

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Beer Run LLC )  
Applicant (Packaged Goods) )  
for the premises located at )  
2216 West Chicago Avenue ) Case No. 13 LA 45  
)  
v. )  
)  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Gregory Steadman, Commissioner )

ORDER

DECISION OF CHAIRMAN FLEMING

Beer Run LLC applied for a Packaged Goods liquor license for the premises located at 2216 West Chicago Avenue. On August 29, 2013, that application was denied by Local Liquor Control Commissioner Gregory Steadman based on his decision that the primary business of the applicant was to be the delivery of liquor and such a primary activity is not permitted under the City of Chicago Municipal Code 4-60-080(a) which states in relevant part:

No liquor shall be sold, offered for sale, kept for sale, displayed or advertised for sale at retail or delivered to any person purchasing same at retail except at a location, place, or premises described in a retail liquor dealer's license.

The applicant filed a timely appeal with this Commission and the matter proceeded to a de novo hearing on December 4, 2013.

This is a case of first impression in the six years this Commissioner has served on this Commission. In the past, this Commission has dealt with cases in which a license was denied because the Local Liquor Control Commission felt that the layout of the applicant's premises were such that the primary activity was to be the sale of liquor as opposed to food. Those cases are difficult to win because the evidence is usually speculation about the intent of the applicant. In those cases, the applicants have testified that liquor sales would not be their primary activity but would only be incidental to the sale of food.

This case is difficult since the applicant does not deny that its primary activity will be the delivery of liquor from its on-site location to off-site customers. It is also unusual since it deals with the fact that the City's Law Department and the Local Liquor Control Commission have allowed such off-site delivery of alcohol under certain circumstances through the use of a legal fiction.

A summary of the relevant testimony will help to understand the unusual facts of this case.

Local Liquor Control Commissioner Gregory Steadman testified he was familiar with the application for a Packaged Goods liquor license for 2216 West Chicago Avenue. The application was filed in the summer of 2013, and he denied the application on August 29, 2013. A packaged goods liquor license allows a business to sell packaged goods liquor on-site to consumers. The City has an ordinance that liquor cannot be sold or delivered to anybody except

at a premises or location described in the liquor license. That is 4-60-080 for the Chicago Municipal Code.

Mr. Steadman first became aware of the applicant's business operation in 2012 when the applicant was considering applying for a license at another location in Alderman Tunney's 44<sup>th</sup> Ward. While Alderman Tunney supported the delivery concept, he opposed a liquor store opening in his ward. The applicant's President, Tony Wojewocki, was told the only way this business could operate was if he had a packaged goods liquor license. Specifically, Mr. Steadman told the applicant he needed a premises on-site where customers can come in and purchase the alcohol on-site like a type of liquor store. Mr. Steadman believed he used Binny's as an example. Since Alderman Tunney opposed such a liquor license, the applicant was told to find a different location.

Commissioner Steadman explained his advice to the applicant by stating that in 2000, he and the law department reviewed the ordinance to determine whether to take action against a number of businesses such as Binny's, restaurants, and grocery stores that were delivering alcohol. A policy was made in 2000 to create a legal fiction that if a customer contacted an establishment that had on-site sales and was not a pure delivery business and they ordered with a credit card, that sale would be deemed to have occurred on-site. The subsequent delivery of that alcohol to the customer was not an illegal delivery. The only caveat was that the sale had to be made by a credit card and would not be allowed for cash on delivery.

Commissioner Steadman denied Beer Run's application because Beer Run was a pure delivery business with no primary business being the on-site delivery of alcohol. They were not going to operate as a pure liquor store which has primarily on-site sales, but this business was the delivery of alcohol which violated 4-60-080 of the Municipal Code.

The witness reviewed City's Exhibit 1d, in evidence, as photographs taken by investigators for the Local Liquor Control Commission. These show that the applicant's premises was a big retail space that was mostly empty. There were two refrigerators designed for packaged goods, but they were not full. The witness felt this was not the type of liquor store where people would primarily purchase on-site; it was a location where it was a delivery of alcohol only primary business. In addition to those pictures, Mr. Steadman reviewed the applicant's website where Beer Run held themselves out as a beverage delivery business. The Facebook page reviewed by Mr. Steadman indicated Beer Run hoped to be the city's first specialized beer liquor delivery service. The Commissioner also referenced an article on Beer Run published on August 22 that included comments by the applicant that the business was to be only delivery of alcohol service.

Commissioner Steadman admitted to a series of emails with a Ben Lawson from Alderman Tunney's office on Beer Run's proposal. In those emails, he explained to Mr. Lawson the legal fiction previously set out in his testimony. That email exchange explained Mr. Steadman's opinion that the Beer Run proposal would be considered an illegal delivery of alcohol because customers do not have the ability to purchase alcohol on-site. Mr. Steadman agreed that email did not state that a liquor store needed a certain percentage of on-site sales to

avail itself of the legal fiction. That email also did not state any kind of limit on a retailer that wished to engage in online credit card based sales.

Mr. Steadman also identified Applicant's Exhibit 2, as an email also sent to Mr. Bennett concerning the applicant, in which Mr. Steadman indicated he felt that the applicant did not understand Mr. Steadman's point that unless the applicant allows customers to buy alcohol physically, a store like Binny's, he cannot deliver alcohol to anyone, even if they order via phone and use a credit card.

Subsequent to the application, Mr. Steadman had a number of phone conversations with Tony Wojewocki, in which Mr. Steadman told Tony his new location needed to be a liquor store where people could come in and purchase liquor. At a minimum, product had to be available for people to come in the store. There seemed to be a miscommunication as Steadman felt he conveyed to Tony he needed to open a liquor store like Binny's which was a full-blown liquor store, where Tony felt all he needed was a little bit of product on-site. Steadman agreed Tony submitted an affidavit at Steadman's request in conjunction with the application. Steadman agreed that it would not be proper for an applicant to have a fully stocked liquor store prior to a license being issued.

The witness identified Applicant's Exhibit 4, in evidence, as emails received from Mr. Wojewocki dated August 26, 2013, asking for an update and a responsive email from the witness which was an unofficial denial. That unofficial denial email explained the application was denied because the business model focuses too much on the delivery of alcohol as a primary

activity. The primary business activity must be on-site sales of packaged liquor. That email added if the applicant could stock his premises with full packaged goods liquor so that on-site packaged goods sales will clearly be the primary activity, the application could be re-evaluated. Commissioner Steadman denied that was the first time he had advised Mr. Wojewocki that physical in-person sales had to be the primary thrust of his business model. He had previously mentioned Binny's as an example of what he needed to do which is a primary activity of on-site packaged goods sales.

Mr. Steadman admitted that his legal fiction was never published anywhere. The information is mentioned to businesses who inquired about delivering liquor but it is not generally publicly available.

The City rested its case.

Anthony Wojewocki has been a logistics manager for Mondelez, International, which was formerly Kraft Foods. Prior to that, he was a police officer in Scottsdale, Arizona for about three years. He is the sole member of Beer Run LLC which was organized in December of 2011 for the purpose of online and phone sales. He initially attempted to open up at 3340 North Clark in the 44<sup>th</sup> Ward. That prospect failed because Mr. Steadman said he could not have a delivery only business and that it had to be a fully operating walk-up liquor store. The Alderman did not support a traditional brick and mortar store.

In response to being told he needed a traditional liquor store in the business model, he went and got a traditional store at 2216 West Chicago where a walk-up would be available to patrons as well as hands-on delivery. There is about 800 square feet at 2216 West Chicago and there are presently two unfilled coolers. He estimates each cooler would hold fifty cases. The space does have room for additional products such as wine and spirits and they would be on display for customers. He would be open from 11:00 a.m. until 2:00 a.m. and 3:00 a.m. on Saturday, and he or an employee would be physically present and the door would be unlocked. All customers could enter the store and no one would be physically turned away.

The witness communicated with Commissioner Steadman initially by email and then by phone. The first time he had a direct dialogue with Commissioner Steadman was in August of 2012, as the project was winding down. Mr. Steadman told him he needed a store where patrons could come in off the street and buy product. At the Commission's request, the witness provided an affidavit dated August 13, 2013, attesting to the fact he will operate a brick and mortar traditional liquor store and further attesting all product available online would be available to customers on a walk-in and in-person basis. From the time of his first direct communication with Commissioner Steadman until the final denial sent by email on August 27, 2013, neither Mr. Steadman nor business consultant Rosiel Zarate told him the majority of his business would have to be of a walk-up, in-person variety. Steadman had once told him he could have a 5,000 square feet retail spot with one refrigerator, one case of beer. He will charge separately for the product and delivery, but the majority of the revenue would be derived from the actual sale of liquor.

This Commission is established by the State of Illinois Liquor Control Act and its powers are set out in that act. In cases dealing with a denial of a liquor license, the function of this Commission is to determine de novo the propriety of the denial of the license. Inherent in that function is that this Commission is bound by the language of the Liquor Control Act and the Municipal Code of Chicago that sets out the reasons an application can be denied. The usual first step in analyzing those cases is whether the reason alleged as the basis for denial is listed in either the Liquor Control Act or the Chicago Municipal Code. Neither of these statutes lists as a basis for denial of a license the fact that the primary business activity of the licensee would be a liquor delivery service. In the normal case, that would be a sufficient reason to reverse a denial of a packaged goods license.

This is not the usual case. The applicant has consistently stated he intends to provide a liquor delivery service if he receives the packaged goods license. It is not disputed that the only reason the applicant is opening a packaged goods store that will sell alcohol on-site to the public is to try to meet the requirements of an unwritten legal fiction put together by the Law Department and the Local Liquor Control Commissioner. It is not the function of this Commission to determine under what circumstances a legal fiction should be employed to allow certain licenses to deliver packaged goods.

The Chicago Municipal Code does not allow packaged goods licensees to deliver liquor to patrons off premises under any circumstances. The proposed business plan of operation will focus on the delivery of packaged goods which would violate the Chicago Municipal Code.

Under these facts, it is appropriate to consider that section of the Municipal Code in deciding this case.

The fact is that with our without a brick and mortar liquor store, the business plan of the licensee will focus on off-site delivery of packaged goods that is not allowed by the Municipal Code. On that basis, the denial of the packaged goods license is affirmed.

COMMISSIONER O'CONNELL'S CONCURRING OPINION

While questioning the equitable application of an unpublished legal fiction, this Commissioner also believes that the city ordinance clearly requires the sale of alcohol at the premises of the licensee. Therefore, this Commissioner concurs with the opinion of Chairman Fleming.

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 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: March 6, 2014

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member