

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Elston & Kimball Liquor, Inc.)
d/b/a Elston & Kimball Liquor)
Applicant (Packaged Goods))
for the premises located at)
3753 North Elston) Case No. 19 LA 2
)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O’CONNELL

NATURE OF THE CASE

On November 6, 2018, Miriam Segovia and Elston and Kimball Liquor, Inc. were notified by mail from Assistant Commissioner Michael Tibbs of the Department of Business Affairs and Consumer Protection that the application for a Packaged Goods liquor license at 3753 N. Elston was denied. The basis for the denial was that a background fingerprint investigation of Ms. Segovia’s husband, Edwin Garcia, revealed two Felony convictions for Aggravated DUI (April 2007 and September 2016) both in Cook County, Illinois.

The Chicago Municipal Code (4-60-030 (z)) states in relevant part:

“Any person who is married to or is the registered domestic partner of an individual who is disqualified from obtaining a license under this chapter or under the Liquor Control Act of 1934, as amended, unless the person can establish by clear and convincing proof that the disqualified individual will not have any direct or indirect beneficial interest in any liquor license issued to the person under this chapter; provided,

however, that if the disqualified individual was denied a liquor license pursuant to subsections (d), (e), (f), (g), (h), (n), (o), or (t) of this section, the person who is married to or the registered domestic partner of the disqualified individual shall not be required to comply with this subsection if the local liquor control commissioner determines, after investigation, that the disqualified individual has been sufficiently rehabilitated to warrant the public trust.”

Based on the convictions in 2007 and 2016, Mr. Garcia was deemed disqualified from obtaining a license and that disqualification extended to his wife, Miriam Segovia, who is the owner of the applicant corporation.

The letter advised the Applicant of its right to appeal this decision by filing a written request with the Prosecution and Adjudication Division of the Department of Business Affairs and Consumer Protection. An appeal was timely filed and a hearing on the rehabilitation of Mr. Garcia was held on December 5, 2018 before Commissioner Lisa McLeod finding that the Applicant failed to present clear and convincing evidence that Edwin Garcia had been rehabilitated based solely on the fact that the Applicant failed to submit at least five character references from upstanding members of the community as required by Rule 9 of the Rules and Regulations for Rehabilitation Ex-Offenders issued by the Department of Business Affairs and Consumer Protection.

On March 19, 2019, Local Liquor Control Commissioner Shannon Trotter denied the application for a Packaged Goods license for Elston & Kimball Liquor, Inc. at 3753 N. Elston. The Applicant filed a timely appeal with the License Appeal Commission. This matter proceeded to hearing before the License Appeal Commission on May 30, 2019.

REVIEW OF THE EVIDENCE

The parties, through their respective counsel, stipulated that the transcript of the December 5, 2018 rehabilitation hearing before Commissioner McLeod would be allowed in evidence as substantive evidence in this case. A summary of that transcript may be helpful in understanding this decision.

The City introduced into evidence the following exhibits:

- City Exhibit 1 Notice of Hearing
- City Exhibit 2 Letter of Appointment
- City Exhibit 3 Denial Letter of November 6, 2018
- City Exhibit 4 Licensee's Letter of Appeal

The City rested upon the introduction into evidence without objection by the Applicant.

Prior to the start of testimony in the Applicant's case, the following exhibits were allowed in evidence without objection:

- Respondent Group Exhibit 1 consisting of three DUI dispositions
- Respondent 2 Letter from Edwin Garcia
- Respondent 3 Letter of Recommendation from Jessica Guzman of Perfect Clean
- Respondent 4 Certificate of Compliance for DUI Risk Education from the State of Illinois Department of Human Services.
- Respondent 5 Letter of Continuing Care from Healthcare Alternative Systems, Inc.
- Respondent 6 Letter of Completion Outpatient Treatment from Healthcare Alternative Systems, Inc.
- Respondent 7 Letter of Recommendation from employer Debonair Social Club
- Respondent 8 & 9 Documentation of Abstinence/Character/Substance Use from the Illinois Secretary of State from Julio Asado and Jose Aterabero.

Miriam Segovia is the Applicant for the liquor license on Elston Avenue. She has owned the building and purchased it with her own money in 2017. She will be the sole owner of that business where she wants to operate a liquor store and sell prepackaged goods from Ecuador. She will be the sole owner and she used her funds to establish the business. These funds are from savings she made from previous businesses she has owned. For the last twenty years, she has a daycare and she ran two cellular phone stores for the past five or six years. She has sold the cellular phone business but has income from the properties where the stores were located.

Ms. Segovia met Edwin Garcia in June 2016 and they were married two years ago. She was aware of his past history with DUI's when they met but he had stopped drinking a year before they met and he was attending AA. She is not a drinker and maintains sobriety. In her daycare business, she has children from six weeks to 13 years old and she cannot have someone around them drinking as that would bring problems to the business.

She married Edwin Garcia in February 2017 and he has maintained sobriety since then. She lives with Edwin in the same house and sees him every day. They are incredibly busy and dedicated to work. Sunday is church day. Edwin is employed as a construction worker separately from her businesses. She intends to have two employees including herself in the liquor store.

On cross, Ms. Segovia stated she does not work specific hours but comes in and out from 6:00 am to 5:00 pm. She has two employees. If she receives the liquor license she will work evening hours at the liquor store and focus on the daycare in the mornings. Her brother Angel Segovia and her son Brian will

work the liquor store when she is at the daycare. Edwin will be there a few hours a day when she would need help.

She does not recall the sentence Edwin received after his last DUI in September 2016, but she remembers him going to jail three to four weeks in September 2016.

On redirect, Ms. Segovia stated Edwin was on house arrest. He then went to and completed treatment.

Edwin Garcia testified he married Miriam Segovia in February 2017. He has had a number of DUI's and was incarcerated from August until September 20, 2016. He has since completed his treatment and is currently in AA working the 12 steps. He thanks God he met a good woman; a good wife and they have a good life. She makes him walk the straight and narrow and he has cut all ties with previous associates. He believes he will maintain his sobriety. He has no monetary interest in the business and Miriam is the sole owner of the business. He has learned his lessons.

On cross-examination, Mr. Garcia explained the 18-month sentence in the Department of Corrections for the September 20, 2016 conviction was changed to house arrest and 20 days in custody. He attended daily treatment for six months. He did not receive treatment after the 2007 DUI. He does carpentry framing which is a heavy job and he would only work at the store when needed. He has no monetary interest in the liquor store but wants his wife to succeed. He still attends Alcoholics Anonymous meetings when not busy.

After testimony was complete, counsel for the City pointed out Ruled 5 states rehabilitation is not available unless two years had passed since the date of completion of the terms of the sentence. He raised a question whether the second DUI sentence ended in September 2016 or February 2018. The parties agreed counsel for the Applicant could submit documentation on that point after the end of the hearing. Applicant's Exhibits 10 and 11 show that on September 1, 2016, Edwin Garcia pled guilty to Felony DUI and was sentenced to 18 months incarceration and a \$1,665 fine. Credit for 252 days spent in custody for home confinement was given to Mr. Garcia and no further proceedings occurred after September 1, 2016.

At the May 30, 2019 hearing, the Applicant introduced, without objection, the following additional exhibits:

- Applicant Group Exhibit A – 21 Letters of Recommendation
- Applicant Group Exhibit B – Letter of No Objection from Alderman Carlos Ramirez-Rosa and Ms. Segovia's State of Illinois Group Daycare Home License.
- Applicant Group C – Letter from Edwin Garcia

The parties stipulated that the City was not pursuing an argument whether Rule 5 was relevant based on the documentation showing the sentence for the second DUI was completed in September 2016.

ANALYSIS

Since this appeal is from a denial of an application for a liquor license, the License Appeal Commission is empowered by the State of Illinois Liquor Control Act to review de novo the propriety of the decision to refuse the license.

The sole basis for denial listed in the denial letter was:

Applicant's spouse is a convicted felon and was found to not be substantially or sufficiently rehabilitated to warrant the public's trust after a hearing on this matter.

As referenced earlier, this decision was based solely on the Applicant's failure to provide sufficient letters of recommendation at the hearing before Deputy Hearing Commissioner McLeod.

At this de novo hearing, the Applicant has submitted twenty-one (21) letters of recommendation, 16 more than required by Rule 9 of the Rules and Regulations for Rehabilitation of Ex-Offenders promulgated by the Department of Business Affairs and Consumer Protection.

Based on this evidence, this Commissioner finds that at the de novo hearing the Applicant has established that Edwin Garcia has been substantially or sufficiently rehabilitated so as to warrant the public's trust.

The denial of the application for a Packaged Goods liquor license by Elston and Kimball Liquor, Inc. for the premises located at 3753 North Elston 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: June 13, 2019

Dennis M. Fleming
Chairman

Donald O'Connell
Member