

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

The Wild Hare, Ltd.)
Licensee/Suspension)
for the premises located at)
738 North Clark Street)
) Case No. 08 LA 39
v.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Mary Lou Eisenhauer, Acting Director)
)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS KOPPEL AND SCHNORF

Licensee was served with an Amended Notice of Hearing that alleged two charges. The first charge alleged that on October 8, 2007, the licensee failed to post in a visible location the sign required by Section 4-60-100(d) of the Municipal Code of Chicago. Count 2 alleged that on November 4, 2007, the licensee allowed the number of people on its establishment to exceed the occupancy limit certified by the buildings commissioner in violation of Section 13-36-020 of the Municipal Code of Chicago. The case was assigned to Deputy Hearing Commissioner Raymond J. Prosser and he issued Findings of Fact finding the City met its burden of proof on the second charge. He recommended a fifteen (15) day suspension based on the facts of this case and the licensee's prior disciplinary history. After consultation with the hearing officer, Acting Director Mary Lou Eisenhauer adopted these findings. The Order of Disposition of a fifteen (15) day suspension was sent to the attorney for the licensee on June 27, 2008, and a timely appeal was filed on July 15, 2008. An amended license order directing the licensee to serve the fifteen (15)

day suspension from September 8 through 23, 2008, was served on the licensee on September 5, 2008. This order was based on this being the second suspension on this licensee within a twelve month period. The licensee filed a request for an emergency stay which was denied by this Commission on September 9, 2008, for lack of jurisdiction. Oral argument on this case was heard by this Commission on September 11, 2008.

In cases of revocation or suspension, this Commission's review is limited to these three 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.

Counsel for licensee argued that the since the provision of the Municipal Code found to have been violated, Section 4-60-100(d), states that any person who violates this subsection shall be subject to a fine of \$500.00 plus \$100.00 per each day of a counting violation, the penalty for this violation must be a fine. Since this specific subsection does not call for a suspension as a penalty, the fifteen day suspension imposed by the Local Liquor Control Commission was not issued in the manner provided by law.

While subsection 4-60-100(d) does not provide for suspension as a penalty, Section 4-4-280 does give the Mayor the power to suspend or revoke any license if the licensee is found to have violated any of the provisions of this code or any of the state statutes, case law

has construed the application of this provision to be limited to violations of statutes, ordinances or regulations that are fairly related to the control of liquor. Section 4-60-100(d) is a provision of the Municipal Code that is specifically applicable to liquor dealers. As such, using the authority of Section 4-4-280 for a violation of this particular subsection would be appropriate since this subsection is related to the control of liquor. The Local Liquor Control Commission did proceed in a manner provided by law.

The findings in this case that the licensee failed to have a required sized sign with the specific language as set out in 4-60-100(d) is supported by substantial evidence. While counsel for the licensee argued that the sign found to have been on the premise was substantially in compliance, it did not satisfy the requirements of the ordinance.

The final issue is whether the fifteen day suspension for this violation is supported by the findings. The Deputy Hearing Commissioner and Acting Director stated the fifteen day suspension was based on prior disciplinary history and the facts of this case. Resolution of this issue depends on whether this fifteen day suspension is so arbitrary, or capricious or unreasonable as to require its reversal. This Commissioner feels that each case should be evaluated on the type of past discipline a licensee has had and the nature of the violation. Applying those principles this Commissioner would not have issued a 15 day suspension in this case.

That is not the standard of review in this case and this Commission does not have the authority to modify the fifteen day suspension. While this Commissioner disagrees with the fifteen day suspension, it is not so arbitrary, capricious or unreasonable as to require it to be reversed. The decision of the Local Liquor Control Commissioner is upheld.

IT IS THEREFORE ORDERED AND ADJUDGED That the order suspending the liquor license of the appellant for FIFTEEN (15) days 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: September 16, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Member

Stephen B. Schnorf
Member