

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Montrose Liquor Mart, Inc. )  
Salem Abdulkawi, President )  
Applicant (Packaged Goods) )  
for the premises located at ) Case No. 06 LA 47  
3158 West Montrose Avenue )  
)  
v. )  
)  
Local Liquor Control Commission )  
Department of Business Affairs & Licensing )  
Scott V. Bruner, Director )  
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

The Local Liquor Control Commission denied the applicant's application for a Packaged Goods license at this address based on its finding that the granting of such a license to the applicant at this location would have a deleterious impact on the health, safety and welfare of the surrounding community. It was also stated in the denial letter that this particular applicant has a history of selling alcohol to minors at two other liquor stores that he has licenses for in the city of Chicago. At the 2583 N. Clark location, his business was fined or closed on three separate occasions and he has been fined twice for selling alcohol to minors at 2807 N. Clybourn. This matter was properly appealed and there is proper jurisdiction for the License Appeal Commission to hear and rule on this case.

This matter comes before the License Appeal Commission for a trial de novo. The issue is whether the granting of a packaged goods liquor license to this applicant at this location would have a deleterious impact on the health, safety and welfare of the surrounding community. The Municipal Code of the City of Chicago in Section 4-60-040 (h) lists the reasons that allow the Local Liquor Control Commissioner to deny a license application and that paragraph specifically allows denial of a license application if the issuance of the license would have a deleterious impact on health, safety and welfare of the community. This section of the Municipal Code does not allow the Local Liquor Control Commissioner to deny a license application because the applicant has a history of selling alcohol to minors at other premises for which he has licenses. As such I read the paragraph in the denial letter of November 22, 2006, reciting the history of sales to minors part of the reason for the finding that the issuance of a license would cause a deleterious impact and it is not a separate reason for the denial of the application.

It should be noted that there is presently a packaged goods liquor license at this establishment. The matter before this Commission is not whether the present licensee is conducting its business in a proper manner. Once a license is issued other due process requirements are triggered and revocation or suspension of an existing license is not allowed for because the establishment is having a deleterious impact on the community. The significance of this distinction as it applies to the facts of this case is that it is not contradicting to find that the City can prove the issuance of a packaged goods license to this applicant at this location would cause a deleterious impact on the community without proving that the existing license is conducting business in such a manner as to subject it to revocation or suspension proceedings.

The City presented several witnesses in opposition to the issuance of this license. A review of the evidence makes it abundantly clear that the community is experiencing problems with public drinking, public intoxication, public urination and public defecation. These problems primarily seem to flow from the actions of a group of men who congregate in the area around 3158 W. Montrose on a daily basis. In addition to the previously mentioned actions of these men, there was testimony that children and others have been harassed by this group. It seems clear to this Commissioner that the City has proved that there are deleterious conditions occurring that affect the health, safety and welfare of the community. The fact that such conditions presently exist does not bar the City from denying a license on the grounds of deleterious impact. If the issuance of a license would tend to continue to aggravate an existing deleterious impact, the application can be denied.

In this case there is clear and conclusive evidence that a source of the deleterious conduct is the consumption of alcohol by this group of men. The descriptions of the containers for the alcohol found littered about the area are such as to believe they were packaged goods carried out of a liquor store or tavern. While some of the witnesses could not relate the purchase of this liquor to 3158 W. Montrose, at least three witnesses testified to seeing someone from this group of men leave the premises at 3158 W. Montrose with liquor. These witnesses were Rev. Joseph Tito, John Rivera and Mariaelena Guzman.

For the purposes of ruling in this case the City could prove the deleterious impact without testimony directly relating the actions of these men to 3158 W. Montrose. The ability of these

men to potentially purchase their alcohol at a licensed liquor store premises at 3158 W. Montrose is a sufficient basis to establish a deleterious impact on the community.

In addition to the evidence on the problems existing in the community there was also evidence that this applicant has been fined or suspended a total of five times for sales to minor at two other locations where he holds liquor licenses. While this evidence can be relevant to the issue of a deleterious impact, this Commissioner does not find it to have much evidentiary value. This is not a situation where the deleterious impact arises out of sales to minors.

Based on the totality of the evidence, the City met its burden of proof and established by a preponderance of the evidence that the issue of this license would cause a deleterious impact on the health, safety and welfare of the community. The decision of the Local Liquor Control Commission is affirmed.

#### OPINION OF COMMISSIONER KOPPEL IN DISSENT

The facts in this case are as follows: the applicant wishes to obtain a packaged goods liquor license. The City contends that the applicant has indicated that the seller has financed the applicant's purchase of this business leaving the seller with a financial interest in the business. The denial was predicated upon the belief of the City that the business would continue to operate.

The denial was predicated on the fact that the previous owner had several violations and that the new applicant has been fined or closed for selling to minors on three separate occasions

over a period of 26 years at a different establishment. In considering the license, the Local Liquor Control Commission took into consideration the past history of the applicant and the license was denied. The police did not object to the issuance of the license.

The applicant is a responsible owner and if he fails in his responsibility to operate a good place there are legal ways to take a license away (if the license is denied the place will still be in existence). To punish the applicant whose record will reflect for no legitimate reason that he has been denied a retail liquor license because he has had violations over a period of years for none of which advocated taking away the license is unfair.

To say that the license "could" contribute to a bad situation is not enough to say it's 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 ways to close a bad place (file a complaint) and there are methods to prevent openings of liquor stores (local option, moratoriums). Again, this place will still be in existence if the applicant is denied the license. If the license is granted and later revoked for serious violations the applicant jeopardizes his other licenses. To deny this license on the testimony that something might go awry is not enough. 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: March 21, 2008

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Commissioner

Irving J. Koppel  
Commissioner – IN DISSENT