

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Pharmacy, LLC)
Herbert S. Greenwald, President)
Applicant (Tavern))
for the premises located at)
1450 West Chicago Avenue) Case No. 06 LA 46
)
vs.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)

ORDER

OPINION OF CHAIRMAN FLEMING

This case comes before the License Appeal Commission for a trial de novo on the issue of whether the applicant has met the requirements for obtaining a liquor license. The City's basis for denial, as amended on April 19, 2007 were:

- a. The premises would have a deleterious impact on the health, safety and welfare of the surrounding community.
- b. The applicant has demonstrated a consistent pattern of failing to observe proper permitting, licensing and naming laws since it began construction at the applicant's location.
- c. The applicant has named its business "Pharmacy" which violates the provision of the State of Illinois Pharmacy Practice Act of 1987.

Testimony was heard from local citizens both in favor of and against the licensee. The licensee testified about the steps it has taken and will take to alleviate any problems to the neighborhood if the license is issued. The licensee and licensee's attorney both indicated that the

name of the business will be changed, but as of the end of the hearing the name on the application has not been changed.

I feel that the City has failed to prove that the issuance of a license to this applicant would have a deleterious impact on the health, safety and welfare of the surrounding community and has also failed to prove that the applicant has demonstrated a consistent pattern of failing to observe proper permitting, licensing and naming laws since it began construction at the application location.

I do also feel that this application before this Commission violates the provision of the State of Illinois Pharmacy Practice Act of 1987. While the licensee has made assurances that the name will be changed, the name on the application before this Commission is "Pharmacy". To issue a license under this name would be improper.

On that basis alone, the denial of the Local Liquor Control Commission is affirmed.

OPINION OF COMMISSIONER ADAMS

The Local Liquor Control Commission denied the application for a tavern license based on deleterious impact and a failure of the applicant to observe proper permitting, licensing and naming laws of the City of Chicago and the State of Illinois.

"Pharmacy" is the name of the tavern as well as the LLC. While the applicant has

pledged to change the name of the tavern if granted a license, the License Appeal Commission has no authority to grant “conditional” liquor licenses or to disregard State Law [225 ILCS 85/5 (c)].

The denial by the Local Liquor Control Commission is affirmed.

COMMISSIONER KOPPEL'S OPINION IN DISSENT

This case comes before the License Appeal Commission for a trial de novo on the question of whether or not the applicant has satisfied and met the requirements for obtaining a liquor license. The Local Liquor Control Commission issued an order disapproving the application in the belief that the premises would create a deleterious impact upon the community.

The facts are as follows - the original complaint was predicated on the fact that it would cause a deleterious impact upon the community. A revised complaint indicated that the applicant started to remodel without a permit. The inspector testified that some minor work was done, but that the applicant applied for a building permit and the property was remodeled in accordance with code.

It should be noted that this place is properly zoned and had police approval. Some people in the area testified that they do not want another tavern. It would cause a deleterious impact upon the community. This is a typical denial predicated on the fact that another tavern would cause a deleterious impact upon the community.

The location is properly zoned. The licensee was approved with no objection from the police. Generally, if the police object they will testify.

Over 26 people testified on behalf of the applicant. Some lived close to the location (one property owner who lives two doors away spoke on behalf of the applicant).

It should be further noted that the applicant invested several hundred thousand dollars to build and remodel this location.

The advocates for the applicant made statements like "it's a good place", "I support it 100%", "good for the neighborhood". The Chamber of Commerce supported the application stating that the "lack of commercial development is a problem. We need a place like this". There were many more favorable comments. The evidence showed that the applicant was qualified.

While I agree that its important to protect the public health, welfare and safety, I believe that there are many legal due process remedies that exist to protect the community. Under Section 4-60-142, a licensee is responsible to the community surrounding the licensed premises. If this establishment creates a nuisance or violates the law than the license can be revoked. There are other due process remedies available. The area can be voted dry. Since the City has this due process remedy, it should proceed in that fashion and not use a back doorway of

revocation by disallowing the application of a legitimate and well qualified businessman.

There was an issue that the name 'Pharmacy' was improper. The applicant will change the name if the license is approved. The City should be 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: June 26, 2007

Dennis M. Fleming
Chairman

Don W. Adams
Commissioner

Irving J. Koppel
Commissioner – IN DISSENT

