

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Darrin’s Fresh Food LLC )  
d/b/a Darrin’s Fresh Food & Liquor )  
Applicant (Packaged Goods) )  
for the premises located at )  
8058 South Racine Avenue )  
 )  
v. ) Case No. 19 LA 1  
 )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Shannon Trotter, Commissioner )

**ORDER**

**DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O’CONNELL**

**NATURE OF THE CASE**

On or about November 16, 2018, Darrin’s Fresh Food LLC applied for a Packaged Goods liquor license for the business location at 8058 South Racine Avenue. On January 15, 2019, the application was denied on the basis that its issuance would have a deleterious impact on the health, safety, and welfare of the community in which the licensed premises is to be located. The denial gave the Applicant the right to file a Plan of Operation that would provide reasonable assurances that the issuance of the packaged goods license would not cause a deleterious impact on the health, safety, and welfare of the community in which the licensed premises would be located. A Plan of Operation was timely filed by the Applicant.

On March 1, 2019, Local Liquor Control Commissioner, Shannon Trotter, issued a final denial letter. The basis for the denial was “deleterious impact concerns by the Alderman.” The denial further stated the Plan of Operation submitted pursuant to 4-60-040 of the City of Chicago

Municipal Code was reviewed and disapproved because it does not provide reasonable assurance that the issuance of a liquor license will not have a deleterious impact on the surrounding community. It also notes the 21<sup>st</sup> Ward Alderman has objected based on increased criminal activity concerns and they feel the issuance of a liquor license at the Applicant's establishment will lead to increased violations of law, traffic, and loitering.

The Applicant filed a timely Notice of Appeal with the License Appeal Commission. This matter proceeded to trial de novo on April 10, 2019. The City was represented by Assistant Corporation Counsels Nathan Shine and Megan Stiarwalt while the Applicant was represented by Harlan Powell and Anne Junia from the law firm of Webster Powell P.C.

#### **SUMMARY OF PROCEEDINGS**

Prior to the start of evidence, City Exhibits 1-7 were allowed in evidence not for the truth of the matter asserted, but as a complete record of what was reviewed by the Department of Business Affairs and Consumer Protection.

Howard Brookins has been the Alderman of the 21<sup>st</sup> Ward for almost sixteen years. His role is to be an advocate for the community as a whole, to fight for resources, and to vote on and pass a budget for the City of Chicago. The boundaries of the 21<sup>st</sup> Ward are roughly 79<sup>th</sup> Street to the north, 99<sup>th</sup> Street on the south, the Dan Ryan or Lafayette on the east, and Damen to the west. 8058 South Racine is within the boundaries of the 21<sup>st</sup> Ward. Racine is somewhat of a major thoroughfare and 79<sup>th</sup> Street is a significant thoroughfare going east and west. In that area are senior facilities and Father Pfleger's church. There is a Walgreen's in the area and strip malls

with a couple storefront areas. There are packaged goods liquor establishments on Halsted and further west on 79<sup>th</sup> Street.

The Alderman is aware and familiar that Darrin's Fresh Food LLC applied for a Packaged Goods liquor license for 8058 South Racine Avenue. His opinion is that this location has operated as a packaged liquor store most of his time as Alderman. It was run by Mr. Sutton who then sold it and it was operated by someone else. Mr. Sutton now wants to get it back.

Mr. Sutton did not adequately address numerous complaints with respect to loitering, trash, people hanging out in general, drinking in the alley, and urinating on the lawns and the streets. When Mr. Sutton sold it a new establishment opened with not as many complaints.

Since those issues have never been resolved, he believes it will cause a deleterious impact on the community by having a liquor establishment with the same owner who previously had it and still owns the building. The Alderman does not believe they will rectify the problems when they have not been able to do it within the last ten years.

Alderman Brookins identified City's Exhibit 4 as a letter he sent on November 20, 2018, to the Commissioner of the Department of Business Affairs and Consumer Protection in opposition to a liquor license at 8058 South Racine Avenue based on concerns expressed in that letter. Alderman Brookins was aware of a Plan of Operation submitted by Darrin's Fresh Food to address the concerns identified by the community. He identified City's Exhibit 5, in evidence, as that Plan of Operation. The Alderman opined that while the plan talks about some of the problems, he does

not think it would rectify the problems in that Mr. Sutton previously owned the liquor establishment and owned the building while it had another liquor license, and nothing was done to address the concerns. The Plan of Operation did not change his opinion as to whether a packaged goods license should issue for this location and his continued objection to the license was submitted to the Local Liquor Control Commission.

Alderman Brookins identified City's Exhibit 6, in evidence, as email correspondence sent on March 1, 2019, by his Legislative Aide, Carla Grover to Shannon Trotter, the Local Liquor Control Commissioner. It includes a letter dated March 1, 2019, from Alderman Brookins to Commissioner Trotter setting forth his opposition to the packaged goods license and the reasons for that opposition. It also contains two pages of petitions in opposition to the issuance of the license.

Alderman Brookins testified that he had an opportunity to speak with the Applicant. The Applicant addressed the Alderman's concerns but did not offer significant assurances anything would happen. He reaffirmed his opposition to this particular license but is not against the issuance of liquor licenses as a whole. It is a case by case, area by area, individual by individual decision.

On cross-examination, the Alderman agreed it was his position that he did not think Mr. Sutton would be able to follow through with the remedial measures proposed to address concerns of deleterious impact. Mr. Sutton has continued to own the property with the same problems.

He agreed that when Mr. Sutton owned and operated a liquor store at 8058 S. Racine Avenue, that business was not subject to a plan of operation. He explained a plan of operation as meeting with the commander of the local district to come up with the type of things that would lessen the impact on the community. That plan of operation actually then becomes an integral part of the retail liquor license. A violation of a term contained in a plan of operation could result in the revocation of a liquor license.

Alderman Brookins agreed Mr. Sutton proposed a number of measures to address specifically the areas of concern noted in his letters to the Commission. Armed security at the establishment was agreed to as well as both internal and external lighting and surveillance measures. He agreed to police the area surrounding the establishment for litter and to ensure people were not loitering and impeding the public way. He agreed to limit his business hours. The Alderman stated in his mind none of these measures were sufficient to address the concerns of his office and/or the community. He explained it is harder to take a license than to get one. Who knows what the administration was going to do one way or the other. He has no faith in the unknown and he does not know who will be the commissioner, their opinion or whether they are going to enforce particular things. He does know his community and what they want.

The witness testified Mr. Sutton has held two liquor licenses in the 21<sup>st</sup> Ward during his tenure as Alderman. Mr. Sutton held a liquor license at 8058 S. Racine Avenue between about 2007 through 2012. He was not aware if that license was subject to any license revocation proceeding and the Alderman did not initiate any kind of public nuisance proceeding against Mr. Sutton. Residents did not complain to initiate a public nuisance but to say they had concerns with the

areas of both facilities being filthy, not well lit with people hanging out. Mr. Sutton addressed issues by selling the business.

The Alderman agreed the license application was not denied for its proximity to nearby church or schools. He was not sure if the 6<sup>th</sup> District Police Commander objected to this license and while Father Pfleger orally opposed this license, to his knowledge there is no letter from any church opposing this application.

Bryan Knipper has been a Business Consultant Supervisor in the Hospitality Unit of the Department of Business Affairs and Consumer Protection for almost eleven years. He oversees that unit which is the group that processes applications for liquor licenses. He does document reviews on applications for liquor licenses.

People start the liquor license application by generating an account. The applicant turns in pertinent documents for review and if zoning is approved, the applicant is allowed to make payment. After the application is complete, the Commission has sixty days to make an initial determination to approve or deny the application. In that time frame, the applicant's background and personal information are checked as well as on-site inspections are conducted by fire, health, and buildings.

The witness is aware that in mid-October 2018, the Department received an application for a packaged goods license from Darrin's Fresh Food located at 8058 South Racine Avenue. He

reviewed the documents in Tab 3 and identified them as the type of documents relied on by the Department.

Mr. Knipper testified there are multiple areas reviewed by the City in the sixty-day review period. There is document review to ensure all documents have been properly submitted and there is review to ensure there is no moratorium at the location. Input from the community, the alderman and the police commander is allowed and received. There is also onsite inspections and proximity check to ensure compliance with state law.

He reviewed the application with Local Liquor Control Commissioner Shannon Trotter who denied this application based on deleterious impact. Tab 4 is a letter from the Alderman objecting to the issuance of the license which was received and considered while the Department was reviewing the application.

In a case of a deleterious impact denial, the applicant is given the opportunity to generate a plan of operation to address the concerns raised by the community, the alderman in that deleterious impact filing. Tab 5 was identified by Mr. Knipper as the Plan of Operation proposed and submitted by Darrin's Fresh Foods. The Commissioner would have reached out to the interested parties, reviewed the plan of operation and make a determination whether or not to accept the plan of operation. Tab 6 was identified as a letter from Alderman Brookins to Commissioner Trotter. The Commission did issue a final denial and the witness identified Tab 2 as a copy of that final denial letter dated March 1, 2019. It lists the basis for the denial as deleterious impact concerns by the Alderman.

On cross-examination, Mr. Knipper explained that Sandra Hernandez was the Business Consultant initially assigned to process Mr. Sutton's application. She would have collected the documents and entered the information into the system. She would put together any objections. When the package was marked complete she would send it on for higher review. There were no objections from the local police on this application and none of the churches in the 21<sup>st</sup> Ward objected to this application. Ms. Hernandez recommended this application be approved.

Mr. Knipper testified the sole basis for denial of Mr. Sutton's application was general deleterious impact concerns.

On redirect, the witness stated Commissioner Shannon Trotter is the final say on approval or denial of a license.

Frederick Alexander has lived at 8020 S. Throop since 1963. It is a residential area. He is aware that Darrin's Fresh Food applied for a liquor license at 8058 S. Racine Avenue. He opposes this particular license because of the inability of the owner to keep it up and because of the element it attracted. He was scared for his grandkids and they were afraid to walk past because of the hoodlums in the area wanting to buy drugs or cigarettes or whatever. Two months ago, he took it on himself to go and rake all the debris down almost a whole block on 81<sup>st</sup> next to where the building is. He has never spoken with anyone from Darrin's Fresh Foods.

When he was going to school that building was an ice cream parlor and candy store where all the kids had fun there. He goes around the neighborhood and picks up paper whereas the owner of



the building does not feel the same. He signed a petition on behalf of Club 21, in evidence as City's Exhibit 6, in support of denying the license to the proprietor of 8058 S. Racine. He agrees with the issues in that petition concerning the trash and garbage.

On cross, Mr. Alexander stated he never met Mr. Sutton and was not aware that Mr. Sutton had agreed he would be responsible for sweeping up and cleaning the public right of way or adjacent to the store. He cannot say he opposes all liquor licenses coming into the immediate area, but he has no confidence that Mr. Sutton would properly maintain his building and keep the public right of way clean.

Alice Robinson has lived at 8040 South Elizabeth Street since 1961. Her house is approximately a block and an eighth from 8058 South Racine Avenue. She is aware that Darrin's Fresh Food applied for a liquor license at 8058 South Racine and it is her opinion that the license not be issued. It should not be issued because without the liquor store the traffic is less; foot traffic as well as vehicle traffic; the loitering is far less; the litter is far less. The change came with the liquor store with people from out of the neighborhood parking on Elizabeth and walking to pick up from the store. Sometimes they sit and drink and throw cans and use the sidewalk for a toilet. It is a nuisance.

The witness added most of the residents are senior citizens with disabilities. They are afraid to walk from one home to another.

On cross-examination, Ms. Robinson testified she has never met Darrin Sutton. She was aware Mr. Sutton attempted to enter into a plan of operation and knew such a plan of operation was a legal document in order to open an establishment and get a liquor license. She did not know Mr. Sutton has agreed to hire security at the store during business hours and had agreed to install security cameras and lighting inside and outside the store. She was not aware Mr. Sutton had agreed to monitor the public right of way to make sure that it was free from litter, debris, loitering and objectionable behavior.

On redirect, Ms. Robinson explained that based on past history if the Applicant did everything promised, it would not change her opinion on issuance of the license.

Dorothy Irving testified as a secondary witness that she opposed the issuance of the liquor license at 8058 South Racine Avenue based on the concerns and issues raised by other witnesses.

Kweli Kwaza is employed as the Community Liaison for the 21<sup>st</sup> Ward but was testifying in an individual capacity. He has lived at 8952 South May since 2003. He founded Club 21 in 2015 which organizes block clubs and helps to start block clubs to address concerns in the community and will help keep the community beautiful and safe.

Mr. Kwaza is opposed to the issuance of a liquor license at 8058 S. Racine Avenue. His son attended a daycare center 20 to 25 feet away from the liquor store. He removed his son from the daycare facility because of the activities going on all day at the liquor store. Adult men were

standing outside drinking during business time. They were selling cigarettes or drugs in front of the store.

As the President of Club 21, he circulated a petition throughout the neighborhood to stop the liquor store from opening up. He identified the fourth and fifth pages of Tab 6 as signatures from residents in the community opposed to the liquor store. Club 21 does not oppose all liquor stores in the community but oppose a liquor store at this particular location because of the reputation. With the liquor store closed, it is like night and day. It is cleaner, and you do not see people hanging out.

On cross, Mr. Kwaza stated Club 21 is formally organized but it is not a 501(c) organization. There are 134 block clubs that are members of Club 21 throughout the city. The language in the petition is a general statement that is not directed specifically to Mr. Sutton or to the applicant premises. Club 21 opposes any packaged goods liquor licenses coming into residential areas of the 21<sup>st</sup> Ward.

The witness was not aware Mr. Sutton had proposed a plan of operation, but the terms concern him. By saying he would provide armed security guards, Mr. Sutton is saying the store would be a problem. His concern would only be allayed by not seeing this license. He would not support any applicant seeking a liquor license at that location and opposes any liquor store in a residential area of the 21<sup>st</sup> Ward.

Mr. Kwaza denied telling Mr. Sutton it was his opinion the Alderman would ultimately sign off on his application.

Darrin Sutton lives at 21135 Sophia Drive, Matteson, Illinois and is in the liquor business. He has owned Darrin's LLC which is a bar located at 1249 East 87<sup>th</sup> Street in the 8<sup>th</sup> Ward for about five and a half years. He previously owned a packaged goods store called Sutton Liquor at 9041 S. Ashland in the 21<sup>st</sup> Ward from July 2005 until about July 2012. This store was located about 500 feet from Alderman Brookins' office and the Alderman never complained about the appearance of the store or relay any of the complaints from his constituents about the store. During that seven-year period, no Chicago Police Officer relayed any concerns about any public nuisance or litter or anything of that nature. The license was never revoked or suspended. He sold the liquor store in 2012 to go into the bar business.

Alderman Michelle Harris of the 8<sup>th</sup> Ward had never complained about the appearance of the bar or the way he operates that business. The police has never voiced concern about crime, loitering, trash or traffic congestion.

Mr. Sutton explained he previously held a packaged goods license at 8058 S. Racine. He had it from about 2007 through 2012. This is the same premises that he is now applying for. During this time, Alderman Brookins never complained about the appearance of the property or how the business was operated. He never received a citation or complaint from the Chicago Police about his operation of the business or public nuisance type issues. He sold the business to a Cherig Patel in 2012 but still owned the real estate at 8058 S. Racine. He continues to own this property

today. Mr. Patel operated the liquor store from 2012 through September 2018. He was never made aware of any public nuisance complaints about how Mr. Patel had operated the business. In June of 2018, eviction proceedings were started against Mr. Patel for his failure to properly maintain the property. The building was in a worse state of repair in 2018 than when it was leased to Mr. Patel. When he received the property back he applied for this license under Darrin's Fresh Food LLC.

Mr. Sutton had no meetings with the Alderman until December of last year when he became aware the Alderman objected to the license. He was told of this objection over the telephone by Miss Sandra Hernandez from the City of Chicago Business Affairs office. He tried to meet with the Alderman at the end of December, but he was not there. He did speak with the Alderman's Chief of Staff. Mr. Sutton later learned the Alderman opposed this license because it was in the middle of an Aldermanic election. At no time did Alderman Brookins or anybody or his staff say there was a specific issue relative to deleterious impact or a concern about increase in crime or an increase in vehicular congestion or a lowering of property value as reasons for opposing the license. He told the Alderman he had the bigger stake for keeping property values higher.

At no time did anyone from the Alderman's office direct the witness to meet with any community groups to discuss potential concerns. He met with the Alderman or the Chief of Staff three times between October 2018 and filing this appeal. In January 2019, the Alderman stated he was not interested in any plan of operation. In that conversation, the Alderman did not express concerns about deleterious impact, crime, littering or other objectionable activities. The

Alderman gave him no guidance with regard to the plan of operation. It is his understanding the local police from the 6<sup>th</sup> District support the application.

Mr. Sutton reviewed the Plan of Operation and agreed he was prepared to undertake each of the enumerated measures in order to address concerns about public nuisance and quality of life. He does not feel they are necessary but was willing to do them to alleviate deleterious impact. The witness stated he is not concerned with his ability to maintain and/or improve the property at the applicant premises. He noted he has a bigger concern for deleterious impact as anyone since he owns the property and pays property taxes. He has a very vested interest in mitigating all deleterious impact concerns.

Mr. Sutton testified he never had any violations for litter when he ran the business and it was and will be his regular practice to clean up in front of the store, behind the store and in the areas on the public way surrounding it. He would take whatever steps agreed to with his neighbors with regard to trash or litter. There is no metered parking in front of the store and parking congestion is not an issue. For the almost six years he ran the packaged goods business, no noise complaints were brought to him by the City or the police.

On cross-examination, Mr. Sutton stated he does not (now) and has never lived in the 21<sup>st</sup> Ward. He plans to manage this packaged goods business himself as his bar does not open until 5:00 pm and has trained assistant managers to run the bar.

## **ANALYSIS**

Since this case is an appeal from a decision by the Local Liquor Control Commissioner of the City of Chicago refusing to grant a license, the matter of the propriety of such order is tried de novo by the License Appeal Commission.

Section 4-60-040(h) of the City Municipal Code states in relevant part:

The Local Liquor Control Commissioner...may deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem...or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located.

The evidence in the record from both Frederick Alexander and Alice Robinson is that while there was an open liquor store at the applicant premises, there was loitering, public drinking, public urination and problems with traffic congestion. These witnesses both testified that these problems were substantially alleviated when the liquor store closed. Mr. Alexander testified there are still problems with littering. This evidence is sufficient to establish by a preponderance of the evidence that the issuance of a packaged goods license at this address would tend to have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located.

Since this application was denied based on deleterious impact, Mr. Sutton was allowed to file and did file a Plan of Operation. In that final denial letter, Commissioner Trotter noted:

Your plan of operation has been reviewed and disapproved because it does not provide reasonable assurance that the issuance of a liquor license will not have a deleterious impact on the surrounding community. The 21<sup>st</sup> Ward Alderman has objected based on increased criminal activity concerns. They feel the issuance of a liquor license at the

applicant's establishment will lead to increased violations of law, traffic, litter, and loitering.

In order to affirm the City's refusal to issue a liquor license based on deleterious impact when a plan of operation has been filed by the applicant, the City must present sufficient evidence to prove the plan of operation is insufficient by a preponderance of the evidence.

Alderman Brookins did not address this specific issue in his testimony. While he did testify that Mr. Sutton agreed to measures designed to address deleterious impact, his opinion that these measures were not sufficient was premised on his statement, it is harder to take a license than to get one. He then expressed concern that who knows what an administration would do one way or the other. These are valid concerns but is not evidence as to why the proposals in the Plan of Operation did not provide adequate assurances that it would address the concerns of deleterious impact.

The testimony of Frederick Alexander and Alice Robinson expressed concern and doubt that Mr. Sutton would perform the measures set out in the Plan of Operation. This is not evidence explaining the deficiencies of the Plan of Operation.

Bryan Knipper testified to the procedures followed by the Department of Business Affairs and Consumer Protection/Local Liquor Control Commission and testified that Commissioner Trotter did not accept the Plan of Operation. He did not testify as to how or on what facts Commissioner Trotter made this decision.



Since Commissioner Trotter did not testify, there is no evidence in the record from her explaining her decision to not accept the Plan of Operation.

As noted earlier, the City did prove by a preponderance of the evidence that the issuance of this packaged goods license could lead to a deleterious impact on the health, safety, and welfare of the community in which the licensed premises is located, the City of Chicago has failed to prove by a preponderance of the evidence why the Plan of Operation submitted by the Applicant did not provide reasonable assurance that the issuance of a liquor license will not have a deleterious impact on the surrounding community.

## **DECISION**

The outright denial of the Packaged Goods liquor license at 8058 South Racine Avenue is Reversed.

The Packaged Goods liquor license for 8058 South Racine Avenue will issue subject to the terms of the proposed Liquor License Plan of Operation.

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 23, 2019

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member