

**LICENSE APPEAL COMMISSION
CITY OF CHICAGO**

Shenk's Restaurant & Tavern, Inc.)	
Luis Melero, President)	
Licensee/Revocation)	
for the premises located at)	
232 North Peoria)	Case No. 07 LA 30
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Scott V. Bruner, Director)	
)	
)	

ORDER

CHAIRMAN FLEMING'S OPINION JOINED BY COMMISSIONER SCHNORF

The Commissioners having considered the appeal of Shenk's Restaurant and Tavern, Inc. from the order or revocation of the Mayor, as Local Liquor Control Commissioner of the City of Chicago entered and taken on July 19, 2007, and the Commissioners having reviewed said appeal and transcript of proceedings taken before the Mayor, as Local Liquor Control Commissioner and now being duly advised in the premises DOTH FIND:

- A. That the Mayor, as Local Liquor Control Commissioner has provided in the manner provided by law.
- B. That the findings of the Local Liquor Control Commissioner are supported by substantial evidence in light of the whole record.

There was more than sufficient evidence to prove that the licensee through its agent on October 12, 2006 sold alcoholic liquor to Christopher Rodriguez, a person under the age of 21 in violation of Title 4, Chapter 60, Section 140 (a) of the Municipal Code of the City of Chicago and in violation of 235 ILCS 5/6-16 (a).

Since the sale of alcoholic liquor to a person under the age of 21 years has been

proven the only issue deals with the propriety of the revocation. In imposing revocation the Local Liquor Control Commission relied on past dispositions which included a voluntary fine of \$800.00 for sale of alcohol to a minor on July 14, 1993; a voluntary fine of \$1,000 for gambling on April 5 and 6 of 1998; a 10-day closing for gambling on June 25, 2001; a 29-day suspension for gambling and a public nuisance on May 9, 2003; and a 7-day suspension on October 25, 2005, for failure to display and operating with expired food, liquor and tobacco license.

We respectfully disagree with Commissioner Koppel's position that these past violations cannot be considered under Section 4-60-181 of the Municipal Code. That section is specifically titled "Revocation order not stayed by appeal". It lists specific incidents where a revocation order is not stayed by appeal and does not address the concept of a time frame after which past disciplinary history cannot be relied on by the Local Liquor Control Commission in determining whether to revoke a license.

While we personally may feel that revocation of this license under the circumstances of this case is harsh, the decision to revoke was within the discretion of the Local Liquor Control Commissioner.

It is therefore ordered and adjudged that the order of revocation is upheld.

COMMISSIONER KOPPEL'S OPINION IN DISSENT

This matter comes before the License Appeal Commission because of a revocation of all the licenses issued to Shenk's Restaurant & Tavern, Inc. The facts in this case are as follows - the owner of this restaurant and tavern has been in business for 15 years. In 1993, he was fined \$800.00 for serving to a minor, previous violations concerning gambling are over six years old and another is four years old. In 2005, he had a 7-day suspension for failure to display food, liquor and tobacco licenses.

The last violation, sale of alcohol to a minor, took place on or about October 12, 2006. Predicated upon the past history of the licensee all of his licenses were revoked. The City Code Section 4-60-181 states as follows: the revocation is for sale of alcoholic liquor to a minor, and

the licensee was disciplined for three or more similar sales, occurring in separate incidents, within the prior three years. This licensee had only one other sale of liquor to a minor since 1993. Further, the revocation of the food or restaurant license was inappropriate. To deny the livelihood of someone who has been in business for 15 years is excessive and inappropriate.

Although the Mayor has the authority to revoke any license issued under the provision of the Chicago Municipal code for good and sufficient cause, these proceedings were conducted pursuant to the Illinois Liquor Control Act and Chicago Municipal Ordinances related to liquor control. The Local Liquor Control Commission did not have the authority to revoke all business licenses to the owner.

This is an extreme penalty under the code previous violations past the three year time are not admissible. The penalty is too harsh particularly with reference to the restaurant. The penalty is an extreme abuse of discretion. The City should be reversed.

Irving J. Koppel
Commissioner

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: November 7, 2007

Dennis Michael Fleming
Chairman

Stephen B. Schnorf
Commissioner