

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Howard Smith)	
d/b/a The Odyssey II Lounge)	
Licensee/Revocation)	
for the premises located at)	Case No. 07 LA 51
211 East 55 th Street)	
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Scott V. Bruner, Director)	
)	
)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER KOPPEL AND
COMMISSIONER SCHNORF

This matter comes to be heard on the licensee’s appeal to this Commission of an Order of Revocation dated November 30, 2007. This revocation was entered after a hearing was conducted by the Deputy Hearing Commissioner John F. Lyke, Jr. and was based on his findings that since 2003 Howard Smith has not been a resident of the City of Chicago. Since Smith was not a resident of the City of Chicago, he is ineligible to hold a City of Chicago Retail Liquor License pursuant to the Municipal Code, alleged on count one; and pursuant to State Statute as alleged in count two.

The only witness at the hearing was Howard Smith. At all times during this hearing he stated that he lived at 7854 S. South Shore Drive. He originally testified he had lived at that

address since 1984 but later corrected himself to state he meant he had lived at that property since 1994. Further testimony from Mr. Smith established that in addition to condominium property at 7854 S. South Shore Drive which he purchased on March 10, 1994, he owned or has owned properties in the City of Chicago:

- a. 7254 S. Euclid Avenue
- b. 12317 S. Loomis Street
- c. 8909 S. Greenwood Avenue
- d. 1459 Hyde Park
- e. 1762 W. 94th Street

In support of his position that he lives at 7854 S. South Shore Drive Mr. Smith introduced these exhibits:

- a. Illinois Driver's License with an address of 7854 S. South Shore Drive. Prior to June of 2007 when Smith received notice of this hearing, the address on Smith's drivers's license was 2817 Lake Park Drive, Lynwood, Illinois.
- b. An electric bill from ComEd for Mr. Smith at 7854 S. South Shore Drive, Apt. 403, and a two year history of that account in the name of Howard Smith.
- c. 2005 Joint Income Tax Return for Howard and Melvin Smith with a home address of 7854 S. South Shore Drive, Apt. 403.
- d. 2006 Joint Income Tax Return for Howard and Melvin Smith at 7854 S. South Shore Drive, Unit 4.
- e. Affidavit of Title and Certificate of Insurance relative to purchase of 7854 S. South Shore Drive, Apt. 403, on March, 1994.
- f. 2005 Second Installment Real Estate Tax bill for 7854 S. South Shore Drive, Apt. 403, sent to Howard Smith at 2817 Lake Park Drive. This bill reflects Mr. Smith took a Homeowner's Exemption on this property for this tax year.
- g. 2006 First Installment Real Estate Tax Bill sent to Mr. Smith at the Lynwood address.
- h. License renewal form sent to Howard Smith at 211 E. Garfield Blvd., 1st Floor, Chicago, Illinois 60637-1009.

On direct examination of Mr. Smith by the City, Smith admitted that he had purchased a home located at 2817 Lake Park Drive, Lynwood, Illinois 60411 on June 30, 2004. That property is located outside of the City of Chicago. Mr. Smith stated he has been separated from his wife Melvin for probably 15 years. They are still legally married and he supports her. Melvin lives at the Lynwood property with three of their children and two grandchildren. Two of the daughters move in and out but use the Lynwood property as their address. The City introduced the following exhibits into evidence relative to Mr. Smith's residence:

<u>Exhibit No.</u>	<u>Description</u>
4	Trust Deed dated February 24, 2003, for the purchase of 2817 Lake Park Drive, Lynwood, Illinois 60411 by Howard Smith. Mr. Smith's address is listed as 1762 W. 94 th Street, Chicago, Illinois and the return address for the deed to be mailed to was to Howard Smith at 2817 Lake Park Drive, Lynwood, Illinois 60411 and a HUD statement for purchase of the Lynwood property dated February 24, 2003 which lists Howard Smith with an address of 1762 W. 94 th Street, Chicago, Illinois 60620, as the borrower.
5	2005 Second Installment Property Tax Bill for 7254 S. Euclid Avenue, Chicago, Illinois 60649, which was mailed to Howard Smith at the Lynwood address. It reflects a Homeowner's Exemption was taken. 2005 Second Installment Property Tax Bill for 12629 S. Bishop Street, Calumet Park, Illinois 60827, mailed to Howard Smith at the Lynwood address. It reflects a Homeowner's Exemption was taken. 2005 Second Installment Property Tax Bill for 7854 S. South Shore Drive, Chicago, Illinois 60649, mailed to Howard Smith at the Lynwood address. It reflects a Homeowner's Exemption was taken.
6	2006 First Installment Property Tax Bill for 8909 S. Greenwood Avenue, Chicago, Illinois 60619, which was mailed to Howard Smith at the Lynwood address. 2006 First Installment Property Tax Bill for 12317 S. Loomis Street, Calumet Park, Illinois 60827, mailed to Howard Smith at the Lynwood address.

2006 First Installment Property Tax Bill for 7854 S. South Shore Drive, Chicago, Illinois 60649, mailed to Howard Smith at the Lynwood address.

2006 First Installment Property Tax Bill for 12629 S. Bishop Street, Calumet Park, Illinois 60827, mailed to Howard Smith at the Lynwood address.

2005 First Installment Property Tax Bill for 7254 S. Euclid Avenue, Chicago, Illinois 60649, mailed to Howard Smith at the Lynwood address

2005 First Installment Property Tax Bill for 7854 S. South Shore Drive, Chicago, Illinois 60649, mailed to Howard Smith at the Lynwood address.

2006 First Installment Property Tax Bill for 7254 S. Euclid Avenue, Chicago, Illinois 60649, mailed to Howard Smith at the Lynwood address.

- 7 LaSalle Bank N.A. Account Statements for an account in the names of Melvin and Howard Smith at 2817 Lake Park Drive, Lynwood, Illinois 60411, dated 1-23-07, 3-21-07, 4-20-07, 5-21-07, 6-21-07, 7-23-07, 11-21-06, 12-21-06, 10-23-06 and 7-24-06.
- 8 Charter One Bank Account Statements for an account in the names of Melvin and Howard Smith with an address at 2817 Lake Park Drive, Lynwood, Illinois 60411, dated 1-5-04, 2-5-04, 3-5-04, 4-5-04, 10-7-04, 11-6-04, 12-7-04, 3-7-05; also statements reflecting the time periods of June 24 - July 11, 2005, July 12 - August 8, 2005, August 9 - September 9, 2005, September 10 - October 11, 2005, October 12 - November 8, 2005, November 9 - December 8, 2005, January 11 - February 8, 2006, February 9, 2006 - March 8, 2006 and March 21 - April 20, 2006.
- 9 2004 Vehicle Registration for a 1998 Mercedes Benz registered to Howard Smith at the Lynwood property; 2005 Vehicle Registration renewal form for a 1998 Mercedes Benz registered to Howard Smith at the Lynwood address.
- 10 2007 Illinois Vehicle Registration Card for a 2003 Mercedes Benz in the home of Howard Smith at the Lynwood address.
- 11 2008 Illinois Vehicle Registration Card for a 2004 Chevrolet in the name of Howard Smith at the Lynwood address.

2007 Illinois Vehicle Registration Card for a 2004 Chevrolet in the name of Howard Smith at the Lynwood address.
2006 Illinois Vehicle Registration Renewal form for a 2004 Chevrolet at

the Lynwood address.

- 12 Copy of certified copy of registration of a 2004 Chevrolet Pickup in the name of Howard Smith at the Lynwood address with a date of 7-25-07.

2008 renewal form of a 2004 Chevrolet Pickup in the name of Howard Smith at the Lynwood address.

2007 Vehicle Registration Card for 2004 Chevrolet Pickup in the name of Howard Smith at the Lynwood address.

2006 Illinois Vehicle Registration Card for a 2004 Chevrolet Pickup in the name of Howard Smith at the Lynwood address.
- 13 Copy of certified proof of registration of a 2003 Cadillac in the name of Howard Smith at the Lynwood address.

2007 renewal form for registration of a 2003 Cadillac in the name of Howard Smith at the Lynwood address.

2006 renewal form for registration of a 2003 Cadillac in the name of Howard Smith at the Lynwood address.

2005 renewal form for registration of a 2003 Cadillac in the name of Howard Smith at the Lynwood address.

2004 renewal form for registration of a 2003 Cadillac in the name of Howard Smith at the Lynwood address.
- 14 Letter from IRS to Howard Smith and Melvin Smith mailed to the Lynwood address and issued November 29, 2006.
- 15 HUD Statement for purchase of property at 12629 S. Bishop, Calumet Park, Illinois 60643 by Howard Smith at the Lynwood address.
- 16 Certified copy of record of Homeowner's Exemption claimed on property with a Property Index Number of 33-07-205-014-0000, which has an address of 2817 Lake Park Drive, Lynwood, Illinois 60611.

When the licensee was questioned about these documents he stated that he has an office at the Lynwood property and that there are certain monetary reasons for using that address and registering the cars at that address.

Since this case is before us on an appeal of a revocation this Commission is limited in its review. The only issues before us are:

1. Did the Mayor, as Local Liquor Commissioner, proceed in the manner provided by law?
2. Are the findings of the Local Liquor Control Commission as set forth in the order of revocation supported by substantial evidence in light of the whole record; and
3. Is the order of revocation supported by the findings of the Local Liquor Control Commission?

In analyzing responses to these questions two separate matters need to be decided. The first deals with the definition of resident as set out in the Municipal Code and the Liquor Control Act.

The second addresses whether the City proved the elements of residency under the Municipal Code and Liquor Control Act.

The issue of the distinction between domicile and a residence is longstanding. Since neither Chicago Municipal Code or the Liquor Control Act defines residence, a review of the distinction is appropriate. Black's Law Dictionary defines domicile as "the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal and permanent home, to which that person intends to return and remain, even though currently residing elsewhere." It defines residence as "1. The act or fact of living in a given place at a given time, 2. The place where one actually lives, as distinguished from a domicile Residence usu. just means bodily presence as an inhabitant in a given place; domicile usu. requires bodily presence plus an intention to make the place one's home. A person may have

more than one residence at a time but only one domicile.”

The problem here is the fact that while these terms have different definitions they have been used interchangeably by legislators. That has made the meaning of residence an ambiguous term and the meaning of which must be ascertained from the purposes of the statute or ordinance. Another problem now arises since there is nothing in the record that sets out the purpose of the residency requirement under the Municipal Code or the Liquor Control Act. Since we are not provided with a definition of residence or a narrative of the purpose of the residency requirement in either the Municipal Code or the Liquor Control Act, the next step is to look to case law.

In Miller v. The Police Board of the City of Chicago, 38 Ill.App.3d 894, 349 N.E. 2d 544, the Illinois Appellate Court interpreted the meaning of residence as used in Police Department Rule 24. As that rule existed at the time of the hearing before the Police Board it required all police officers to reside within the corporate boundaries of the City of Chicago. The Appellate Court determined that the requirement that a police officer reside in the city was synonymous to a requirement that a police officer have a permanent abode or home in a particular place. The opinion went on to state that in order to have one's residence in a particular place one must have a physical presence and have the intent to make that location his permanent residence. The Illinois Supreme court in the case of Fagiano v. The Police Board of the City of Chicago, 456 N.E. 2d 27, interpreted the term “actual resident” as set out in the Municipal Code and Rule 25 of the Chicago Police Department. It stated, “In the context here ‘residence’ was intended to be

synonymous with domicile.” The Illinois Supreme Court in this case specifically referred to the Miller case in support of this interpretation.

Another case that seems to support this position as the term residence is used under the Illinois Liquor Control Act is Catherine Noble v. Illinois Liquor Control Commission, 160 N.E. 2d 688. This abstract of this opinion was published and stated:

“Where a license to sell alcoholic liquor at retail in village was issued to widow of operator of tavern in village for 1957 on her assurance that she would become a resident of the village but she did not move to the village and maintained her residence elsewhere and in 1958 she rented a room about a half-block from a tavern for about four weeks, she did not establish a bonafide residence in the village and the Local Liquor Commissioner of village was justified in refusing to renew license for 1958.”

Based on these cases it is the opinion of this Commissioner that the term residence as used in the Municipal Code and the Liquor Control Act is comparable to domicile. It requires a liquor licensee to have his or her permanent abode in the City of Chicago.

The next step in this analysis deals with what evidence was presented at the hearing before Deputy Hearing Commissioner John F. Lyke, Jr. The specific findings of fact were that the licensee has not been a resident of the City of Chicago since 2003 and is ineligible for a liquor license under the Municipal Code and the Liquor Control Act. It follows from this finding that the Deputy Hearing Commissioner found that the licensee was a resident of Lynwood, Illinois. The only witness to testify was the licensee and he stated on several occasions that he resided at 7854 S. South Shore Drive and has resided at that address since 1994. It must be

noted that the Deputy Hearing Commissioner made no finding as to the credibility of the licensee. Without such finding, this Commissioner feels that the issue of credibility or lack thereof of the licensee is not part of this review. The statement of the licensee of his intent to have his residence at the Cottage Grove address is uncontradicted. The City did introduce several exhibits consisting of documents that showed the licensee registered his car in Lynwood, received mail in Lynwood and had family members living in Lynwood. The licensee explained his reasons for these matters and those explanations have not been contradicted. The licensee in turn presented several documents showing he receives mail at and pays bills for the Cottage Grove address. There was no evidence that respondent ever had a presence at the Lynwood address except for his testimony he had an office at the property. In the cases cited by the City in support of its position there was specific testimony about actual presence at the suburban address. In Miller v. The Police Board of the City of Chicago, 38 Ill. App 3d 894, 349 N.E. 2d 544, there was surveillance testimony of Miller's movements to and from addresses in Chicago and Villa Park. There was also testimony from Miller's apartment mate at the Chicago address about the number of days he saw Miller at the Chicago apartment. One tenant at the apartment building knew Miller and saw him twice a week at most and sometimes only two or three times a month and another tenant at this apartment building never saw Lt. Miller at that address. Miller testified he was not divorced or separated from his wife who did live in the suburbs with their children. In O'Boyle v. Personnel Board of the City of Chicago, 119 Ill App. 3d 648, 456 N.E. 2d 998, one Fire Department Investigator testified he surveillanced O'Boyle's suburban address with positive sightings of O'Boyle on five separate occasions. A second investigator interviewed a neighbor of O'Boyle's parents' home where O'Boyle alleged he was living and a neighbor of

the Palos Hill property. The former stated O'Boyle lived in Palos Hills and the latter identified O'Boyle as her neighbor in Palos Hills.

This Commission is of the opinion that without evidence placing the licensee Howard Smith at the Lynwood property the city failed to meet its burden of proof. This Commissioner is aware of the standard of proof needed to uphold a revocation on this administrative review but feels that the evidence in the record as a whole fails to support the revocation. The decision of the Local Liquor Commissioner is reversed.

IT IS THEREFORE ORDERED AND ADJUDGED That the order revoking the liquor license of the appellant is hereby REVERSED.

Pursuant to Section 54 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 7, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Commissioner

Stephen B. Schnorf
Commissioner

