

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

6858 S. Halsted, Inc.)
Fawzi Mansour, President)
Licensee/Revocation)
for the premises located at)
6858 South Halsted) No. 10 LA 55
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND O'CONNELL

Licensee received notice that a hearing was to be held in connection with disciplinary proceedings regarding the City of Chicago retail liquor license and all other City of Chicago licenses issued to it for the premises located at 6858 S. Halsted. The charges were that on October 30, 2009, the licensee, through its agent, sold, gave or delivered alcoholic beverages on the licensed premises to a person under the age of 21 years. It was alleged that this action violated Title 4, Chapter 60, Section 40 (a) of the Municipal Code of Chicago and Section 235 ILCS 5/6-16 (a) of the Illinois Compiled Statutes.

A hearing on these charges was held on April 2, May 14 and August 20 of 2010, before Deputy Hearing Commissioner Juliana Stratton. Assistant Corporation Counsel Shannon Trotter represented the City and David Kugler represented the licensee. The Deputy Hearing Commissioner entered Findings of Fact that the City met its burden of

proof on Charges 1 and 2, and further found that in light of the present violation and the licensee's past disciplinary history that revocation was the appropriate penalty. These findings were adopted by Norma Reyes, the Commissioner of the Department of Business Affairs and Consumer Protection and by Gregory J. Steadman, Commissioner of the City of Chicago Local Liquor Control Commission. The licensee filed a timely Notice of Appeal with this Commission.

Since this is an appeal of a revocation of a liquor license review of this Commission is limited to these questions:

- (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.

There does not seem to be an argument on whether the Local Liquor Control Commissioner proceeded in the manner provided by law and the licensee's argument focuses on the two remaining issues. A review of the evidence will help in analyzing these issues.

Tyrone Jackson is a Chicago Police Officer who was in the Vice Control Section of the Organized Crime Division on October 30, 2009, he was working in a unit called SAM, which is Stop Alcohol to Minors. He would take individuals under the age of 20, employed by the City of Chicago into licensed liquor establishments to see if those establishments would sell alcohol to the minor. He was working with fellow police

officers Sam Puhar, Eric Johnson and Officer Lebow. He also was working with his cooperating minor Jawan Odis. They started their shift at Homan Square at 3340 W. Filmore, where he received a \$20 dollar bill from Sergeant Sneed. Jackson noted and recorded the serial number. They then met up with the minor Jawan Odis. He made sure Jawan did not have any I.D. or currency on his person and he then gave the minor the prerecorded \$20 bill.

They proceeded to 6858 S. Halsted where King Food and Liquor is located. Jackson and Jawan entered the small convenience store. All the merchandise is enclosed behind glass and the business side of the store is completely enclosed in glass. It was busy when they entered. There were two cash registers and two lines. Jawan got into one of the lines. As Jawan approached the cash register, a store employee named Edward King yelled out to Jawan "What to you want?" and Jawan responded "A pint of Hennessy cold." A man named Akaf Zatar was operating the cash register. King retrieved the Hennessy and put in next to Zatar at the cash register. As Jawan approaches the cash register, a turnstile is rotated to him where he places the \$20 bill. Zatar then rotated the turnstile and put the \$20 bill in the register. Zatar placed the Hennessy and the \$1.90 in change. Jawan took the change and the Hennessy and stepped away from the turnstile. At that point Jackson cut in line and identified himself as a police officer. He was no more than three feet from this transaction and never saw Jawan Odis show his identification. He never heard anyone ask for his identification, his birth date or his age. Jackson then went to the business area of the store and recovered the \$20 bill from the

cash register. Jackson identified City's Exhibit 3 – A, B and C. 3A is a photo of the Hennessy, 3B is a photo of Jawan Odis, and 3C is Mr. Zatar.

Jackson was satisfied the minor had no currency or coins on his person but he did not search or pat him down. He and Odis entered together. Both cash registers had lines and other people were milling around. He just stood around while Odis was in line. It took about three minutes for the transaction to occur.

By agreement, City's Exhibit 4, which is the birth certificate of the cooperating minor was allowed in evidence.

The City rested its case.

Edward King has been employed at 6858 S. Halsted for five years. His job is to stock and fill the coolers and to help cashiers if they need help. He is not a cashier and does not handle money. He was working on October 30, 2009. The merchandise is kept behind the cashiers and there is a partition separating the merchandise from the customers. A customer cannot get his own merchandise. The merchandise is obtained from King or the cashier. There are two cash registers about three to five feet apart. On October 30, 2009, he was working when a police officer identified himself. The cashier was known to King as Jeff. King identified Jeff as the person in City's Exhibit 3C. Since it was crowded, he assisted the cashiers by asking the customers what they wanted and bringing the order to the cashier. He identified the person in City's Exhibit 3B, as a

customer who ordered a pint of Hennessy. King put the Hennessy in a bag and set it next to the cashier. The person who ordered the Hennessy did not put money in the slot. The guy that put the money in the slot was the person who identified himself as a police officer. He put the money in the slot and the cashier took it. The officer picked up the change and the merchandise. The young man was standing in the middle of the two lines when the officer identified himself. The officer came behind the counter and took the \$20 bill out of the cash register and then took pictures. The cashier was in charge of requesting identification to ensure a customer was not a minor but he does not know if the cashier requested identification because his back was turned. He did see the money being put into the slot by the officer but did not know if he asked the officer for an I.D.

Akaf Zatar has worked as a cashier at this place of business at 6858 S. Halsted for three years. He works ten hours a day, seven days a week, and this is his only source of employment. He and another cashier were working on October 30, 2009. The customers are divided from the merchandise by a glass partition. On that date, at about 8:00 p.m., it was very busy with 30 people waiting in two lines. Edward was helping him by taking orders from the customers and putting the merchandise on the counter. It was very busy when the customer came up to the window. It was a tall, black, light black, African-American more than 35 years old that came to the window. He did not see who put the money on the spindle, but the person in front of him was that African-American gentleman. After we gave him the change and liquor he told us the other man who came from the other line was a minor. He identified himself as a police officer and said we sold to a minor. The witness knows a person must be 21 to buy liquor and added he has

never had a similar problem working there. He identified City's Exhibit 3B, as a picture of Jawan Odis, the minor, but stated Otis was not in his line and it was the police officer in the window. He did not hear Otis order the Hennessy and did not see who put the \$20 in the turnstile. It was very busy and he did not see where Otis came from or who put the money on the turnstile but it was the police officer in front of him when the Hennessy was put in the turnstile.

Shafeek Mohammed is the manager of the food and liquor store located at 6858 S. Halsted. He has had this position for three to four years. He was not on the premises on October 30, 2009, but since he has been the manager there have been no similar occurrences. He has been present when members of the Chicago Police entered the location to investigate, and at no time were any tickets issued for any violations. He was not the manager on June 9, 2005, or any time prior to that. The business has operated for 28 years.

City's Exhibit 5, was allowed in evidence as the prior disciplinary history of the licensee. It lists:

- a. May 23, 2000 – 15-day suspension for sale of alcohol to a minor
- b. February 3, 2002 – 21-day closing for operating after permitted hours
- c. April 6, 2004 and June 9, 2005 – 30-day closing for sale of alcohol to a minor
- d. November 27, 2002 - \$5,000.00 voluntary fine for failure to file a manager's statement
- e. An unlisted disposition and no case number for an April 20, 2005, failure to notify of corporate change

In her Findings of Fact the Deputy Hearing Commissioner made a specific finding that she found the testimony of Tyrone Jackson to be credible, reliable and, for the most part, uncontradicted. It is not the role of this Commission to overrule a decision by the Local Liquor Control Commission because a majority of the Commissioners would have made a different finding of fact. It is not the role of this Commission to reverse on the basis that the majority may feel that revocation is too harsh a penalty.

The standard with regard to this case is whether the finding of fact in favor of the City was supported by substantial evidence in light of the whole record. The testimony of Officer Jackson with the specific finding of credibility given to that testimony is sufficient to establish substantial evidence supporting the findings that the City proved the two charges.

The next issue addresses whether revocation is supported by the findings. The Deputy Hearing Commissioner weighed the previous disposition and the evidence presented in mitigation and found revocation to be the appropriate penalty. While some or all of the Commissioners on the Commission may feel that revocation was too harsh, such a feeling cannot be the basis of reversal. Revocation under the facts of this case was not so arbitrary and capricious as to justify reversal.

The decision of the Local Liquor Control Commissioner revoking the liquor license for the premises located at 6858 S. Halsted is affirmed. We make no ruling on the fact of any other licenses issued for these premises, as that decision is not within the jurisdiction of this Commission.

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: May 5, 2011

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member