

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

1575 N. Milwaukee Avenue Corp.)
Sean Moran Mulrone, President)
Licensee/Fine)
for the premises located at)
1575 North Milwaukee Avenue)
v.)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Scott V. Bruner, Director)

Case No. 07 LA 23

ORDER

OPINION OF CHAIRMAN FLEMING

This case is before the License Appeal Commission on the appeal by the licensee of a \$1,500.00 fine imposed based on the finding of the Local Liquor Control Commission that the licensee, on November 21, 2006, failed to display a retail food license in plain view in a conspicuous place on the licensed premises in violation of Title 4, Chapter 4, Section 210 of the Municipal Code of Chicago. This Chapter of the Municipal Code is titled General Licensing Provisions and it states as follows:

It shall be the duty of every person conducting, engaging in, maintaining, operating, carrying on or managing a business or occupation for which a license is required by any provision of this Code to post such license in a conspicuous place at the premises where the business or occupation is being conducted.

Section 4-4-280 titled License Revocation allows the Mayor to fine a licensee if he determines that the licensee shall have violated any of the provisions of this code. Later that section states that if the Mayor determines that a fine is an appropriate penalty, the amount of the

fine shall not exceed the fine imposed in the chapter creating the subject license. The fines set out in Section 4-8-068 are between \$200.00 and \$1,000 per day and the fines set out in Section 4-4-130 range between \$250.00 and \$500.00 per day. Section 4-60-200 calls for fines of \$300.00 to \$1,000 per day.

When this Commission sits in review of matters decided by the Local Liquor Control Commission review is limited to these issues:

1. Did the Mayor, as Local Liquor Control Commissioner, proceed in the manner provided by law?
2. Were the findings of the Local Liquor Control Commission as set forth in the order imposing the \$1,500.00 fine supported by substantial evidence in light of the whole record?
3. Was the order imposing a \$1,500.00 fine supported by the findings of the Local Liquor Control Commission?

There is no issue raised as to the first issue and there is no need to discuss it.

As to the second issue, this Commissioner is aware of the law defining substantial evidence and is aware any evidence in the record that supports the finding of the Local Liquor Control Commission is sufficient to uphold the \$1,500.00 fine. It is not our place to reweigh the evidence and impose a different result solely because we would have entered a different decision. However, when the ruling of the Local Liquor Control Commission is not supported by substantial evidence, that ruling should be reversed.

On November 21, 2006, the premises located at 1575 N. Milwaukee Avenue consisted of

two separate establishments. Santullo's was a casual place serving sandwiches and pizza while Debonair's Social Club was an upscale Italian social club. On this date, the City of Chicago had issued one retail food license for both establishments at that address. The fact that the City has now required that separate food licenses now be obtained is not relevant to this case. The City admits that there was a valid food license issued to the licensee on November 21, 2006, and the City's own witness admits he was shown a valid food license on the premises that night. Where did that valid food license come from before it was shown to Officer Skoraczewski? Officer Skoraczewski testified he was not aware when he revisited the premises that there was another dining area with that address under the same license. Neither this witness nor the other officers went to the other side of the establishment where the casual diner was located. If he did not go to the area known as Santullo's he is not competent to say the food license was not conspicuously displayed at that location. The licensee's witness, Andrew Barrett, explained in detail that at the request of other City investigators the original licenses are displayed in a frame in Santullo's and copies of the licenses are displayed at Debonair's. The original food license had just been renewed and no copy was posted at Debonair's on November 21, 2006. The original food license was displayed at the Santullo's side that night. This testimony was not rebutted. The fact that there was not an original food license posted in Debonair's is not material to this case. There was one license issued and the only testimony on this point is that the food license was posted conspicuously in the portion of the premises known as Santullo's. There is no substantial evidence in the record as a whole to affirm the City's finding that the licensee failed to post in a conspicuous place a retail food license on November 21, 2006, and that finding is reversed.

For the sake of judicial economy the third issue will be discussed in the event that a reviewing court disagrees with the analysis on the substantial evidence issue.

The order imposing a \$1,500.00 fine was not supported by the findings of the Local Liquor Control Commission. This Commissioner follows the precedent that great deference should be given to the decision of the Local Liquor Control Commission on suspensions, revocations and fines, but this Commissioner is also bound by precedent that requires a reversal of such discipline if it is arbitrary and capricious. The record is silent on the issue of any past disciplinary history and the findings of fact prepared by the hearing officer gives no basis as to how a \$1,500.00 fine in these situations is justified. The section of the Municipal Code previously cited set parameters for fines from \$200.00 to \$1,000.00 per day. A fine in excess of those parameters for a first time offense of not displaying the food license to a licensee with no prior disciplinary history without explanation is arbitrary and capricious and should not stand. The \$1,500.00 fine would be reversed on the bases should a reviewing court find there was sufficient evidence in the record to support the finding of the Local Liquor Control Commission.

COMMISSIONER KOPPEL'S CONCURRING OPINION

This matter comes before the License Appeal Commission with regard to the issuance of a fine for not properly displaying a food license. There actually was a food license in another dining area with the proper address under the same license. I agree with Chairman Fleming that there was a food license properly posted in the premises known as Santullo's and there is no evidence to affirm the City's finding that the licensee failed to post a retail food license in a conspicuous place.

Further, it seems to this Commissioner that the penalty is not related to a serious liquor violation (serving to minors, overserving, etc.) to impose a penalty of \$1,500.00 is excessive. This establishment has no other violation. It would seem that the inspector would advise that the license was not properly placed. The penalty far exceeds the so called violation if there was one. The City is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order to Fine the licensee
the sum of \$1,500.00 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: March 13, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Commissioner

Note: Commissioner Schnorf did not participate in decision