

COMMISSIONER SCHNORF'S OPINION - CONCURRING IN PART AND DISSENTING  
IN PART WITH COMMISSIONER KOPPEL

The Local Liquor Control Commission imposed a 30-day suspension concurrent on two cases against this licensee. The first case alleged that there was a jukebox on the premises without the proper city tax stamp and the second alleged a failure to have an exit warning sign. After hearing evidence the Hearing Commissioner ruled that the City proved both matters. In deciding on the recommendation of a 30-day suspension the Hearing Officer took into consideration the past disciplinary history of the corporate licensee which included a \$300 voluntary fine for operating without a license on November 13, 1992; a 21-day closing for sale to minor on October 19, 2001; and a 30-day closing on January 6, 2003 for operating in violation of a voluntary closing agreement. All previous disciplinary history occurred prior to Mr. Langhart purchasing all of the stock of the licensee corporation.

Initially I must dissent from Commissioner Koppel's opinion as it relates to the use of prior disciplinary history in this case. I do not believe that Section 4-60-181 imposes a time period after which prior disciplinary history can be reviewed by the Local Liquor Commissioner in assessing discipline. That section sets out situations in which an order of revocation takes immediate effect and is not stayed by appeal. To read that section of the Code as limiting the use of past discipline in determining the proper discipline is wrong.

I also dissent from Commissioner Koppel's opinion that the past discipline cannot be used to assess an appropriate penalty in this case because that discipline occurred prior to Mr.

Langhart individually purchasing all of the stock of the licensee corporation. The Municipal Code allows for an applicant in this type of case to apply for a new license individually or by forming a new corporation. If granted that license would have no strikes against it. The Code also allows one to purchase the stock of the existing corporation. Despite the fact that the purchaser of said stock is investigated in a similar manner as he would if a new applicant, there is not a new license. When Mr. Langhart purchased the stock of the licensee corporation he purchased its past disciplinary history.

This Commission is limited in reviews of suspensions and revocation. It determines if the Local Liquor Control Commission proceeded according to law and then determines if the findings of the Local Liquor Control Commission are supported by substantial evidence. There is no issue raised that the Commission did not proceed in a manner prescribed by law and the findings as to the lack of the city tax emblem being on the jukebox was supported by substantial evidence. The licensee through his attorney stipulated to the lack of a warning exit sign. The issue now becomes if the order of the 30-day suspension is supported by the findings. I find such order in this case was not supported by the findings.

This Commissioner is aware fully that violation of any statute, ordinance or regulation related to the control of liquor upon liquor licensed premises constitutes cause for revocation or suspension. This Commissioner is aware and supports the fact that Local Liquor Commissioners are given grand power to assess proper penalties for violations of such statutes, ordinances or regulations related to the control of liquor. With those matters in mind this Commissioner feels

that each case must be looked at and ruled on based on the facts of each case and the section of the code or statute found to have been violated. The issue becomes whether the circumstances of each individual case shows the Local Liquor Control Commission in imposing a 30-day suspension for these two violations acted arbitrary or unreasonably or selected a type of discipline unrelated to the needs of the Commission in the statute.

Title 4, Chapter 156, Section 180 of the Municipal Code requires jukeboxes on licensed premises to have a valid tax emblem. Chapter 156 does not deal with regulation of liquor but with amusements. It appears that Section 4-156-510 of the Code applies to violations of this Section and the penalty called for is a fine between \$200.00 and \$500.00 for each offense and each day the violation continues is a separate offense.

Title 4, Chapter 60, Section 100 (d) of the Municipal Code mandates that each liquor licensee shall post a 14 inches by 14 inches sign stating: "A person exiting this establishment must depart in a quiet and courteous fashion, and must not cause disturbances to nearby residents, litter or damage private property". While this section of the Municipal Code does specifically apply to regulation of liquor licensees, the section includes a specific penalty for violation of this section. It sets the penalty as a specific fine of \$500.00 plus \$100.00 per each day of a continuing violation.

It is also relevant to point out that these violations were observed before the tavern had opened for business. There is no evidence that patrons of the licensee were playing pool on an

unlicensed table or that patrons were exiting the tavern in a manner that was causing a disturbance to the neighbors.

Under these facts and dealing with the violation of these ordinances the imposition of a thirty day suspension was arbitrary, unreasonable and not a type of discipline unrelated to the needs of the statute and the Local Liquor Control Commission. The 30-day suspension is reversed.

#### CHAIRMAN FLEMING'S DECISION IN DISSENT

This case is before the License Appeal Commission on the Licensee's appeal of a 30-day suspension imposed for a failure to have a warning sign and for failure to have the proper tax emblem on a jukebox. The 30-day suspension is to run concurrently on these two matters. There were two separate cases filed before the Local Liquor Control Commission and they were heard on the same date and consolidated for purpose of the findings of fact and discipline imposed.

The present stockholder of the licensee corporation argues that it was wrong for the Local Liquor Control Commission to consider past discipline imposed on the licensee corporation in determining an appropriate penalty since he was not a stockholder at the time that this discipline was imposed. His attorneys as well as Commissioner Koppel rely on Judge Arnold's statements in the case of Eddie Z's, Inc. v. Richard M. Daley et al, 01 CH 1231. While I understand the rationale behind Judge Arnold's opinion I do not feel that such an opinion is binding precedent

on this Commission. The fact is that Mr. Langhart had a decision to make when he decided to purchase this establishment. It is the same decision facing anyone who is considering purchasing an existing license held by a corporation. If I buy the stock of the corporation various inspections of the premises are avoided but the past history of the license is now my history. If I apply for a new license I will have a clean record but must follow all the procedures set out for a new applicant. The voters in the area would be notified, inspections of the premises by building inspectors must be passed and the Local Liquor Control Commission may decide the issuance of a new license could cause a deleterious impact on the community. For whatever reason Mr. Langhart decided to purchase the stock of the existing licensee corporation. When he purchased the stock he purchased the corporation's disciplinary history.

The Licensee's argument on this point focuses on the fact that a new stockholder or officer must undergo a similar background check and be approved by the Local Liquor Control Commission. While that is true, other aspects of the application process differ when the applicant seeks a new license as opposed to a stock purchase of an existing corporate licensee. The notion that the Local Liquor Control Commission treats corporate change in the same manner as a new application is the foundation of Judge Arnold's opinion and that notion is wrong.

Rule 9 (b) of the Rules of Procedure for contested hearings before the Mayor's License Commission specifically states a Licensee's prior history may be admitted pursuant to Childers v. Illinois Liquor Control Commission, 67 Ill. App. 2nd 107 (3<sup>rd</sup> Dist. 1966). This past history is allowed not to prove the allegations of this present case but to be considered in the

recommendation of discipline. It was proper in this case for the Deputy Hearing Commissioner to consider the corporate licensee's past disciplinary history.

There is no statute of limitations on the use of such disciplinary history. If discipline was imposed on a corporate licensee fifty years ago, that past discipline may be allowed in evidence. Section 4-60-181 of the Municipal Code is specifically titled "Revocation order not stayed on appeal". It sets out when a revocation order is not stayed on appeal but any limitations on use of past discipline is only for this particular issue. I disagree respectfully with Commissioner Koppel's position that this section of the Municipal Code applies to suspension and discharge cases.

By law this Commission is limited in its review of appeals of suspensions. The issue is whether the thirty day suspension for these two violations was so arbitrary and unreasonable or so unrelated to the needs of the Commission so as to justify an outright reversal. Since there is no concrete definition of when a penalty is arbitrary, unreasonable or unreliable to the needs of the Commission these matters must be dealt with on a case by case basis. In making a determination this Commissioner is limited by the proviso that the Local Liquor Control Commission is given broad power in determining what discipline to impose. This Commission also may not reverse if it feels that the penalty imposed is inappropriate and that another lesser discipline should have been imposed.

One of the two ordinances involved in this case deals specifically with the regulation of liquor establishments. Title 4, Chapter 60, Section 100 (d) of the Municipal Code specifically requires that every tavern shall have a 14 inches by 14 inches sign posted in a visible location advising patrons to leave in a quiet and courteous manner and to not disturb nearby residents. The admitted violation of this ordinance is an admitted violation of an ordinance specifically drafted as a requirement for tavern owners. It should be noted that the section specifically calls for a fine of \$500.00 plus \$100.00 per day for each continuing violation. Counsel for the licensee did not argue that this provision in fines limited the Local Liquor Commission's power to impose discipline other than a fine.

The second ordinance violated by this licensee in this case deals with the failure to have a valid tax emblem on a jukebox. While on its face this ordinance would be considered one dealing with revenue, the fact that this jukebox was inside a licensed tavern is a sufficient nexus to say that the violation was within the provision of the Local Liquor Control Commission.

Since both ordinances are related to the regulation of liquor licensed establishments and with the past history of violations being properly considered by the Deputy Hearing Commissioner, this Commissioner cannot say that the imposition of the 30-day suspension was so arbitrary, unreasonable or so unrelated to the Commission so as to justify its reversal. While I personally would not have imposed a 30-day suspension, I do affirm the 30-day suspension.

Dennis Michael Fleming  
Chairman

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the Licensee for THIRTY (30) days is hereby 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 11, 2007

Irving J. Koppel  
Commissioner

Stephen B. Schnorf  
Commissioner

