

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Lucky 7 Foods, Inc. )  
Zafar Sheikh, President )  
Licensee/Revocation )  
for the premises located at )  
4256 West Fullerton )  
 ) Case No. 08 LA 26  
v. )  
 )  
Department of Business Affairs & Licensing )  
Local Liquor Control Commission )  
Mary Lou Eisenhauer, Acting Director )  
 )

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

This matter comes to be heard on licensee's appeal of an order dated April 17, 2008, revoking the City of Chicago Retail Liquor License and all City of Chicago licenses issued to Lucky 7 Foods, Inc. for the premises located at 4256 W. Fullerton. This matter had gone to a contested hearing before Deputy Hearing Commissioner Raymond J. Prosser on November 15, 2007, February 7, 2008, March 13, 2008 and April 3, 2008. The City was represented by Assistant Corporation Counsel Rachel Berger and 711 Senior Law Student Joseph D. Ackerman. The licensee was represented at the contested hearing before the Local Liquor Control Commission by Thomas Erickson of Fitzgerald and Hursey and for oral argument before this Commission by Timothy J. Fitzgerald.

At the conclusion of the hearing, Deputy Hearing Commissioner Prosser submitted Findings of Fact that the City's witnesses were credible and the City had sustained its burden of proof on Charges 1 and 2, which alleged the licensee gave, sold or delivered alcoholic liquor to a minor on September 5, 2007, in violation of the City of Chicago Municipal Code and the Liquor Control Act of the State of Illinois. Commissioner Prosser recommended revocation based on the facts of this case and the prior disciplinary history of the licensee which included five previous sales to minor in the last twelve years. The Findings of Fact and the recommendation of revocation were adopted by Mary Lou Eisenhauer. A copy of the Order of Revocation was mailed on April 17, 2008, to the licensee and a timely appeal to this Commission was filed on April 28, 2008. Oral argument on this matter was heard on July 9, 2008.

At the hearing before Deputy Hearing Commissioner Prosser the licensee made an oral motion to strike evidentiary testimony based on the argument that the "investigation" of this licensed premises was unconstitutional. Both parties were allowed to prepare and file written briefs on this issue. Commissioner Prosser stated in his Findings of Fact that he would make no ruling on this issue since an administrative agency does not have the authority to decide constitutional issues. This Commissioner agrees with Commissioner Prosser and also declines to make a ruling on the constitutional arguments. The fact that the Commission allowed oral argument before it on the constitutional issues should not be interpreted as suggesting it has jurisdiction to rule on those issues. Argument was allowed to preserve these issues in the record for possible appeal. In addition to the general proposition of law that administrative agencies do not have the power to rule on constitutional issues, this Commission is a creature of state statute

that specifically states what authority it has in cases of appeals of revocation or suspension.

This Commissioner does not believe that the statute creating the Commission gave it power to decide constitutional issues.

Under the state statute review by this Commission in revocation cases the Commission is limited to three questions:

1. Whether the Mayor, as Local Liquor Control Commissioner, has proceeded in the manner provided by law;
2. Whether the order supported the findings;
3. Whether the findings are supported by substantial evidence in light of the whole record.

There was no argument that the matter did not proceed in the manner provided by law. There is no question that there was sufficient substantial evidence to support the findings that the licensee sold alcohol to a minor in violation of the City of Chicago Municipal Code and the Liquor Control Act of the State of Illinois. The licensee's evidence that its agent sold the alcohol to this minor only because that agent had previously carded this minor and the minor had produced identification that she was over 21, is at best evidence for mitigation. It does not justify the sale to this minor on this date. The history of this licensee presented at this hearing shows the following violations: Sale to Minor on February 15, 1996 and December 22, 1995, which resulted in a 3-day closing; a Sale to Minor on May 12, 2003, which resulted in a 30-day closing; a Sale to Minor on March 19, 1999, which resulted in a 14-day closing and a Sale to Minor on January 16, 2007, which resulted in a Revocation (that revocation was also appealed and heard separately at the Local Liquor Control Commission and the License Appeal Commission).

A decision in that case (Case No. 07 LA 46) is being issued simultaneously with this opinion. The order of revocation is supported by the findings and the findings are supported by substantial evidence in light of the whole record.

The revocation of the retail liquor license and all city licenses issued to Lucky 7 Foods, Inc., Zafar Sheikh, President for the premises located at 4256 West Fullerton is sustained.

OPINION OF COMMISSIONER KOPPEL

The record in this case is quite clear. The licensee has a history of selling liquor to minor. It is the responsibility of the License Appeal Commission to determine if the revocation of the license was appropriate. My colleague's statement concerning the jurisdiction was proper. This Commission is a creature of state statute that specifically states the authority it has on appeals of revocation or suspension. In this case, the order of revocation is supported by the findings of fact which include the history of this license. Based on its continuing history the License Appeal Commission appropriately affirms the many violations of serving liquor to minors. The City is hereby 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: August 20, 2008

Dennis M. Fleming  
Chairman

Irving J. Koppel  
Member

Stephen B. Schnorf  
Member