

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

South Shore Produce, Inc.)
Nehaya Shubbak, President)
Licensee/Revocation) Case No. 12 LA 73
for the premises located at)
7900 S. South Shore Drive)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

The Licensee received notice that pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago, that a hearing would be held in connection with disciplinary proceedings regarding the City of Chicago liquor license and all other licenses issued to it for the premises located at 7900 S. South Shore Drive. The charge against the licensee was:

1. That the licensee, by and through its agent, caused a public nuisance by failing to take reasonable steps to correct objectionable conditions occurring on the licensed premises or on adjacent property while the establishment is open for business and within one hour or less of the time the establishment is open or closed for business, in violation of Municipal Code of Chicago 4-60-190 (b).

This matter proceeded to hearing on several dates before Deputy Hearing Commissioner Robert Emmett Nolan. Assistant Corporation Counsel Maggie Shiels represented the City of Chicago and attorney Timothy Fitzgerald represented the licensee. Deputy Hearing Commissioner Nolan entered Findings of Fact that included:

- a. The City held hearings pursuant to 4-60-190 (b) of the Municipal Code to investigate conditions that exist in and around the licensed premises and those hearings have not resulted in a successful outcome.
- b. That the licensee, by and through its agent, by failing to take reasonable steps to prevent disturbances of the peace, loitering, drinking in public, public urination, and failing to keep the area around his business free from excessive debris has caused a public nuisance, in violation of 4-60-195 of the Chicago Municipal Code.

The licensee filed a timely appeal of that decision with the License Appeal Commission. As this appeal deals with Sections 4-60-190 and 4-60-195 of the Municipal Code, a copy of these code sections is attached to this decision as Addendum A.

Several witnesses testified as secondary witnesses in support of the licensee and opposed to the licensee. Both sides also presented testimony within petitions. This evidence was limited in scope and did not address specific testimony on the issues of whether a nuisance existed at the licensee's business. There is no need to specifically recite this testimony.

In order to clarify this decision, a synopsis of the relevant testimony of the primary witnesses will be helpful.

Keiana Barrett was Chief of Staff for then 7th Ward Alderman Sandi Jackson and testified on behalf of the Alderman. She became aware of South Shore Produce two years earlier when she started her job. That would have been in July of 2010. Within a few weeks of being on the job, residents regularly complained about the sale of loose cigarettes, excessive loitering, excessive garbage, and loud music. Since then, the Alderman's office has received two or three

calls a week from residents complaining of criminal activity on the premises, lack of security, and a lack of adequate lighting. The witness identified City's Exhibit 3 as copies of complaints from citizens on forms provided by the Department of Business Affairs. These 59 forms complained about the licensee and were submitted in the last two months. The complaints were of sale of alcohol and tobacco to minors, sale of loose cigarettes, sale or possession of drug paraphernalia, and public nuisance.

The witness personally visited the store about five times since 2010. Two of the visits were in 2010, two were in 2011, and the most recent a few weeks before testifying. The visits were at different times because the complaints made were for different times during the day. The purpose was to observe and ascertain whether there was a correlation between the complaints and what she observed. On those visits, she observed excessive garbage on the exterior and no visible security. Groups of individuals were assembled directly outside the door, and in 2010 she observed the sale of loose cigarettes by a store employee. She is personally aware Alderman Jackson has contacted the licensee to discuss concerns about the operation of the business since 2009, and she was present at a meeting the previous year. The witness opined that sale of alcohol at 7900 S. South Shore Drive contributes to the problems she described.

In 2009, the 7th Ward contacted the Department of Business Affairs and Consumer Protection because of resident complaints about the licensee's business practices. The witness as well as a representative of the licensee attended meetings at City Hall in 2010 and 2011. The Alderman was personally present and expressed her concerns. There was no decrease in complaints after the 2010 meetings and prior to the 2011 meetings. During the 2011 meetings,

suggestions were made to improve matters at the business. These included Basset training for all employees, uniformed security for the grounds of the store as well as its interior, and routine cleaning of the parking lot and the rear alley area of the store. Over the last year, the witness has not seen improvement in security and only a slight improvement in the appearance and maintenance of the grounds.

Arthur Lyles is an assistant pastor at Christ Bible Church located at 7877 South Coles Avenue and lives at 3037 East 79th Street. He is familiar with South Shore Produce located at 7900 S. South Shore Drive. He has observed instances of violence with men fighting in the store and he has seen broken glass and trash. There was a shooting in the last year about 60 feet from the store. These problems have been going on for the last five or six years. He believes the sale of alcohol at this store is responsible for these problems because the traffic comes because liquor is sold. People's inhibitions are lessened when they drink and they do things they normally would not do. Sometimes there is loud noise from cars. He experienced problems related to the liquor store like fighting two or three times a year. The trash and litter and garbage are always present. The store has put up a fence and put up outside lights but those have not deterred the problems. He feels the sale of alcohol at the store is a nuisance. He also feels sale of alcohol is a public nuisance in general.

Samuel Ortiz has lived at 7859 B S. South Shore Drive since 1988. He lives approximately the length of 79th Street from the licensee and is familiar with South Shore Produce. He has observed prostitutes servicing clients in his development's parking lot. He believes this activity is related to the licensee because he sees on occasion liquor bottles next to

used condoms. At the intersection of 79th and South Shore Drive, he has observed people selling loose cigarettes. Those individuals are typically holding some sort of alcohol. He sees these gentlemen going back and forth from South Shore Produce. These activities are ongoing at 8:15 a.m. and are still happening in the late evenings. He has not seen any improvements in these conditions in the last year. He feels the sale of alcohol at 7900 S. South Shore Drive is a nuisance.

Reginald Washington has lived at 7914 S. South Shore Drive for four years. His home is across the alley next door to 7900 S. South Shore Drive. He is familiar with the licensee's liquor store. He has experienced problems that he feels are caused by the sale of alcohol at that store. The people that are drawn to the store leave the lot to urinate and defecate in the alley. There is garbage that comes from the lot that he cleans up each day. The lot is a focal point for drug deals and there are constantly gang members present. People urinate in the alley at least two or three times a day and he sees people doing gang handshakes. He feels the activity is related to South Shore Produce because the transactions start in the store's parking lot. People sit in the parking lot drinking. He has expressed his concerns to the store's representative. There has been some improvement in that the store now cleans the lot at night and delivery trucks no longer park on the sidewalk. The garbage in the alley from the store's patrons is still not cleaned up. There was one security guard that helped control the loitering but he has not seen him recently. He feels the sale of alcohol at the licensee's store is a nuisance.

Carlos Maxwell has lived for twelve years at 7436 S. Oglesby which is within a mile of 7900 S. South Shore Drive. He is the project manager for Special Services Area 49, which

provides supplemental services to the area of the store. His services are contracted by the South Shore Chamber of Commerce. He is present in the area around 7900 S. South Shore Drive at work all day. He is familiar with South Shore Produce as a spot with a lot of negative elements within the community. He has roll calls for security guards employed by SSA in the store's parking lot. The store has been cited as a hotspot because of the frequency of crime and violence around the store. He has received reports of loose cigarette sales and sales of high octane 40 ounce malt liquor. There is a great deal of loitering. As Chairman of the 7th Ward Business Advisory Committee he has interfaced with the owner about points of contention with the community at large. He has been Chairman for about five years and has been hearing complaints about South Shore Produce since around 2008. The complaints have not declined since 2008. He has not observed any improvements in the last year and thinks the sale of alcohol at the store is a nuisance. He has not personally seen sales of alcohol to minors but has witnessed people defecating and urinating in the alley behind the premises. He has personally witnessed the sale of narcotics on multiple occasions.

Marion Brown has lived at 7919 S. South Shore Drive for almost seven years and is President of the Rainbow Beach Advisory Council. That council meets on a monthly basis to discuss what is happening in the park. South Shore Produce is kiddy-corner from the park. The basic problem caused by the sale of alcohol is that people start to drink the alcohol on the way out. They drink in the alley and in the park. There is also trash in the parking lot and in the park. People sell loose cigarettes in the park and go back and forth to the liquor store. There are fights and loud music, and gang activity across the liquor store. The loitering has gotten really bad in the last four or five years. There is a high volume of people that come late at night; they are

loud, drinking and urinating in the alley. The trash in the park is cigar wrappers, beer cans, and bottles. She picks up alcohol related trash from her lawn on a daily basis. She did not notice any improvements in the neighborhood in 2009 and 2010. She attends meetings at City Hall to try to get improvements. The store was asked to have shorter hours to prevent late hour drinking, and for a security guard in the parking lot. The store did close at 11:00 p.m. for a short time but went back to selling until 1:00 or 2:00 a.m. The security guard only steps out of the door occasionally. The security has not improved conditions in the parking lot. It was also requested that the store put in a fence that could control litter. Another request was that the store not sell blunts or rolling papers, or small servings of alcohol. She has seen no improvement in the conditions in the neighborhood between August 2011 and the present. The witness called the store in 2009 to complain about the noise in the parking lot. There was no improvement after that call.

The witness has been in the store twice in six years. She does not know if the store still sells cigarette paraphernalia or malt liquors or smalls because she has not been in the store. A fence was put up but the witness feels it did not secure the property. She agreed she cannot prove the waste or garbage in the park came from the store. She has called the police many times. The loitering is in the alley next to the store, on the front sidewalk, across the street, and in the parking lot. The people she sees loitering come and go into the store. They leave the store with alcohol and go to the park.

David Lottich has a residence at 3608 East 79th which is about 75 feet from 7900 S. South Shore Drive. He has rental properties and is in the neighborhood on a daily basis. He is a customer of the store occasionally. Every morning he picks up black liquor store bags that come

from the store. There was a shooting that happened after an argument started in the parking lot. People loiter in the area and the liquor store functions as a community center for people without much else to do. The security guard shags them off and they loiter in the park. He has not noticed any improvement despite meetings with the store at City Hall. They put in a fence but it is too high from the ground to trap litter.

Talmadge Betts is an associate pastor at the Christ Bible Church which is three blocks from the liquor store. She also works for the Black United Fund of Illinois which is a coalition of 35 to 40 neighborhood organizations in South Shore. At least six times in the last four and a half years problems at the liquor store have been reported to her by coalition members. The sale of liquor at the store leads to public loitering, sales of loose cigarettes, public inebriation, public urination, the sale of illegal drugs, and frequent fighting. These problems have not gotten better since August of 2011. The witness has not personally observed sale of loose cigarettes or fighting but did observe public urination as a result of public drinking last summer. She has not observed personally the sale of drugs.

Anitta Bright lives across the street from South Shore Produce and is familiar with the store. People buy liquor and throw empty bottles in her yard. Young men gather in the alley drinking and milling around. She did not experience problems when the store did not sell liquor. There was some improvement for a while but it has resorted back over the last year.

Yolanda Nowells is a CAPS Officer in the Chicago Police Department 4th District which includes 7900 S. South Shore Drive. In that role she works with the community to forge a

relationship with the police. The area around 7900 S. South Shore Drive has a pregnancy clinic on the north side and the liquor store is on the south side. Other than those two businesses it is a residential area. She became aware of South Shore Produce in her position as a business officer and doing beat meetings starting around five years ago. The complaints at that time were of loitering, narcotic sales, and public urination. There are still similar complaints but they are not as consistent. At meetings at City Hall in April, June, and August of 2011, she expressed concern about calls for services regarding loitering and narcotics and the fact that these calls had not decreased. These concerns were expressed to the store's representative as well as telling the representative that a different route might be needed since the meetings are not working. Since August of 2011, the complaints have remained about the same.

Officer Nowells identified City's Exhibit 7, as a list of calls for service from 911 and 311 from April of 2011 through May 17, 2012, for the address of 7900 S. South Shore Drive. The total number of calls was 386. Thirty-nine of these calls or about 10.1 percent were made by the business. The number of calls from April 14, 2011 through June 9, 2011 was 45, and there were 95 calls from June 9, 2011 through August 11, 2011. The witness opined that is a lot of calls even for a liquor establishment.

City's Exhibit 8 was identified by the police officer as the calls for service at the same address from June 1 through August 15, 2012. There were 39 calls total and 3 or about 9 percent came from the store.

The witness has not received complaints about the liquor store at 79th and Exchange. Officer Nowells admitted that the documents were run for 7900 S. South Shore Drive and that there is only one address that indicates 7900 S. South Shore Drive. It is the only address on that block. That address could be reported for an incident such as a heart attack on a bus that has nothing to do with the store. She admitted that the records show the caller, whoever it might have been, located that address as the location for services. The reports do differentiate occurrence address and service address. The reports may have duplicate calls for the same event but she did not count the duplications. She also stated it a good thing when a business calls in for services but feels 10 percent of the calls from a store, is not a good number. If something is happening the store should write down the incident on paper and call from a land line so that the call is recorded. She has told this to Mr. Tyson several times.

Barbara Gressel is an attorney and is the Acting Deputy Commissioner of Business Affairs and Consumer Protection where she oversees the prosecution and adjudication division for the department. One of her duties is facilitating community meetings regarding public nuisance allegations. The municipal code requires a minimum of three meetings. The witness reviewed the file regarding the license and the community meetings. There were two series of meetings. The first were in 2009 and 2010, and the second series in 2011. She was the facilitator for the three meetings in 2011. Ms. Gressel identified City's Exhibit 9, as complaints from over five citizens sent to the department about the licensee. City's Exhibit 10 is a letter from Alderman Jackson requesting the community meeting process be initiated. City's Exhibit 11 is a letter to Department of Business Affairs and Consumer Protection from the Mayor's Office of

Intergovernmental Affairs advising Alderman Jackson has requested community meetings for 7900 S. South Shore Drive.

The first meeting the witness facilitated was on April 14, 2011. Alderman Jackson, community members and the licensee were present. The bulk of the community members opposed the business but there were supporters present. After everyone had a chance to speak it was her impression that the ongoing activities were detrimental to the health and well-being of the community. The licensee stated he wanted to work with the community. The witness suggested reasonable steps the licensee would take which included:

- a. The licensee or its agent should call 911 whenever it observed illegal behavior on or about the premises including the property adjacent, including the parking, and to keep a list. She gave licensee a form created that included the date, time, and purpose of the call and any other action.
- b. A clean up log showing when the parking lot and alley were cleaned and to make sure it was swept on a daily basis.
- c. All employees receive BASSET training.
- d. Stop selling loose cigarettes and rolling paper.
- e. Fix the damaged fence.
- f. Evaluate its product line to remove product that costs only \$1, \$2, or \$3, the kind of products that give a big bang for the buck, high alcohol content.

The second meeting was held on June 9, 2011. The police, Alderman, and community members in favor and in opposition were allowed to speak. Her impression at the end of the meeting was that there had been a few changes but no overall improvement since the first meeting. She provided the licensee a different kind of 911 call log and asked for the BASSET certificates for all employees. The license had asserted all employees had been so trained but she

wanted the certificates. She asked the licensee to stop selling malt liquor, to identify all items that were sold in half pints and clarification on sales under \$10.00. The fence still needed to be fixed and security or the licensee needed to address parking on the sidewalk.

The third meeting was held on August 11, 2011. The same type people attended and made reports. A report was made that the business was still selling rolling papers. There were more calls for service and very few were from the licensee. The fence had not been repaired. The licensee claimed he had been BASSET trained and did not know if the other employees had been so trained. He reported the fence was removed. She made the determination that the licensee was not taking reasonable steps to address the conditions. Based on that conclusion, Ms. Gressel terminated the meetings unsuccessfully and a letter was sent to Alderman Jackson on August 15, 2011 that the meetings had been terminated.

Ms. Gressel admitted she terminated the meetings even though the licensee brought in certificate, stated he had security, stated he had daily garbage collection, and had removed some malt liquor. Whether to continue with community meetings is a judgment call. If things are improving meetings have gone in over a year. If things are not improving, it does not make sense to continue the meetings.

The City rested its case after Ms. Gressel, subject to introducing exhibits. Some of the licensee's witnesses testified out of order. For clarification, this summary of all the licensee's witnesses are together even if the testimony was not put in the record in the same sequence.

Peter Draper has lived at 7839 S. South Shore Drive since 2007. He is an Emergency Physician. He has patronized South Shore Produce two to three times a week since 2007. Most of the time that he patronizes the store there is no loitering. He has not witnessed the sale of drugs or gang activity in the parking lot or on the premises. The park by Rainbow Beach is well maintained and the trash is not related to South Shore Produce. Trash is endemic to the community. He has never seen the sale of loose cigarettes in the store but it does happen in the intersection along the sidewalks. Someone has tried to sell him loose cigarettes once or twice but it is not frequent. That sale of loose cigarettes like litter is something he encounters throughout the community. He has been to the store at all hours but probably more in the evening. He does not feel that any criminal activity that occurs in the community is related to South Shore Produce. He also feels if the store closed the intersection would be more dangerous because it would be a completely dark intersection. He has not been in the alley behind the store and does not know if groups of men frequent that alley.

Sharon Lewis lives about one mile from South Shore Produce and has been a patron of the store for fifteen years. She shops there about twice a week. She has not seen or been intimidated by gang bangers and has not seen narcotic sales in the parking lot. She has seen it across the street in vacant lots. She has not seen people congregate in the parking lot drinking, defecating, urinating, and loitering. She would not shop there if she saw this activity. She works out at Rainbow Beach and goes by the store on a regular basis. She works in the community as a Precinct Captain for the 7th Ward and a majority of the voters that live in the area of 79th and S. South Shore Drive are in favor of the store. She also has never seen people drinking alcohol from an open container in the parking lot, the sidewalk, or the alley.

Jesse Adams lives close to and has been a customer of South Shore Produce for fifteen years. He is at the store at least every other day during the daytime. He has not seen people urinating, selling narcotics, drinking from open alcohol in the parking lot, and has not seen gang bangers. He does not feel the operation and management of the store is disrespectful of the community.

Judith Richardson has been a customer of the licensee since 2003 and shops there four or five times a week in mornings and mostly afternoons. She walks to the store. She has never seen anyone drinking from an open alcohol container in the parking lot, has never seen anybody appear to be selling narcotics in the parking lot, never seen prostitutes in or around the parking lot, never seen anyone urinate in the parking lot or defecate in the alley, and has never seen gang bangers on or around the premises. She feels safe walking to and being inside the store. She also has not seen garbage in the store's parking lot.

Betty Robinson is familiar with South Shore Produce and shops there at least twice a day. Her first trip would be between 11:15 a.m. and 12:00 p.m. and the second about 8:00 to 8:30 p.m. She has not seen people loitering in the parking lot or any public urination or defecation in or around the store. She has not seen any prostitution or the sale of narcotics around the grocery store. The store does not disrespect the community.

Tahseen Shubbak has been the manager of South Shore Produce since 1997 or 1998. His sister-in-law owns it. He managed the store for the previous owner who sold it to his sister-in-law. The store has never sold loose cigarettes and does not allow loitering in or about the

premises. Since 2007 he has security that starts at 5:00 p.m. and a little earlier on weekends. In the morning he has a guy that is not security but he cleans the lot and keeps people out of the area. It is too slow at that time for a security guard. He has not witnessed prostitution at this location for the last ten years. Mr. Washington never complained to him about people urinating or defecating in the alley. He has 32 cameras located inside and outside and he put a camera by the bus stop. He calls police immediately if he witnesses illegal behavior. He has not witnessed roll calls taking place in the parking lot.

He attended the community meetings but did not receive copies of any notes of the meetings. The matter requested by Ms. Gressel had been done before the meetings commenced. They had five garbage cans, installed lights, installed a fence, and hired security. He agreed to stop selling alcohol before 10:00 a.m., but the rest of the stores kept serving liquor before 10:00 a.m. Four or five of his employees as well as himself are BASSET trained. Two new employees are not trained. Nobody consumes alcohol on the premises. Ms. Gressel did not explain why the meetings were terminated unsuccessfully. He was selling malt liquor as of August 11, 2011, but stopped such sales on October 1, 2011.

The last time South Shore Produce was cited for a sale to a minor was in 2000 or 2001, and he does not recall if the store was ever cited for any tobacco violations. He has no recollection of a shooting taking place on either the premises or the parking lot. He has never seen people leave his store and drink alcohol on a stoop. He would call the police if he saw that. He does not call 911 often because he has security.

The witness attends CAPS meetings the first Tuesday of every month and no complaints have been made about South Shore Produce.

His hours of work at the store vary from 20 to 80. He does remember being asked to increase security in 2009 and 2010. He has the same security except security started at 4:00 or 5:00 p.m. instead of 8:00 p.m. He has complied with every step requested after the meetings in April, June, and August of 2011. Ms. Gressel never asked that all employees be BASSET trained but did suggest the store stop selling rolling papers and malt liquor, and was also asked to stop selling things he never sold. Ms. Gressel did not know what products were sold. She talked about Irish Rose and Thunderbird which the store did not sell. Prior to August 11, 2011, he trained all the employees but they were not all BASSET trained. They brought Ms. Gressel a 911 log which was too detailed. He built a fence exactly as requested in 2009. That fence is not up the same way because it kept being damaged by cars. He feels his security does their job satisfactorily in that they help with litter and trash problems and ensure people do not loiter and drink alcohol near the premises. They check on litter through the camera and clean up the parking lot and sidewalk every day. He did not agree to not sell rolling papers or malt liquor initially because his competition was allowed to sell those items.

While it is not on the transcript, the record does contain as City's Exhibit 5, the Plan of Operation proposed by the licensee. It is this Plan of Operation that the Local Liquor Control Commissioner rejected in his final Order of Revocation dated January 18, 2013.

At various times at the hearing and in oral argument before this Commission, the attorney for the licensee has made constitutional arguments concerning procedural due process and other issues. It is the position of this Commissioner that the jurisdiction of this Commission does not include a resolution of those issues. They are noted in the record and may be considered having been raised for future appeals.

The City has proceeded in the manner provided by law with respect to this ordinance. There is substantial evidence in the record to support this finding in that three public meetings were held and the complaint procedures did not result in a successful outcome. After this determination, the Local Liquor Control Commission gave the licensee due and adequate notice of the date, time, and location of the hearing and of the charges against the licensee alleged to have violated 4-60-190(b) of the Chicago Municipal Code.

There is substantial evidence in the record as a whole to support Findings of Fact 3 and 4, that the licensee has failed to take reasonable steps to prevent disturbances of the peace, loitering, drinking in public, public urination, and failure to keep the area around his business free from excessive debris which has caused a public nuisance and that the sale of liquor at the licensed premises is a public nuisance. While there is conflicting evidence on whether these conditions do and did exist, it is the function of the Deputy Hearing Commissioner as the trier of fact to resolve this conflicting evidence. It is not the function of this Commission to reweigh evidence and reverse findings if substantial evidence supporting the findings are in the record.

The Order of Revocation is supported by the findings of the Deputy Hearing Commissioner. The totality of circumstances supporting revocation would include the past disciplinary history on both alcohol and non-alcohol related offenses. It would also take into account the facts in the record that uphold the findings of fact. Revocation, under these circumstances, is not so arbitrary or unduly as to require reversal.

Subsequent to the decision of the Deputy Hearing Commissioner, the licensee did present in a timely manner a Plan of Operation to the Local Liquor Control Commissioner. After reviewing the record as well as the potential impact of the Plan of Operation, the Local Liquor Control Commissioner found the licensee has not provided satisfactory proof that the Plan of Operation provides reasonable assurance that continued operation of the business under the plan would not cause a public nuisance. It is the opinion of this Commissioner that a review of this decision is not within the jurisdiction of this Commission.

The revocation of the liquor license issued to South Shore Produce, Inc., for the premises located at 7900 S. South Shore is affirmed.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT 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: July 17, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member