STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

H's BAR, LLC 1310 Dutch Hollow Road Belleville, Illinois Appellant, vs. ST CLAIR COUNTY LIQUOR CONTROL COMMISSION Appellee.	Case No.: 20 APP 19 State License Number: 1A-1137421 ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter "State Commission") upon the appeal of H's Bar, LLC, Appellant, (hereinafter "H's Bar") the Commission being otherwise fully informed and a majority of its members do hereby state the following:

Procedural History

H's Bar is the holder of a St. Clair County Class A liquor license and a State of Illinois retail liquor license (1A-1137421). On or about November 25, 2020, the St. Clair County Liquor Control Commissioner, Mark Kern, (hereinafter "St. Clair Commissioner") served H's Bar with a Citation and Notice of Hearing to appear on December 1, 2020, via at a telephonic hearing to answer to charges of violating Governor of Illinois Executive Order 2020-73 (hereinafter "EO-73") and St. Clair County Code Section 21-3-11 (hereinafter "Section 21-3-11"). The St. Clair Commissioner held a hearing on December 1st and 2nd, 2020 and issued an order on December 3, 2020, finding H's Bar to have violated EO-73, Governor Executive Order 63[1] (hereinafter "EO-63"), and Section 21-3-11. Upon a finding of guilt on the charges, the St. Clair County Commissioner suspended H's Bar Class A license from December 3, 2020, through December 31, 2020 (29 days), and fined H's Bar $1,000. On the same day, H's Bar filed an appeal with the State Commission staying the suspension and fine. On October 20, 2021, the State Commission held a

[1] Although Executive Order 63 was not a charge in the St. Clair County Notice of Hearing, there was apparently no objection made by H's Bar to the finding since the charge and violation are substantially similar to EO-73.

remote de novo appellate hearing via WebEx pursuant 235 ILCS 5/7-9.[2] State Commission Chair Cynthia Berg presided over the matter which was also heard by Commissioner Tom Gibbons. After the preparation of the transcript of the October 20, 2021, de novo hearing, the State Commission in its entirety deliberated on the matter at the November 17, 2021, State Commission meeting.

Decision

After consideration of the evidence presented at the de novo hearing and a review of the legal issues presented, the State Commission AFFIRMS the order of the St. Clair Commissioner to suspend H's Bar Class A license for 29 days and pay a $1,000 fine.

Findings of Fact

Pursuant to a stipulation of the parties and exhibits admitted at a hearing, the State Commission finds the facts as presented herein:

1. In 2020, H's Bar, LLC, located in St. Clair County, Illinois, was the holder of Class A Liquor License No. 0052 issued by St. Clair County Local Liquor Commissioner Mark Kern.
2. On November 10, 2020, November 12, 2020, November 22, 2020, and November 25, 2020, St. Clair County Sheriff's Deputies entered the inside/interior of the subject premises and observed H's Bar, LLC, by and through its employees/agents, selling and allowing in-person, indoor consumption of alcoholic beverages by its customers, as well as the failure of its customers and staff to wear a mask/face-covering.
3. The St. Clair County Sheriff's Deputies delivered a COVID-19 Compliance Violation Notices and Citations and Notices of Hearing on the dates indicated thereon.

State Commission Hearing Exhibit 1.

4. In addition to the stipulated facts, the State Commission has reviewed additional evidence presented at the State Commission de novo hearing that the St. Clair County Health Department issued a suspension order of H's Bar food-service permit on December 4, 2020, for health code violations.

[2] Appeal was held de novo because St. Clair County does not have a local ordinance requiring all appeals of Local Liquor Control Commission actions be heard on the record by the State Commission.

5. Pursuant to a hearing to abate the suspension of the food-service permit, a St. Clair County hearing officer issued a December 18, 2020, order denying the abatement stating:

    a. "Specifically, witnesses have testified to observing indoor dining which presents an imminent health hazard and a substantial threat to the public health, and which therefore violates St. Clair County Code, Chapter 19."

    b. "Respondent, St. Clair County Health Department has produced numerous witnesses who have testified as to specific dates and times on which its agents or St. Clair County sworn officers have witnessed violations of the Illinois Department of Public Health, Tier 3 Mitigation Plan, by … H's Bar. The Tier 3 Mitigation Plan seeks to implement the Illinois Governor's Executive Orders 2020-63 and 2020-73, as they relate to the prohibition on indoor dining to prevent the spread of COVID-19, due to its prevalence being designated a public health emergency."

State Commission Hearing Exhibit 6.

6. H's Bar did not appeal the St. Clair County decision to deny the abatement of the food license suspension.

<u>Conclusions of Law</u>

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the Commission. *235 ILCS 5/7-9.* In reviewing the propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following 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 the light of the whole record.

235 ILCS 5/7-9.

A. Whether the local liquor control commissioner has proceeded in the manner provided by law.

In reviewing the actions of a local liquor commission, the Commission must review whether the local liquor commission offered appropriate process in arriving at its decision and whether the local commission relied on promulgated laws to take disciplinary action against the

license. Upon a review of the record in this case, the St. Clair Commissioner satisfied the requirements of law prior to issuing a fine and suspension of the license.

i. Analysis of Due Process

H's Bar does not contest that the St. Clair Commissioner followed proper procedure prior to the imposition of a disciplinary action against the license holder. The alleged license violations occurred on November 10, 12, 22, and 25, 2020, and the St. Clair County Sheriff delivered citations and notices of hearing to H's Bar on each day. *State Commission Hearing Exhibit 1.* The notices were delivered to H's Bar more than the required three days prior to a hearing. H's Bar did not request additional time prior to or during the hearing to prepare a defense to the charges.

ii. Analysis of St. Clair Commissioner Enforcement of E.O. 63 and E.O. 73.

H's Bar alleges the St. Clair Commissioner cannot issue a license violation pursuant to a Governor of Illinois Executive Order because the Orders have not been determined to be constitutional and, alternatively, if they are constitutional, the St. Clair Commissioner has no authority to enforce the orders. As to the constitutionality of the Orders, the State Commission defers to reviewing courts to make constitutionality rulings, but thus far, the State and Federal courts have definitively and overwhelming ruled that the Illinois Governor has authority under the Illinois Emergency Management Agency (IEMA) Act to take all necessary executive and emergency action to control the spread of the COVID-19 virus.[3] Moreover, the IEMA Act directs the Governor "to utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State ***and of the political subdivisions of this State.***" *20 ILCS 3305/19 (emphasis added).* In his Executive Orders, the Governor expressly utilizes the resources of local government by stating: "This Executive Order may be enforced by State and local law enforcement." *State Commission Hearing Exhibit 3, p. 8.* The St. Clair Commissioner, therefore, held the requisite authority to enforce the prohibitions on indoor dining and drinking by statute and subsequent Orders.

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[3] *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, 161 N.E.3d 1190, 2020 Ill. App. LEXIS 767, 443 Ill. Dec. 538; *Nowlin v. Pritzker*, 2021 U.S. Dist. LEXIS 29403, 2021 WL 669333; *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341, 2020 U.S. App. LEXIS 18862, 2020 WL 3249062; *Cassell v. Snyders*, 458 F. Supp. 3d 981, 2020 U.S. Dist. LEXIS 77512, 2020 WL 2112374; *Vill. of Orland Park v. Pritzker*, 475 F. Supp. 3d 866, 2020 U.S. Dist. LEXIS 136833, 2020 WL 4430577; *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 2020 U.S. App. LEXIS 28118, 2020 WL 5246656.

The St. Clair Commissioner also has the authority to suspend and even revoke local liquor licenses even if there is no direct violation of the Illinois Liquor Control Act or local alcohol beverage related ordinance. The Illinois Liquor Control Act grants the local commissioner broad authority to suspend a license "for cause." *235 ILCS 5/4-4.* "So long as his actions are not arbitrary, the Commissioner is vested with broad discretionary powers in this regard." *Weinstein v. Daley,* 85 Ill. App. 2d 470, 480 (1st Dist. 1967). Also, per *Weinstein v. Daley*:

> The case law has now well established this principle. Notwithstanding the provisions of the statute upon which plaintiffs rely, there exists a fundamental public policy consideration for vesting the broad power to revoke "for cause" in the Local Commissioner. The widespread retail sale of alcoholic beverages is a business which is said to be fraught with danger, an enterprise which if allowed to proceed unchecked, would place in imminent peril the public health, safety, and very moral fiber of the community.

Id., at 481-482. The authority of a local liquor control commissioner to suspend a liquor license to protect the "health, safety, and welfare" of the community is a core principle of alcohol beverage regulation supported by statute and common law. The St. Clair Commissioner's suspension of a liquor license because of multiple violations of Illinois Governor Executive Orders, while not a direct violation of local or State alcohol beverage law, is well within the parameters of the St. Clair Commissioner's discretionary authority.

B. Whether the order is supported by the findings

Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence." *Daley v. El Flanboyan Corp.*, 321 Ill. App. 3d 68, 71, (1st Dist. 2001). The Illinois Appellate Court has ruled that, as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966, (1st Dist. 1996).

The order contains sufficient findings of fact from which to base the ultimate decision. The record is clear that the facts in this matter are not contested. On four separate occasions, November 10, 2020, November 12, 2020, November 22, 2020, and November 25, 2020, St. Clair County law

enforcement officials visited H's Bar and found persons inside dining and drinking without wearing face coverings. After each occasion, St. Clair County law enforcement delivered Compliance Violation Notices to H's Bar. *State Commission Hearing Exhibit 1, p. 1.* These actions repeatedly violated the Executive Orders and H's Bar was on notice that they were jeopardizing their licenses by continuing to permit indoor dining and drinking. Therefore, the findings set forth sufficient facts to establish multiple violations from which to base a fine and license suspension order. Although the length of the suspension against H's Bar is near the maximum penalty, the penalties are not unreasonable or arbitrary in consideration of the severity H's Bar's bars actions and in consideration of the multiple warnings and chances they had to comply. Furthermore, the suspension of the liquor license for 29-days is less than the amount of time of the successive Executive Orders prohibiting indoor dining and drinking. The penalties imposed by the St. Clair Commissioner are reasonable.

C. Whether the findings are supported by substantial evidence in the light of the whole record.

Finally, this Commission must review whether the findings are supported by substantial evidence in the light of the whole record. In the prosecution of its case, the St. Clair Commissioner relied on two primary charges against the licensee: 1) Violation of E.O. 63 and E.O. 73; 2) Violation of St. Clair Liquor Code Section 21-3-11.[4] There is sufficient evidence in the record to support both charges.

As stated, H's Bar does not contest that, on four separate occasions, persons were inside H's bar dining and drinking in violation of E.O. 63 and E.O. 73 in effect during the four instances. Presuming the Executive Orders are constitutional and that the St. Clair County Commissioner has the authority to enforce the Executive Orders, as held herein, the St. Clair County Commissioner relied on substantial evidence to issue a fine and suspension against H's Bar on the basis of the Executive Order violations.

[4] The State Commission record includes the Notice of Appeal filed by H's Bar, LLC which includes the local Notice of Hearing to appear to answer to license charges. Included in the Notice of Hearing was a charge that H's Bar violated Section 21-3-11 of the St. Clair County Liquor Code. Because H's Bar was made aware of the charge at the local hearing, it is appropriate to review evidence supporting such charge at the State Commission hearing. Because the State Commission hearing is a de novo hearing, the State Commission may review relevant evidence that supports the charge even if such evidence was not considered by the local commission or did not exist at the time of the local hearing.

In addition to the violation of the Executive Orders, the St. Clair Commissioner introduced evidence that H's Bar violated St. Clair Liquor Code Section 21-3-11. Section 21-3-11 of the St. Clair Code requires licensees in St. Clair County to maintain liquor licensed premises in a "clean and sanitary condition." *State Commission Exhibit 4.* As evidence of a violation of Section 21-3-11, the St. Clair Commissioner introduced a suspension order of H's Bar's food-service permit in which St. Clair County found H's Bar to be an "**Imminent Health Hazard**" due to indoor dining and drinking in violation of E.O. 63 and E.O. 73. *State Commission Exhibit 6 (emphasis included).* Per the St. Clair County Health Code, a suspension of a food-service establishment permit requires a finding of "unsanitary or other conditions in the operation of the food-service establishment… which …constitute a substantial hazard to the public health." *State Commission Hearing Exhibit 5, Section 19-4-4(A)(2).* H's Bar requested the abatement of suspension of the food-service permit which was denied by a St. Clair County Health Department Hearing Officer. *State Commission Hearing Exhibit 6.*[5] H's Bar did not appeal the denial of abatement and the suspension became final.

The evidence in the record supports the St. Clair Commissioner charge that H's Bar had violated the Section 21-3-11 by not maintaining its premises in a "clean and sanitary condition." As stated in the St. Clair County Health Department suspension order, allowing indoor dining and drinking created an "Imminent Health Hazard." As additionally stated in the St. Clair County Health Code, the suspension of a food-service license results from a finding of "unsanitary or other conditions" that create a "substantial hazard to the public health." Therefore, there is evidence in the record to support a liquor code violation (Section 21-3-11) that H's Bar did not maintain a "clean and sanitary" licensed premises. The evidence in the record supports the charge of a liquor code violation.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the St. Clair County Liquor Commission to assess H's Bar, LLC a $1,000 fine and a 29-day suspension of its liquor license is AFFIRMED.

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[5] Admitted at the State Commission hearing over H's Bar objection.

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If no Petition for Rehearing is filed, this order will be considered the final order in this matter. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on November 17, 2021.

Cynthia A. Berg

Cynthia Berg, Chair

Melody Spann Cooper, Commissioner

Thomas Gibbons, Commissioner

Julieta LaMalfa, Commissioner

Steven Powell, Commissioner

Donald O'Connell, Commissioner

Patricia Pulido Sanchez, Commissioner

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UNDER PENALTY OF PERJURY, as provided by law, section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be e-mailed by agreement of the parties prior to 5:00 p.m. on the following date: December 20, 2021.

/s/ Richard R. Haymaker

Richard R. Haymaker

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