STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

BOOGIE NIGHTS, LLC 14701 Wood Street HARVEY, IL 60426 Appellant, vs. HARVEY LIQUOR CONTROL COMMISSION Appellee.	Case No.: 21 APP 03 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 BOOGIE NIGHTS, LLC, Appellant (hereinafter "Boogie Nights"), the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

Boogie Nights is an applicant for the renewal of a Class A liquor license at 14701 Wood Street, Harvey, Illinois. The Class A liquor license related to this appeal expired on October 31, 2020. On or about October 2, 2020, Boogie Nights filed a liquor license renewal application. On or about November 13, 2020, the Harvey Liquor Control Commission ("Harvey Commission") sent to a representative of Boogie Nights by email, regular mail and UPS Next Day Delivery a Citation and Notice of Hearing for Non-Renewal of a City of Harvey Liquor License ("Citation and Notice of Hearing") to be held on November 20, 2020. The Harvey Commission eventually held an evidentiary hearing on December 17, 2020. On or about December 23, 2020, the Harvey Liquor Control Commissioner ("Harvey Commissioner") signed an Order and Decision of the Local Liquor Control Commissioner ("Local Commission Order") formally refusing to renew Boogie

Nights' Class A liquor license expiring on October 31, 2020. The Local Commission Order was served on a representative for Boogie Nights on or about December 24, 2020, via regular mail and email. On or about January 4, 2021, Boogie Nights filed a Notice of Appeal of the Local Commission Order to the State Commission. After multiple status calls and the submission of the administrative record, the State Commission represented by Commissioners Steven Powell and Thomas Gibbons heard on the record arguments of counsel on the matter on April 28, 2022. The State Commission as a whole reviewed the entire record and deliberated on the matter at the June 15, 2022, State Commission meeting.

Decision

Upon review of the record of the Harvey Commission, the State Commission AFFIRMS the order of the Harvey Commission to deny the renewal of Boogie Nights' Class A liquor license.

Discussion

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.* If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an "On the Record" review of the official record of proceedings before the Local Liquor Commission. *Id.* The Commission may only review the evidence found in the official record. *Id.* The City of Harvey has adopted a local ordinance requiring any appeal from an order of the Harvey Liquor Commissioner to be a review of the official record. *Harvey Ordinances, Section 5-06-210(B).* Accordingly, the Commission will only review the evidence as found in the official record.

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.

The Illinois Appellate Court has provided guidance that this Commission's duty is to determine whether local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1080, (2nd Dist. 2010). "Such review mandated assessment of the discretion used by the local authority, stating that "[t]he functions of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion." *Koehler*, 405 Ill. App. 3d at 1080 (2nd Dist. 2010).

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

The Harvey Commission ruled according to law in providing Boogie Nights with the necessary fair and legal process to defend against the license charges levied against Boogie Nights. In reviewing the actions of a local liquor commission, the Commission must review whether the local liquor commission offered appropriate legal processes, offered the licensee the opportunity to prepare a defense, and relied upon established law in arriving at its decision to refuse to renew the license.

Upon a review of the record in this case, the Harvey Commission sent a license renewal packet ("Application Packet") by regular mail to Boogie Nights on August 6, 2020, but the Application Packet was returned undelivered. *ILCC p. 143-144.* Upon receipt of the returned Application Packet, the Harvey Commission resent the Application Packet to the Boogie Nights email of record and by way of confirmed UPS overnight delivery to the applicant home address on August 20, 2020. *ILCC p. 141-142.* The Application Packet contained a letter from Mayor Christopher J. Clark which highlighted the renewal deadline date in the following paragraph:

> **The deadline to submit a completed application and all required information and documentation is Friday, October 2, 2020. No applications will be accepted for consideration for liquor licenses for the 2020-2021 license year after that date, and no supplemental information or documentation will be accepted after that date.**

The Application Packet included a checklist of items that all license holders needed to provide with the renewal application by the application deadline of October 2, 2020. *ILCC p. 118.* Furthermore, the Application Packet letter advised applicants that renewal application assistance would be offered by city officials and legal counsel for an additional $500 and that applicants must assume the risk of application denial if the applicant submitted a "deficient or incomplete" application. *ILCC p. 115-116.* Applicants would not be permitted "to amend, correct, or supplement your documentation" after submission. *Id.*

Notwithstanding the nearly two-month advance notice and offer of assistance by the Harvey Commission, Boogie Nights failed to provide a complete application to the Harvey Commission by October 2, 2020. The remainder of the timeline of the renewal denial as detailed in the Harvey Commission denial order is not contested and demonstrates the Harvey Commission provided Boogie Nights with fairness and due process prior to denying the renewal of the license. It is not contested that Boogie Nights did not sign an affidavit to the application ("License Affidavit") and a Financial Disclosure Form related to the financial background of the license holder, required of

all applicants. *ILCC p. 071-075*. Boogie Nights' application submission also did not include City of Harvey excise tax forms ("Liquor Returns") nor remitted excise taxes ("Liquor Excise Taxes") as required in the application checklist. *ILCC p. 067*. Even though Boogie Nights submitted the Liquor Returns and Liquor Excise Taxes on November 6, 2020, after the application deadline, the record is clear that Boogie Nights had actual and constructive notice that Liquor Excise Tax returns and payments had been due monthly during the prior license year (2019-2020). Because of the deficiencies of the renewal application and tax payments and because of other operational concerns related to possible violations of Harvey's "sexually explicit business" ordinances, the Harvey Commission sent Boogie Nights a "Citation and Notice Hearing for Intent not to Renew a City of Harvey Liquor License" on November 13, 2020, for a November 20, 2020, hearing alleging application renewal and ordinance violations. *ILCC p. 007-008.* Upon Boogie Nights' request, the Harvey Commission granted a continuance of the November 20, 2020, hearing to December 17, 2020, 1.5 months after the Boogie Nights' license expired.

In addition to providing sufficient process to Boogie Nights, the Harvey Commission has relied on both State and local law to form a basis for its decision not to renew the Boogie Nights Class A liquor license. Related to the application renewal, the Harvey Commission cites the authority of the Illinois Liquor Control Act to request books of records of its license renewal applicants *(235 ILCS 5/4-5; 235 ILCS 5/6-10).* The Harvey Commission further cited the Harvey City Code ("City Code") to demonstrate that Boogie Nights' failure to timely pay Liquor Excise Taxes violated Section 3-34-070(A) of the City Code as well as the general requirement that a licensee abide by all federal, state, and local laws (5-06-090). *ILCC p. 023-024.* Lastly, the Harvey Commission cites Boogie Nights for having violated Sections 16-96-300 of the City Code's sexually oriented business requirements for allowing "live nudity within a sexually oriented

business" and for "directly paying or tipping performs at sexually oriented business." *ILCC p. 030.* The Harvey Commission relied on local and state licensing laws to form the basis of its decision. For the above cited reasons, the Harvey Commission ruled according to law in this matter.

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

The Harvey Commission issued findings supported by substantial evidence in light of the whole record. 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). A finding is "against the manifest weight of the evidence only if an opposite conclusion is clearly evident from the record." *Vino Fino Liquors, Inc v. License Appeal Com'n of the City of Chicago,* 394 Ill. App. 3d 516, 522 (1st Dist. 2009).

In this case, the Harvey Commission substantiated its refusal to renew the Boogie Nights Class A liquor license by providing evidence that Boogie Nights: 1) failed to timely remit Liquor Excise Taxes for the 2019-2020 license year in violation of Chapter 3-34 of the City Code; 2) failed to timely produce books and records in the form of a Certificate of Occupancy and a validly executed License Affidavit and Financial Disclosure Form in violation of 235 ILCS 5/6-10 of the Illinois Liquor Control Act ("Liquor Control Act"); and 3) violated Section 16-96-300 of the City Code's sexually explicit business ordinance by allowing full nudity of the performers and by allowing the direct payment or tipping of such performers.[1]

[1] At the State Commission hearing, the Harvey Commission withdrew charges against Boogie Nights related to the operation of a sexually oriented business without a permit (Section 16-96-090(a)) and operating a sexually oriented business within 500 feet of a residential zone (Section 16-96-05(A)(B)).

Renewal Application Documents – Tax Filings, Certificate of Occupancy, Application Certifications

As local liquor control commission, the Harvey Commission has the authority and the responsibility to ensure that all of its license holders comply with State and local laws. The Illinois Liquor Control Act states:

> The local liquor control commissioner shall have the right to examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof, or any licensee upon whom notice of revocation or suspension has been served in the manner hereinafter provided, and to examine or cause to be examined, the books and records of any such applicant or licensee; to hear testimony and take proof for his information in the performance of his duties, and for such purpose to issue subpoenas which shall be effective in any part of this State.

235 ILCS 5/4-5 (*See also 235 ILCS 5/6-10).* Specifically related to the collection of the local Liquor Excise Tax, Chapter 3-34 of the Harvey Municipal Code requires all on-premises Harvey liquor license holders to file monthly returns and remit excise or drink taxes. *City of Harvey Code of Ordinances, Chapter 3-34.*

In this case, the evidence is clear and not contested that Boogie Nights did not timely submit Liquor Excise Tax returns or timely remit actual Liquor Excise Taxes. Per the affidavit of Harvey Chief of Staff Corean Davis who manages the liquor license renewal process, Boogie Nights filed an application with the Harvey Commission on October 2, 2020, but the application did not include any Liquor Excise Tax filings or payments. In the affidavit, Davis, the keeper of liquor license application records, stated that she inspected the Boogie Nights application as of October 2, 2020, but that such application did not contain Liquor Excise Tax forms or Liquor Excise Tax payments for the months covering November 2019 to August 2020. *ILCC p 064.* The fact that Boogie Nights had not filed Liquor Excise Tax Returns by the October 2, 2020, application deadline is corroborated by Davis' testimony at the December 17, 2020, hearing. *ILCC p. 188-189.* Such

Liquor Excise Tax forms were specified to be filed in the Application Checklist and to be filed no later than October 2, 2020. *ILCC p. 067.* Davis testified that despite the offer made in the August 6, 2020, renewal letter that the City would assist applicants with questions, that neither the owner nor any of the officers of Boogie Nights ever contacted her about submitting the application forms or supplementary documents. *ILCC p. 189.* Not until a month after the application deadline did Boogie Nights submit the Liquor Excise Tax forms and payments. *ILCC p. 193.*

Boogie Nights' defense of lack of knowledge for failing to timely submit monthly Liquor Excise Tax returns and payments lacks relevancy and credibility. First, the Harvey Ordinances are clear that a condition of an on-premises license is for the license holder to file monthly Liquor Excise Tax returns and remit monthly excise taxes. *Harvey Code of Ordinances, Chapter 3-34.* Ignorance of this law is not a defense for a failure to file and remit taxes. Admittedly, however, the record implies the Harvey Commission had not regularly enforced the filing of Liquor Excise Tax returns or payments prior to the 2020-2021 license renewal period. Notwithstanding a prior lack of enforcement, however, the Harvey Commission made it clear at least two months before the license renewal deadline, that on-premises license holders would be held accountable for submitting previously unsubmitted Liquor Excise Tax returns. The Harvey Commission did not spring this requirement on license holders at the last moment. In the August 5, 2020, renewal packet, the Application Checklist clearly states the applicant is required to submit:

> Copies of all reports you filed with the City of Harvey in 2019-2020 for excise taxes and copy of receipts from City of Harvey for excise tax payment.

ILCC p. 118.

As related to the Liquor Excise Taxes, even if it was unlikely that Boogie Nights or any other Harvey on-premises licensee filed local excise taxes during 2019-20 or before, Harvey provided an opportunity for license holders to come into compliance before the October 2, 2020,

renewal date. The Harvey Commission gave clear instructions to applicants to reach out to Chief of Staff Davis if they had any questions. Davis testified that no person from Boogie Nights ever requested her assistance on filing the application. *ILCC p. 189.* In addition, notwithstanding the testimony of Annette Smith, owner of Boogie Nights, that she was not aware of the Liquor Excise Tax filing and payment requirements for the 2019-2020 license year, Ms. Smith certified in November 2019, ***before*** the 2019-2020 year, that Boogie Nights "is obligated to pay the City a tax pursuant to Chapter 3-34 of the City of Harvey City Code and that the licensee's ongoing ability to have a liquor license is dependent on the licensee filing a return with the City Clerk's office by the 30th of each month, and the licensee's payment of the tax to the City of Harvey by the 30th of each month." *ILCC p. 163.* Therefore, there is sufficient evidence that Boogie Nights was not only aware that Liquor Excise Tax documents and payments needed to be filed with the Harvey Commission by October 2, 2020, with the renewal application, but that such tax returns and payments needed to be made on a monthly basis throughout the prior year.

Furthermore, the evidence is clear that, contrary to the requirements of the renewal application checklist, Boogie Nights did not submit a Certificate of Occupancy as required by the renewal application. Similar to the Liquor Excise Tax requirements, Boogie Nights received a license renewal application that required Boogie Nights to submit a Certificate of Occupancy. *ILCC p. 067.* Per the affidavit and testimony of Corean Davis, Boogie Nights did not file a Certificate of Occupancy by the October 2, 2020, application deadline nor by the December 17, 2020, hearing. *ILCC p. 197*. Again, if Boogie Nights was having difficulty in obtaining a Certificate of Occupancy for its business, it had the opportunity to specifically reach out to Harvey Commission representatives to obtain such assistance per the August 6, 2020, renewal letter. Per the testimony of Davis, however, no representative from Boogie Nights ever contacted her about obtaining

assistance in filing the necessary renewal documentation. *ILCC p. 189*.

In addition to the failure to timely file tax returns, tax payments, and a Certificate of Occupancy, the evidence in the record clearly shows Boogie Nights failed to certify renewal application documents. As a prerequisite for renewal, the Harvey Commission reasonably requires all of its license holders to certify answers on its application forms in lieu of conducting a full investigation of every license holder for every renewal period. The Harvey Commission application forms requiring signature of the applicant include common certification language found on any application. Harvey's standard Financial Disclosure Form, intended to verify the beneficial owner of the licensed business, includes the following certification language:

> I hereby certify, under penalty of perjury, that I am authorized to execute this form and that all information I have provided on this form is complete, true, and correct. I certify that I understand that information provided on this Financial Disclosure Form may be corroborated. The City of Harvey reserves the right to request any and all documentation it determines necessary to perform this verification. I and/or my representative will have three business days to meet such requests, and failure to do so may result in a disapproved or suspended license application. I understand and accept that any falsification or purposely holding back of this information is grounds for recalling the license(s) issued.

ILCC p. 075. Likewise, the Harvey Commission requires all of its license renewal applicants to sign a standard application affidavit ("License Affidavit") in which the applicant certifies the application is "true and correct," untrue statements "shall be cause for …non-renewal," and the applicant will not violate federal, State, or local laws. *ILCC p. 071.* The Harvey documentation certifications are standard and reasonable application certification statements.

The evidence in the record clearly demonstrates Boogie Nights refused to sign the License Affidavit and Financial Disclosure Form. *ILCC p. 071, 075.* Boogie Nights' defense for not signing application forms is that it had it had signed an alternative statement relating to being notified that Boogie Nights owed Harvey a tax deposit of $10,000 as of September 18, 2020. *ILCC p. 076*. It is

difficult to understand, however, why Boogie Nights would not sign the License Affidavit and Financial Disclosure Form in order to simply verify the statements made in such documents and also certify that it would comply with all laws related to business operation. If Boogie Nights complied with the local excise tax law, then it would have nothing to fear in signing the application documents. Refusing to make standard application certifications for fear that such certifications might be used against it to prove non-compliance seems to reinforce the Harvey Commission basis for refusing to renew the Boogie Nights license.

Sexually Oriented Business Evidence

In addition to the application deficiencies which arguably can be corrected by later submissions, the testimony related to Harvey's sexually oriented business ordinances represents clear evidence of a violation of two Harvey ordinances regulating such businesses. As of the date of the hearing, Harvey's adult entertainment ordinances permitted businesses to offer exotic dancing or a form of adult semi-nude entertainment, but it did not permit full nude exotic dancing and did not permit direct payment of exotic dancers. Based on the representations made in the Local Order, "Section 16-96-230 of the City Code prohibits live nudity within the City of Harvey within any sexually oriented business" and Section 16-96-300 "prohibits patrons from directly giving any gratuity/tips to any dancer or performer" but rather must "place such remuneration in a designated box located away from the stage area." *ILCC p. 025.* Per the Order, "nudity" is defined in Section 16-96-020 as:

> (a) the appearance of human bare buttocks, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
>
> (b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

Id.

Testimony in the record demonstrates that Boogie Nights violated both the full nudity and direct payment sexually oriented business prohibitions. At the December 17, 2020, hearing, the owner of Boogie Nights, Annette Smith, testified to violations of both the full nudity and direct payment ordinances. Per Smith, Boogie Nights' exotic dancers "sometimes" "strip without the pasty or areola covering or sticker" and also perform in "thongs." *ILCC p. 245.* These performances would be classified as definitionally fully nude and would violate the ban on fully nude performances. Moreover, Smith testified that the dancers get paid when "the dollars going flying" *(ILCC p. 246)* which would violate the ban on direct payment and the requirement for payments be made in a specially designated payment container.

For the stated reasons, the Harvey Commission relied on substantial evidence in light of the whole record to establish violations of the sexually oriented business operational ordinances.

C. Whether the order is supported by the findings.

The Harvey Commission's order to refuse to renew Boogie Nights' liquor license is supported by the findings because the Harvey Commission did not act arbitrarily or unreasonably, nor did it abuse its decision in not renewing the Boogie Nights license. In reviewing whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to deny the renewal of the license. 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).

In this case, the Harvey Commission decision not to renew the Boogie Nights license is reasonable based on the entirety of the evidence reviewed by the Harvey Commission. The Harvey Commission renewal process was a fair process because of the length of time and notices the Harvey Commission gave Boogie Nights to come into compliance. Because it is clear that such documentation was not submitted and the evidence strongly demonstrates adequate notice and fairness, the Harvey Commission did not abuse its discretion in denying the renewal of this Boogie Nights' Class A liquor license.

The failure to timely submit documents begs the question of whether Boogie Nights should be permitted to subsequently submit the necessary documentation after the October 2, 2020, renewal deadline. While this question falls outside the jurisdiction of the State Commission "on the record" review of this matter, the State Commission supports the actions taken by the Harvey Commission to act decisively to hold license holders accountable for failing to comply with basic renewal procedures like request for documentation and mandating renewal application certifications. Even if Boogie Nights eventually provided all of the necessary documentation for license renewal after the renewal deadline (like it did with the Liquor Excise Tax forms and payments a month after the renewal deadline), the Harvey Commission may still reasonably choose not to renew the license on the grounds that Boogie Nights did not comply with reasonable renewal requirements. If it turns out that Boogie Nights subsequently attempted to comply with document and certifications requirements, the Harvey Commission will have spent considerable resources bringing Boogie Nights into compliance with simple and clearly noticed renewal requests. In this case, Boogie Nights had at least one and half months to speak with Harvey Commission officials

or seek assistance in the filing of the renewal application. The fact that Boogie Nights did not avail itself of the specific assistance offered by the Harvey Commission contributes to the determination that the Harvey Commission did not abuse its discretion or arbitrarily deny the renewal. The Harvey Commission offered to assist with the application filing but it should not be expected to expend considerable resources in the license renewal process to force its license holders to become compliant.

In addition to proving a lack of compliance with application renewal procedures, the Harvey Commission proved a pattern of non-compliance by Boogie Nights in admissions by the owner that it had not complied with Harvey sexually explicit business ordinances in the operation of the adult entertainment business. It would be difficult to label the Harvey Commission's decision to not renew the license as arbitrary when the record demonstrates Boogie Nights not only failed to comply with clear renewal procedures but also clearly violated laws related to its business operation.

For the above cited reasons, the Harvey Commission's decision to not renew the Boogie Nights Class A liquor license is not arbitrary or an abuse of discretion and is supported by the findings.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Harvey Local Liquor Commission refusing to renew the Boogie Nights LLC Class A liquor license is AFFIRMED.

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 June 15, 2022.

Cynthia Berg, Chairman

Melody Spann Cooper, Commissioner

Thomas Gibbons, Commissioner

Julieta LaMalfa, Commissioner

Steven Powell, Commissioner

Brian Sullivan, Commissioner

Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS)
COUNTY OF COOK) 21APP 03

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: August 8th, 2022.

/s/ Richard R. Haymaker

Richard R. Haymaker

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