

**LICENSE APPEAL COMMISSION
CITY OF CHICAGO**

El Tropico, Inc.)	
Angel I. Rivera, President)	
Licensee/Revocation)	
for the premises located at)	Case No. 07 LA 45
3933-35 North Sheridan)	
)	
v.)	
)	
Local Liquor Control Commission)	
Department of Business Affairs & Licensing)	
Scott V. Bruner, Director)	

ORDER

The License Appeal Commission having considered the appeal of EL TROPICO, INC., ANGEL I. RIVERA, PRESIDENT, from the order of revocation of the Mayor, as Local Liquor Control Commissioner of the City of Chicago, entered and taken AUGUST 30, 2007, and said Commission having reviewed said appeal and transcript of the proceedings taken before the Mayor, as Local Liquor Control Commissioner and now being fully advised of the premises, DOTH FIND:

- A) That the Mayor, as Local Liquor Control Commissioner, has proceeded in the manner provided by law.
- B) That the findings of the Local Liquor Control Commissioner as set forth in the order of revocation are not supported by substantial evidence in the light of the record as a whole.

David Mirza did testify that in his opinion, there was no dramshop coverage for the licensed premises for October 8, 2005 to October 18, 2005, and from December 3 through December 10, 2005. David Mirza may well have been a credible, reliable and uncontradicted witness, but David Mirza's opinion on whether there was insurance coverage was based on his interpretation of the facts. It should be noted

David Mirza testified he is in charge of the Underwriting Department but no evidence was presented to establish Mr. Mirza was an expert on the issue of insurance coverage. The facts are not in dispute. The Licensee admitted he made late payments on his dramshop insurance. It is also uncontradicted the insurance company accepted these late payments and reinstated the policies on both occasions. The issue before this Commission is the legal effort of the reinstatements of the dramshop policy.

It should be noted the notice of hearing alleges a failure to maintain liquor license liability (dramshop) insurance for the licensed premises from October 8, 2005 through October 18, 2005, and then again from December 5, 2005, through December 10, 2005. The notice alleges these acts violate Title 4, Chapter 60, Section 040 (c)(1) of the Municipal Code. That section does not mention dramshop insurance. The relevant section of the code would appear to be 040 (c) (3) which states in part:

the termination or lapse of the licensee's insurance coverage
shall be grounds for the revocation of such license

Since there has been no objection raised before the Local Liquor Control Commission or before this Commission, this will be considered an administrative error that should not be a basis to overrule the decision of the local liquor commissioner.

Commissioner Prosser specifically makes mention in his findings that the Licensee did not present case law to him to support its position that the reinstatement of the policies meant legally there was no lapse in coverage. That is not the situation before this Commission.

The testimony of David Mirza was that the dramshop policies were both "reinstated" after the late payments were received by the insurance company. The record is also clear no new policy was issued. In Kahn v. Continental Casualty 39 Ill 445, 63 N.E. 2d 468 (1945) the Illinois Supreme Court stated:

'To reinstate' means to 'instate again, to place the policy in

the position as it was before the default was made in the payment of the premium'. It supplies the right of the insured to be placed in the same condition that he occupied before the forfeiture, and it supplies the duty on the part of the insurer to place the insured in that condition.

The legal effect of the reinstatements was that there was no lapse in dramshop insurance coverage for the dates in question.

- C) Since the findings of the Local Liquor Control Commission as set forth in the order of revocation are not supported by substantial evidence in light of the record as a whole, the order of revocation is not supported by the findings of the Local Liquor Control Commission.

IT IS THEREFORE ORDERED AND ADUDGED That the order revoking the liquor license of El Tropico, Inc. 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 4, 2007

Dennis Michael Fleming
Chairman

Irving J. Koppel
Commissioner

Note: Commissioner Schnorf did not participate in hearing