

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Arihant Corporation)
Ashvin C. Shah, President)
Licensee/Revocation)
for the premises located at) Case No. 10 LA 34
1401 North Western Avenue)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND O'CONNELL

The City of Chicago sent notice to the Licensee that a hearing would be held in connection with disciplinary proceedings regarding the City of Chicago Liquor License and all other licenses issued for the premises located at 1401 North Western. The charges were that on January 13, 2009, the Licensee, by and through its agent, sold, gave or delivered alcoholic liquor to a person under the age of 21 in violation of Title 4, Chapter 60, 140 (a) of the Municipal Code of Chicago and 235 ILCS 5/6-16 (a). This case proceeded to hearing before Deputy Hearing Commissioner Gary Chan on August 26, 2009, and May 5, 2010. Assistant Corporation Counsel Maggie Shiels represented the City of Chicago. Attorney William Cooley represented the Licensee on August 26, 2009, and Jeffery Deer represented the Licensee on May 5, 2010.

Deputy Hearing Commissioner Chan entered Findings of Fact that the City sustained its burden of proof that the Licensee sold alcoholic liquor to a minor. He further found that based on the Licensee's disciplinary history and the facts of this case

revocation was the appropriate penalty. These findings were adopted by the Local Liquor Control Commissioner and an Order of Revocation issued. The Licensee filed a timely Notice of Appeal with this Commission.

Since this is an appeal of a revocation of a license review by this Commission is limited to these 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.

The City presented Alicia Chlebek and Officer Eugene Leboeuf as its witnesses. In summary Alicia Chlebek was a minor on January 13, 2009, with her date of birth being December 29, 1989. She had worked with the Selling Alcohol to Minors Unit of the Chicago Police Department for two years as of September, 2009. On January 13, 2009, she went to Carlos Food & Liquor located at 1401 N. Western. She was working with Chicago Police Officers Tyrone Jackson, Eugene Leboeuf, and Eric Johnson. She entered the location which is a small liquor store around 7:00 p.m. She went to the refrigerator to get a six-pack of Miller Lite. She went to the register area and placed the beer and a \$20 bill on a turnstile. The cashier turned the turnstile, took the beer and rang up the sale with the \$20 bill. The beer was placed in a bag and it and \$14.50 in change were put on the turnstile and given to her. At no time did the cashier request any identification or ask how old she was. She never showed any identification and did not

tell the cashier her age. At that time Officer Leboeuf approached the cashier and stated why they were at the store.

Officer Leboeuf testimony's corroborated that of Alicia Chlebek. He added that he was in plain view to observe the entire transaction and close enough to know he did not hear the cashier ask Alicia to produce an ID or ask her age. Alicia did not tell the clerk her age or date of birth. He saw the cashier take the \$20.00 then ring up the transaction. He put the six pack of Miller Lite in a black plastic bag and placed it on the Lazy Susan and spun the opening to face Alicia. Alicia picked up the bag with the beer and the change. Leboeuf then identified himself as a police officer and informed the cashier of the violation he had just committed.

Jorge Bazail testified he became President of Arihant Corporation on November 14, 2006. He also manages the store. He is aware selling alcohol to minors is a violation and he instructs people working for him to make sure liquor is not sold to minors. He has a display that says not to sell liquor to minors and a policy that a person that appears to be underage is to show a license. He was not aware of any previous orders of disposition for sales to minor before he became President. Those would have occurred when Mr. Shah owned 100% of Arihant Corporation. He became President of the corporation in 2006 and filed a change of officers application but the City wanted papers from Mr. Shah that Mr. Shah refused to produce.

Counsel for the corporation has argued that this is an entrapment case. The City sent out a person who looks to be of age in an attempt to have them sell liquor. It is argued that no state law or city ordinance requires a liquor licensee to card persons purchasing alcohol. It is probably true that these cases have an aspect of entrapment to them but the only evidence in this case is that the cashier did sell alcohol to a minor. Whether the minor looked to be 21 is not material. State law and municipal ordinance bar the sale of alcohol to any minor, not just minors that look to be under 21. It is true no law mandates the carding of liquor purchases but this Licensee is not charged with not carding. If the cashier had carded this case would probably not be before this Commission.

The second argument is that the Corporation under this President should not be responsible for prior violations of sale to minors that occurred before Mr. Bazail became President. Recent case law has affirmed the proposition that purchases of shares of stock of an existing corporation with a liquor license purchase the prior history of violations. It also suggests the Local Liquor Control Commission can review which violations are attributable to the old stockholders and which are attributable to the new stockholders when deciding a proper disposition. We do not have that fact scenario on this case. There was no transfer of stock in this case. Mr. Shah owned 100% of the stock before and after November 14, 2006. The only change was that of electing Jorge Bazail as President of the existing corporation as of November 14, 2006. The record shows this change was not reported to the City or approved by the City in the manner required by

the Municipal Code. While it is not charged in this case these facts do suggest a possible subterfuge.

The final argument presented by the Licensee is that since Mr. Bazail started managing this business in November, 2006, the business has run well and without violations. This argument may not be completely correct since City's Exhibit 6, which is the record of prior order of disposition, lists a sale to minor on March 8, 2007. It does not list a disposition. The fact is that case law does allow the Local Liquor Control Commissioner to review all prior orders of disposition.

The Local Liquor Control Commissioner did proceed in the manner provided by law; the order of revocation is supported by the findings and the findings are supported by substantial evidence in light of the whole record.

The revocation is upheld.

IT IS THEREFORE ORDERED AND ADJUDGED that the order revoking the liquor license of the APPELLANT 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: December 7, 2010

Dennis M. Fleming
Member

Stephen B. Schnorf
Member

Donald O'Connell
Member