

**LICENSE APPEAL COMMISSION
CITY OF CHICAGO**

A.K.I. Inc.)	
d/b/a Budget Food & Liquor)	
Licensee/Revocation)	
for the premises located at)	
2504 East 79 th Street)	Case No. 19 LA 8
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Shannon Trotter, Commissioner)	

ORDER

DECISION OF CHAIRMAN FLEMING

The Licensee received a Notice of Hearing that pursuant to 235 ILCS 5/7-5 and 4-4-280 of the Municipal Code of Chicago, a hearing was to be held on February 28, 2019, in connection with disciplinary proceedings regarding the City of Chicago liquor license and all other licenses issued to it for the premises located at 2504 E. 79th Street, Chicago, IL upon these charges:

1. That on or about October 27, 2018, the licensee, by and through its agent, sold, gave or delivered alcoholic liquor on the licensed premises to a person under the age of 21 years, in violation of Municipal Code of Chicago, 4-60-140.
2. That on or about October 27, 2018, the licensee, by and through its agent, gave or delivered alcoholic liquor on the licensed premises to a person under the age of 21 years in violation of 235 ILCS 5/6-16(a).
3. That the licensee failed to pay a debt due to the City after a period granted for payment expired, in violation of Municipal Code of Chicago, 1-20-090, and is therefore subject to license suspension or revocation pursuant to Municipal Code of Chicago, 4-4-084.

The Notice of Hearing specifically advised the Licensee that for the limited purpose of assessing the severity of the penalty that could be imposed, when applicable, the City may

present evidence of previous acts of misconduct which have resulted in disciplinary action against the licensee, along with other citizen, police or governmental agency complaints.

This case proceeded to a full hearing on June 6, 2019, with Hearing Commissioner Maura Yusof presiding. Assistant Corporation Counsel Natalie Tepeli represented the City of Chicago and attorney John Mraibie represented the Licensee. At the hearing, both sides were allowed to present evidence and witnesses and to cross-examine the witnesses of the other parties. Count 3 of the charges were withdrawn by the City.

Subsequent to the conclusion of the hearing, Hearing Commissioner Yousef entered Findings of Fact that the City had sustained its burden of proof on both remaining charges. She further found that based on the totality of the circumstances, revocation of the Licensee's licenses was appropriate. The Hearing Commissioner specifically referenced Rule 10(d) of the Rules of Procedure for the Mayor's License Discipline Commission on aggravation that states as follows:

Licensee's prior history shall be admitted at or after the completion of testimony in the case for purposes of aggravation or mitigation, but will only be considered for those purposes if one or more of the charges in the Notice of Hearing are sustained.

The City presented an Order of Disposition which set forth these prior violations considered for aggravation of the charges:

- Violation Date: 10/29/19 – Sale of Alcohol to Minor
- Violation Date: 5/13/05 – Sale of Alcohol to Minor
- Violation Date: 8/16/06 – Sale to Minor – Tobacco
- Violation Date: 8/05/09 – Sale of Alcohol to Minor
- Violation Date: 2/15/18 – Possession of Controlled Substance – Battery by Agent

After considering the Hearing Officer's Report of Proceedings and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence and after deliberating and being fully advised of the premises, the Local Liquor Control Commissioner entered an Order of Revocation of the City of Chicago Retail Liquor License and all other City of Chicago licenses issued to A.K.I. Inc. dated September 5, 2019.

A timely Notice of Appeal was filed with the License Appeal Commission and oral argument was heard on November 26, 2019.

SUMMARY OF PROCEEDINGS

Eric Johnson has been a Chicago Police Officer for twenty-eight years and is currently assigned to the Chicago Police Department – SAM (Sale to Minor) Section. He has worked in this section for almost 18 years. His job is to go around liquor-licensed establishments to see if they do not sell alcohol to minors and that they check for an ID.

He was working in casual clothes on October 27, 2018, with Sergeant Lomperis, Officer Mike Iglesias and cooperating minor Vaughn Bean. Ms. Bean was then employed by the Chicago Police Department and was then 19 years old according to her birth certificate. She was dressed in casual, plain clothes. The shift on that date began at the Fillmore station. Miss Bean was picked up at her home. He ensured she had no ID's on her person and gave her a \$20 bill prerecorded by serial number. That \$20 bill came from the contingency fund. At 10:34 am he and his team arrived at Budget Food & Liquor at 2504 East 79th Street.

Miss Bean entered the premises alone and he entered four or five seconds later. He does not recall the layout of the store or if there were other people in the store. He observed a person working at the store that he later determined was a Rumash Patel. He then saw Vaughn Bean go to the cooler and retrieve a six-pack of Bud Light beer. She then went to the checkout counter. The beer was rung up by the cashier and the minor gave the cashier the prerecorded \$20. The cashier returned the change and the beer was bagged. He then announced his office.

At no time did the witness observe Ms. Bean show any ID to the cashier or state her age. He did not hear or observe the cashier ask Miss Bean for ID or ask her age. The witness did then explain to Mr. Patel he had sold alcohol to a minor. He retrieved the prerecorded \$20 bill identified by the serial number. A Notice to Appear was issued.

The witness identified City Exhibits 2A-C as pictures taken on that date. They show the cooperating witness Vaughn Bean, a Female, Black with a medium complexion; the cashier who sold the alcohol to the minor; and the purchased six-pack of Bud Light. The six-pack of Bud Light was inventoried. City Exhibit 3 was identified as the Cook County Birth Certificate for Vaughn Bean with a birthdate of November 11, 1998.

On cross-examination, Officer Johnson repeated he had been in the SAM section of the Vice Unit for eighteen years. Undercover buys are done Tuesday through Saturday, five days a week. He did not know when the last time prior to this incident when an integrity search was done at Budget and did not know if there were any subsequent integrity searches. He explained Miss Bean is no longer in the program since she turned 20. He picked Miss Bean at her house and

ensured she had no ID's and no currency on her person. He did not do a pat-down but relied on Ms. Bean's word. He stayed at the front of the store while Miss Bean went to the cooler. She received \$13.95 in change back from the purchase of the beer.

On redirect, the witness explained this was not Ms. Bean's first investigation. She is informed on each occasion she should not have any ID on her and the only thing she carried was the prerecorded \$20.

On recross, Officer Johnson stated he did not know how many integrity checks were done on that date. Based on Defense Exhibit 1, the witness stated there were ten checks performed on that date with two being positive.

The City rested its case subject to reopening at the end of the Licensee's case for aggravation purposes.

Khamis Imsaih has owned the business known as A.K.I., Inc. for thirty-five years. It is a food and liquor store located at 2504 East 79th Street. He was not working on October 27 when there was a sale to minor by Rumash Patel. Prior to Mr. Patel being retained, he was told the appropriate method of checking for ID. He was instructed to ask for IDs. It was store policy to ask for an ID.

He was not present at the store on October 27. He had a heart attack and was under the weather.

Over the Licensee's objection, the Hearing Officer allowed into evidence City's Exhibit 4 as the Order of Disposition relative to the Licensee.

Alarice Adams was called as a witness of the Licensee to rebut the aggravation evidence presented by the City in City's Exhibit 4. Ms. Adams has worked for A.K.I. or Budget Food & Liquor as a cashier for five years. When she was interviewed by Mr. Imsaih it was explained that IDs are to be asked for at the time of sale of liquor and tobacco. The store policy is to ask for IDs. She requests IDs for almost every customer even if it offends a customer.

On cross, Ms. Adams stated she does not always request ID but does if someone looks to be in their 20's or 30's. She does not ID older people but does if they look to be under 35.

Floyd Young has lived in the neighborhood of 2504 E. 79th Street for 30 years and frequents the store almost every day. This is one of the last stores in the neighborhood and he frequents it daily. The store is well kept and clean on the inside and outside. No one is hanging out outside the store.

Kimberly Johnson has been a customer of the store for 30 years. She lived in the neighborhood around the corner but is now Mr. Young's home care aide six days a week. She takes Mr. young to the store to buy food and grocery products. There are no other stores within a few blocks of this location. The store is well run and is clean with no one hanging around. It would be a detriment to the neighborhood if the store closes because there would be no place to get a paper

or a lottery ticket or a cold beer. It is maybe 12 blocks to the nearest grocery store or packaged goods store.

DISCUSSION

Since this case deals with revocation of a liquor license the only issues before this License

Appeal Commission are:

- 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 substantial evidence in light of the whole record.

The first issue has generally been examined in the concept of whether the local liquor control commissioner provided the due process required by the Municipal Code and State Statute. In this case, the Licensee received due and adequate notice of the date, time and location of the hearings. It also was represented by counsel and had the opportunity to and did present evidence in its defense as well as having had the opportunity to cross-examine the witnesses that testified for the City. The Local Liquor Control Commissioner did proceed in the manner provided by law.

The Licensee is not arguing that the findings that its agent sold liquor to a person under the age of 21 were not supported by substantial evidence in light of the whole record. Its argument with respect to this finding is that the sale of alcohol by its agent was in violation of company policy. That is no an argument addressing the sufficiency of the evidence but one that is a factor in mitigation. Case law in these cases upholds the concept that a liquor licensee is strictly accountable for the actions of its agent.

The third issue and the determinative issue, in this case, is whether the order of revocation is supported by the findings. Since this case is brought under Section 4-4-280 of the Municipal Code, any violation of a City of Chicago ordinance or state statute can be the basis for revocation of a license. Similarly, Section 235 ILCS 5/7-5 allows a local liquor control commissioner to revoke or suspend a license issued by him if he determines that the licensee has violated any of the provisions of this Act or of any valid ordinance or resolution enacted by the particular city council. Since the sale of alcohol to a person under 21 violates the Liquor Control Act and the Municipal Code of Chicago, on its face the revocation of this liquor license is an appropriate discipline. Case law holds that revocation for violations of the Municipal Code or State Statute will be upheld unless the imposition of this sanction is arbitrary or capricious or unduly harsh under the circumstances of the particular case.

Counsel for Licensee has argued that under the facts of this case, revocation is unduly harsh and so arbitrary and capricious so as to require reversal for imposition of a lesser penalty. Among the factors pointed out in his argument is the length of time the store has been open, the fact the owner did not approve of and was not aware of the sale of alcohol to a minor and the fact the last previous sale to a minor took place on August 5, 2009. This License Appeal Commission does not have the authority to give the licensee the relief it seeks. This License Appeal Commission can only affirm or reverse outright the revocation. If this Commission reverses outright the Licensee will receive no penalty of their admitted sale to minor in violation of the Municipal Code of Chicago and the State Liquor Control Act.

Counsel for the City argues that based on the past disciplinary history in evidence and specifically noted by the Hearing Commissioner in her Findings of Fact, that revocation is not so arbitrary or capricious or unduly harsh so as to require reversal. That past disciplinary history included three previous sales of alcohol to a minor and sale of tobacco to a minor. It also included a voluntary closing of an undisclosed period for possession of controlled substance and battery by an agent on February 15, 2018, which was nine months before this incident.

Counsel for Licensee raised for the first time in this record an argument that the February 15, 2018, disposition should not be considered since the actual agreement between the Liquor Commissioner and the Licensee specifically denied liability on behalf of the Licensee but accepted the voluntary closing. Since this document was not entered in the record of proceedings before the Hearing Commissioner, it cannot be considered by this License Appeal Commission. It should also be noted that this issue was not raised orally at the hearing.

While it would certainly be helpful in these types of cases for Hearing Commissioners to explain in greater detail why revocation is an appropriate discipline, the Hearing Commissioner did specifically find violations of the Municipal Code and State Statute and did specifically refer to past disciplinary history as aggravating factors. These Findings of Fact are sufficient to establish that revocation of this license was not so arbitrary or capricious or unduly harsh so as to require reversal.

The revocation of the liquor license issued to A.K.I. Inc. for the premises located at 2504 East 79th Street, Chicago, IL 60649 is Affirmed.

CONCURRING OPINION OF COMMISSIONER BERG

While I concur with the decision of Chairman Fleming in this case, I do so because this License Appeal Commission does not have the power to remand a case for further evidence or to impose a suspension and/or fine as opposed to revocation. In particular, I would have remanded for a hearing on what were the terms of the voluntary closing on February 5, 2018. If there was no admission of liability on what legal basis was the voluntary closing imposed? I would like to have known further details on who possessed the controlled substance and what was the nature of the battery by agent. If this incident was not in the record of disposition, I might have agreed with the decision of Commissioner Gibbons that revocation for this sale to minor was so arbitrary and capricious as to require reversal.

DISSENTING OPINION OF COMMISSIONER GIBBONS

I agree with Commissioner Berg that if this case was heard by the Illinois Liquor Control Commission it would have been remanded for additional testimony or the revocation would have been reduced to some type of suspension. Since this License Appeal Commission has only the power to affirm or reverse outright, the decision that under all circumstances revocation is the proper discipline, I have reviewed what I consider the relevant facts in this case.

Khamis Imsaih has been the owner of A.K.I. Inc. for thirty-five years operating as a mixed food and liquor store. He hired a Rumash Patel to work at the store and instructed Mr. Patel to check for IDs. If Mr. Patel did not ask for an ID he should have asked as instructed. He hires employees from the neighborhood and tells them to check for IDs. He was not present at the store on October 27, 2018. Ms. Adams testified as an employee of the store that store policy was for IDs

to be checked. Over the thirty-five year period, this establishment has been disciplined six times. One was non-liquor related as a sale of tobacco to a minor and one dealt with possession of controlled substance and battery by agent. The record in this latter matter is silent as to any facts underlying this discipline. Unlike a sale to minor, this Commissioner cannot ascertain what happened to lead to the voluntary closing and, as such, does not feel the discipline is relevant to this case. This is especially so based on the representation of counsel for the Licensee that this discipline was imposed despite the fact there was no acknowledgment of liability. This case should be remanded on this point alone because there is no power granted to any Local Liquor Control Commissioner to impose a suspension without a finding of a violation of a state statute or municipal ordinance.

Revocation is imposed in this case based on a history of three sales of alcohol to a minor that occurred over a thirty-five year period. The last sale to minor was in 2009, with a penalty of a \$1,500 fine. To jump from a \$1,500 fine for a sale to minor nine years after the last such sale to a minor without some explanation for this revocation by the Local Liquor Control Commissioner is unduly harsh requiring outright reversal of the revocation.

Thomas W. Gibbons
Member

DECISION

The revocation of the liquor license issued to A.K.I. Inc. for the premises located at 2504 East 79th Street, Chicago, IL 60649 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: January 14, 2020

Dennis M. Fleming
Chairman

Cynthia A. Berg
Member