

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Franklin Super Foods & Liquors, Inc.)
Applicant (Packaged Goods))
for the premises located at)
501 North Kedzie Avenue) Case No. 12 LA 67
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

Franklin Super Foods & Liquor, Inc. applied for a Packaged Goods liquor license for the premises located at 501 N. Kedzie, 1st Floor. That application was denied by Gregory Steadman, Local Liquor Control Commissioner, on November 20, 2012. The application was denied for the following reasons:

1. Due to concerns that issuing the license would create a law enforcement problem.
2. That the applicant had not submitted the followed required documents:
 - a. Individual History Form and copy of I.D. for the money lender
 - b. The Alcohol Awareness for the manager
3. An onsite investigation revealed that based on the setup of the location, liquor sales will be the primary business.
4. The applicant is not the type of person that can be entrusted with a liquor license because the applicant was the acting manager during the following two citations:
 1. 6/5/2010 Sale of Alcohol to a Minor - \$1000 - voluntary fine
 2. 11/17/2010 Sale of Alcohol to a Minor - \$2,500 - voluntary fine

The applicant filed a timely appeal with the Commission. The matter proceeded to hearing on January 17, 2013, and April 7, 2013. Assistant Corporation Counsel Daniel Rubinow represented the City and attorney Zubin Kammula represented the applicant.

A summary of the hearing testimony will aid in understanding this decision.

Bryan Knipper is a Business Consultant Supervisor for the Department of Business Affairs and Consumer Protection that deals primarily with reviewing documents for hospitality and liquor licenses. He is familiar with the application because he did the document review in this case. Rosiel Zarate was the Business Consultant. In processing this application, Mr. Zarate contacted the then Police Commander of the 13th District. Commander Gross sent a letter, City's Exhibit 2, in evidence, objecting to the issuance of this license. That exhibit set out the Commander's reasons for his objection.

Knipper stated that his review of the application documents showed that certain requested documents had not been tendered. The department was asking for an Individual History Form and a photo I.D. from the current owner, and an Alcohol Awareness Certificate for the person named Ali Yafai who was listed as the manager. There was a receipt that this person was in class and progressing, but had not received the certificate.

A third basis for denial was based on the fact that the City investigator determined that the sale of packaged goods was not an accessory use, but was the primary use of the store. This

business is in a B-3 Zone, which does not allow the sale of packaged liquor goods to be a primary use.

A review of the disciplinary history of the current licensee showed a negative history which included two sales to minors in 2010.

It was stipulated that Fahdle Ahmed is the sole owner and officer of the applicant corporation. On his Individual History Form under Employment History, the applicant listed he has been the Manager of Franklin Food and Liquors since July 6, 2006.

On cross, Mr. Knipper acknowledged the applicant Fahdle Ahmed and the manager Ali Yafai were fingerprinted and there were no disqualifying factors. Both were eligible to hold a liquor license. Knipper was shown Applicant's Exhibit 2, which is an Individual History Form for Nassar Yafai which was dated November 6, 2012. This would have been after the witness reviewed the file for documents. The witness also stated that, standing alone, a sale to a minor is not a disqualifying factor in the Chicago Liquor Ordinance.

Antonio Torres is a Revenue Investigator II for the Department of Business Affairs and Consumer Protection. On October 4, 2012, he conducted a liquor license inspection at 501 N. Kedzie. It is a one story building with the inside being a general store. Based on his general observation, he would describe it as more of a liquor store than a general merchandise store. Of the fifteen coolers in total, ten contained alcohol, and five had general food items. In between the coolers were three aisles of merchandise. One aisle was dedicated solely to wine and the

other two contained chips, soda, and general merchandise. The witness identified City's Exhibit 8, in evidence, as a proposed site plan for the location which was prepared by the applicant and shows the existing layout. 9B through C, were allowed in evidence without objection as pictures the witness took of the premises during his investigation.

The investigator stated there were non-liquor items for sale such as soft drinks, eggs, milk, frozen food, can goods and general products like paper towels, toilet paper, and cups. He did not do a complete inventory of the products. During his investigation, Mr. Ahmed said this store layout would be consistent with the new ownership.

Jesse Smart is currently employed as an Assistant to the 27th Ward Alderman Walter Burnett. He acts as a liaison between businesses and the Alderman. The Alderman is in support of this application and has no objection to Fahdle Ahmed taking over ownership of the store. Alderman Burnett was aware of the police objections from the previous Commander. The Alderman's office has been in contact with the new police commander and she has no objection to this application. The Alderman also has no objection to changing the zoning to allow liquor to be the primary use of the store.

Keith Muhammad is a life-long resident of the 27th Ward where he also serves as the Precinct Captain of the 31st Precinct for the 27th Ward. He is also the President of a community organization known as KAFT for Unity. KAFT stands for Kedzie, Albany, Franklin, and Troy Neighborhood Community Organization. That organization has no objection to the issuance of this license. Individually, and as a Precinct Captain he has no objection to this license. He is not

aware of any complaints or concerns from the residents. The store contributed to the community by helping out for block parties and football breakfasts in the area. As the former BEAT facilitator in that area, he never heard the former commander indicate concern about negative activities about the liquor store.

Fahdle Ahmed has been managing a convenience store at 501 N. Kedzie for the last six years. He has worked in the convenience store business for almost 16 years. His present day to day duties include making orders, stocking the shelves, dealing with customers and making sure everything is organized. The store sells a little bit of everything. The witness identified City's Exhibit 3, in evidence, as a list of groceries and non-food items currently sold at the store. If granted the license, he will continue to sell these products. He also plans to implement changes by stocking more vegetables and fruits.

The witness agreed there have been two sales to minors at the store in 2010. To make sure subsequent violations do not take place, they ask for I.D. and how old the person is. Since the last sale to minor in 2010, the store has not been cited for other such violations. If granted the license, he intends to have security.

Mr. Ahmed received the pictures in evidence as City's Exhibit 9(C) and 9(I), and agreed the store has looked that way for three years and the liquor in 9(I) is still present. He is not putting up all the money at once to purchase the store and will pay it off over several months. Applicant's Exhibit 4, which was described as pictures of the non-alcoholic products currently for sale at the store, was allowed in evidence without objection.

Applicant's Exhibit 5, which is a summary of the dates and results of investigations at 501 N. Kedzie under the Stop Alcohol to Minor Program since 2006 was allowed in evidence.

Applicant's Exhibit 6, which is the Individual History Form for the seller Nasser Yafai, was allowed in evidence. Applicant's Exhibit 7, which is the TIP Certificate for Ali M. Yafai, was allowed in evidence with the City noting this document was not previously part of the application.

The final document that was not in the applicant's file was a copy of a picture I.D. of the seller's driver's license. There was testimony from the expeditor, Larry McCullom that he believes it was submitted but could not be 100 percent certain. Over the City's objection, this Commission allowed the applicant's attorney to file a copy of this license in evidence as Applicant's Exhibit 8.

Since this case deals with the denial of a liquor license, the issue before this Commission is to determine de novo the propriety of that denial. Since affirming the denial on any of the reasons alleged would be sufficient, this decision will address the four reasons alleged as the bases for the denial of the license.

The City has failed to meet its burden of proof in that the license should be denied for law enforcement problems due to overall calls for service and violent crime in the area. Due to a change in personnel, the present Chicago Police District Commander apparently has no objection to the issuance of this license. The record contains no evidence to affirm the denial on this basis.

The City did prove by a preponderance of the evidence that the documents submitted did not include a photo I.D. for Nasser Yafai. Respondent did present testimony from its expeditor that he believed the copy of the license was included in the application package, but he was not certain. A copy of the photo ID has been made part of the record as Applicant's Exhibit 8. While it may have been produced late, this Commissioner does not believe the license should be denied on that basis alone. The facts of the financial transaction which the present owner was acting as the money lender were not hidden. If there was a problem with the financing, that should have been alleged as a basis for denial.

The third reason for denial is that in the opinion of the investigator, the present layout of the store is more indicative of a liquor store and not a grocery store with liquor as accessory as required by the present zoning. The investigator's opinion is supported by the documents provided by the applicant that show the proposed future layout of the store to be similar to what presently exists. The investigator's description of the non-alcohol products conflicts with the list of non-alcoholic products the Respondent asserts as for sale and will be for sale. The applicant also testified that he intends to sell more fruits and vegetables. This Commissioner feels that this conflicting testimony is not sufficient to serve as a basis for the denial of the license. If an investigation, after the issuance of this license, leads to evidence that proves the sale of alcohol is the primary purpose of the store, the City can take the appropriate action at that time.

The final reason asserted for the denial of this license is that the applicant is not the type of person that can be entrusted with a liquor license because two sales to minors occurred during the time the applicant was the acting manager of the licensed establishment. The Municipal

Code lists specific reasons why an applicant can be denied. These reasons are listed in 4-60-030 for the Municipal Code and these reasons do not include denial based on the fact that an “applicant is not the type of person that can be entrusted with a liquor license.” An applicant can be denied if the issuance of the license would cause law enforcement problems under the Vino Fino case, or if the applicant is not of “good character and reputation in the community in which he resides or in which his premises are located.” The City did not base its denial on either of these grounds. Since a license cannot be denied on the grounds set forth in Reason 4, the denial on that basis cannot stand. If a reviewing court disagrees with this decision and feels the language of reason is within the reasons for the denial under 4-60-30, the record in this case is insufficient to establish that this applicant is not the type of person that can be entrusted with a liquor license.

For all these reasons, the denial of the Packaged Goods application for Franklin Super Foods & Liquors, Inc., for the premises located at 501 N. Kedzie is 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 REVERSED.

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: July 30, 2013

Dennis M. Fleming
Chairman

Donald O'Connell
Member