

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Rafael Zavala, Inc.)
Rafael L. Zavala, President)
Licensee/Suspension)
for the premises located at)
4218 South Archer Avenue) Case No. 07 LA 57
)
v.)
)
Department of Business Affairs and Licensing)
Local Liquor Control Commission)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER KOPPEL

Respondent received proper Notice of Hearing to be conducted in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued to Rafael Zavala, Inc., for the premises located at 4218 South Archer Avenue, Chicago, Illinois. The City alleged two charges as the bases for the disciplinary action. The first charge alleged a sale of alcohol to a minor on August 4, 2006, in violation of the Municipal Code of the City of Chicago. The second count alleged a sale of alcohol to a minor in violation of state statute. Hearings on these charges were held by Hearing Commissioner Robert Emmett Nolan on July 24, 2007, September 11, 2007 and November 6, 2007. Subsequent to these hearings Hearing Commissioner Nolan issued Findings of Fact that the City proved both charges and that based on the totality of circumstances, including the licensee's prior record, that a thirty-day (30) suspension is an appropriate punishment. Scott V. Bruner, then the Director of Business Affairs and Licensing adopted these findings.

The licensee filed a timely Notice of Appeal with the License Appeal Commission. Oral argument was heard and taken under advisement on October 23, 2008.

Since this is an appeal of a suspension the scope of review for this Commission is limited to the following questions:

- (A) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (B) Whether the order is supported by the findings;
- (C) Whether the findings are supported by the substantial evidence in light of the whole record.

One of the issues raised by the licensee deals with whether it was appropriate for the Local Liquor Control Commission to consider the entire disciplinary history of the licensee in assessing a 30-day suspension. The past history in the record as City's Exhibit #3 shows a 21-day closing for a sale of alcohol to a minor on February 16, 2004; a 10-day closing for a sale of alcohol to a minor on April 10, 2000; a 3-day closing for a sale of alcohol to a minor on June 12, 1995; and a \$500.00 voluntary fine for a sale of alcohol to a minor on August 11, 1994. This exhibit was allowed in evidence over the objection of licensee's attorney but it should be noted the objection dealt with the issue of whether the \$500.00 voluntary fine should be considered as prior punishment. No objection was made at the hearing with respect to the issue of whether a subsequent owner of stock of a corporation should be responsible for actions of the corporation before they owned the stock. Finally no objection was made at the time based on the accuracy of the prior discipline listed on City's Exhibit #3.

Certain Cook County judges had adopted the reasoning that since new stockholders need to go through a complete background investigation comparable to what was required at the time of the original application, those new stockholders should not be burdened with past disciplinary history of the corporation prior to their purchasing the stock. The Appellate Court has recently rejected that argument in the case of Addison Group, Inc. vs. Richard M. Daley, et al, (1-06-0532, 6th Division, 1st District). Addison held that a corporate owner should not use a sale to avoid the consequences of past misconduct. A change in ownership might be a mitigating factor where a current owner did not participate in past violations but it was proper to consider all prior misconduct by the corporate licensee. Addison also ruled that voluntary payment of fines is considered past misconduct. Based on Addison this Commissioner finds it was appropriate for the Hearing Commissioner to consider all past prior misconduct as listed on City's Exhibit #3. The fact that Mr. Zavala did not own the stock in this corporation from 1990 until 2000, was a matter the Hearing Commissioner could have used in mitigation.

A tandem argument raised at oral hearing was that City's Exhibit #3 is not an accurate history of prior discipline for this licensee. Since it was not accurate the imposition of the 30-day closing should be reversed since the Hearing Commissioner ruled on inaccurate information in finding a 30-day closing was appropriate. The licensee argues that Mr. Zavala's testimony was unrebutted that there were only two violations imposed against the corporation while he was the owner. His testimony did not mention a sale to minor in 2000 as set out in City's Exhibit #3. Counsel for licensee also referred to the rebuttal closing argument of the Assistant Corporation Counsel in which he referred to the fact that there was only one prior sale to minor under the

ownership of Mr. Zavala as further proof City's Exhibit #3 was flawed.

The transcript of Mr. Zavala's testimony (Transcript 9-11-07, Page 6) states he has had two tickets only. On Page 11 of that transcript in cross-examination Mr. Zavala clarified that one of those tickets was in 2006, this case, and he believed in 2004. Both tickets were for selling to minors. Based on this transcript Mr. Zavala admitted to two previous sales to minor while he was the owner of this corporation.

This Commissioner finds that it was appropriate for the Hearing Commissioner to have considered the entire past history of the corporate licensee under the ruling in the Addison case and pursuant to the rules of procedure at the Local Liquor Control Commission. It further finds there was no specific objection to the use of City's Exhibit #3 on the basis that it was inaccurate and that a review of all of Mr. Zavala's testimony does not establish that it was inaccurate. Mr. Zavala admitted to two sales of minors including this case while he owned the corporation.

After a review of the entire record and taking into account the arguments of counsel and having had the chance to review applicable case law, statutes and ordinances this Commissioner finds:

- (A) The Local Liquor Control Commissioner proceeded in a manner provided by law;
- (B) The order of a 30-day closing is supported by the findings;
- (C) The findings are supported by substantial evidence in light of the whole record.

The decision of the Local Liquor Control Commission is upheld.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor

license of the appellant for THIRTY (30) days 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: February 3, 2009

Dennis M. Fleming
Chairman

Irving J. Koppel
Member