

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

Case No.: 20 APP 03

TRIPLE LOCATION, LLC
D/B/A CLUB O
17032-40 S. HALSTED STREET
HARVEY, IL 60426

Appellant,

vs.

HARVEY LIQUOR CONTROL
COMMISSION

Appellee.

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 Triple Location, LLC., d/b/a Club O, Appellant (hereinafter “Club O”), the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

Club O is an applicant for the renewal of a liquor license at 17032-40 S. Halsted Street, Harvey, Illinois. The Harvey Liquor Control Commission (hereinafter “Harvey Commission”) previously issued a Class A liquor license to Club O at 17032-40 S. Halsted Street in Harvey which expired on October 31, 2019. Club O attempted to renew the Class A liquor license related to this appeal for the term November 1, 2019, through October 31, 2020. On December 18, 2019, December 30, 2019, and January 31, 2020, the Harvey Commission held license renewal hearings. The Harvey Commission issued an Order and Decision of the Local Liquor Control Commissioner formally refusing to renew Club O’s Class A liquor license on March 5, 2020. On March 6, 2020, Club O appealed the Harvey Commission’s refusal to renew order to the State Commission. After multiple status calls, the State Commission represented by Commissioner Brian Sullivan held a *de novo* hearing on the matter on July 19, 2022. The State Commission as a whole reviewed the entire record and deliberated on the matter at the September 21, 2022, State Commission meeting.

Decision

Upon review of the stipulations of fact by both parties, the State Commission REVERSES the decision of the Harvey Commission to deny the renewal of the Club O Class A liquor license. Furthermore, upon a review of the evidence presented to the Commission related to the liquor license qualifications of Asa Powell (hereinafter "Powell"), the State Commission REHABILITATES Powell of a 1992 felony conviction. Such prior felony conviction shall not prohibit Powell from obtaining local or Illinois liquor licenses.

Findings¹

1. Club O applied to the City of Harvey Local Liquor Control Commissioner ("LLCC") for renewal of its City of Harvey Class "A" liquor license No. 3 (the "License") for the 2019-20 license term (November 1, 2019 - October 31, 2020).
2. At all relevant times prior to November 1, 2019, Club O possessed the License, authorizing it to sell alcoholic liquor at the 17032-40 S. Halsted Street, Harvey, IL ("Property") for on-premises consumption in accordance with applicable State and local regulations.
3. Pursuant to Section 5-06-050 of the City Code, the License expired by its own terms on October 31, 2019.
4. On or about October 24, 2019, Club O received correspondence and informational packets from the LLCC dated October 21, 2019, and October 22, 2019 (the "Packet"), respectively, providing it, and all liquor licensees in the City of Harvey ("City"), an extension of time until November 25, 2019 (the "Deadline"), to submit a completed liquor license renewal application.
5. The Packet detailed the LLCC's request for certain records related to Club O's liquor sales, sales taxes, and property ownership or lease information. A copy of the Packet is attached hereto as Stipulated Evidence Exhibit 1.
6. Club O timely applied for renewal of its License and accompanying records by the Deadline. Club O's submittal consisted of a liquor license renewal application and a certificate of liability insurance for the Property, attached hereto as Stipulated Evidence Exhibit 2 ("Initial Application Materials").

¹ Findings 1-35 are taken nearly verbatim from the City of Harvey Local Liquor Control Commissioner/Triple Location, LLC d/b/a Club O Joint Stipulations of Fact. ILCC pp. 001-008.

7. The City served Club O with a Citation and Notice of Hearing for Intent to Not Renew A City of Harvey Liquor License ("Hearing Notice") at least three days prior to the initial hearing date of December 18, 2019. A copy of the Hearing Notice is attached hereto as Stipulated Evidence Exhibit 3.
8. The Hearing Notice was timely served in accordance with 235 ILCS 5/7-5.
9. When the non-renewal hearing began on December 18, 2019, the City identified certain additional information and records that Club O would need to submit in order to supplement its Initial Application Materials and fulfill the requirements set forth in the Packet.
10. On December 18, 2019, the LLCC entered an order directing Club O to file certain additional records and complete certain additional tasks in supplementation of its Initial Renewal Application and continuing the hearing until December 30, 2020. A copy of the December 18, 2019, LLCC Order is attached hereto as Stipulated Evidence Exhibit 4.
11. When the hearing resumed on December 30, 2020, certain of the identified tasks and records in the December 18, 2019, order had been accomplished and filed, while other records remained incomplete or outstanding. The matter was continued again to give Club O an opportunity to further supplement its submissions. A copy of the December 30, 2019, LLCC Order is attached hereto as Stipulated Evidence Exhibit 5.
12. The City's Packet directed Club O to tender monthly Illinois Department of Revenue ST-1 Sales and Use Tax and E911 Surcharge Returns ("ST-1s") for the business for the January 2017 through October 2019 period.
13. By the time the hearing concluded on January 31, 2020, Club O had submitted to the City ST-1s filed with the State of Illinois Department of Revenue from January 2017 through July 2018.
14. By the time the hearing concluded on January 31, 2020, Club O had submitted to the City unsigned ST-1s that had not yet been filed with the State of Illinois Department of Revenue from August 2018 through October 2019.
15. The City's Packet directed Club O to furnish monthly gross liquor sales data ("Sales Data") for the business for the January 2017 through October 2019 period.
16. By the time the hearing concluded on January 31, 2020, Club O had not filed any Sales Data to the City for the January 2017 through October 2019 period.

17. At all relevant times, Club O has operated at 17032-40 South Halsted Street in Harvey, Illinois (the "Property").
18. At all relevant times, Club O's corporate managers were My Business, Inc., an Illinois corporation, and Surayyah, Inc., an Indiana corporation.
19. At all relevant times, Deborah A. Diaz ("Diaz") was the corporate president and secretary of My Business, Inc.
20. Seif El Sharif was president of Surayyah, Inc. prior to his death on or about September 25, 2019.
21. At the time that the application for License renewal was filed with the City and at all relevant times to the LLCC's evaluation of the same, Diaz had a partial ownership interest in Club O and executed the License renewal application in her capacity as a managing principal of Club O.
22. At all times relevant to the 2019-2020 renewal period, Last Coast Entertainment LLC ("Last Coast") leased the Property from Club O.
23. At all times relevant to the 2019-2020 renewal period, Last Coast had a management agreement with Club O.
24. At all times relevant to the 2019-2020 renewal period, Last Coast was responsible for managing the day-to-day operations of Club O.
25. At all times relevant to the 2019-2020 renewal application, Asa Powell ("Powell"), served as President of Last Coast.
26. Diaz and Powell each individually executed Club O's License renewal application as "manager/agent."
27. Powell was convicted of felony federal drug conspiracy in August 1992 and sentenced to 121 months in the federal bureau of prisons with five years' supervised release and was incarcerated in Federal Correctional Institution, Oxford until his supervised release in May 2000.
28. The LLCC concluded that the proper determinant of whether Powell is impaired by his felony conviction from engaging in his managerial role for Club O during the 2019-20 license term in accordance with the criteria set out in Section 6-2.5(b) of the Act is the Illinois Liquor Control Commission ("ILCC").

29. Club O was denied renewal of its 2019-2020 liquor license by order of the Local Liquor Control Commissioner dated February 5, 2020 (the "Denial").
30. At all times relevant to the 2019-20 liquor license renewal determination and subsequent cycle, Club O had not had its liquor license suspended or revoked during the previous twelve (12) months.
31. Club O's Initial Application Materials listed closing times violative of the City's ordinance requiring cessation of operations at 12:00 midnight and Club O declined to modify its stated hours when asked by the LLCC.
32. The City did not allege or cite Club O for violating the City's ordinance requiring a 12:00 midnight closing time at any time relevant to the 2019-20 liquor license renewal determination or term.
33. Following the Denial, Club O paid relevant state sales taxes and submitted ST-Is evidencing same in connection with the subsequent liquor license cycle application period.
34. Following the Denial, Club O tendered the Sales Data in connection with the subsequent liquor license cycle application period.
35. In the current liquor license term (2021-22), neither Last Coast nor Asa Powell is identified as having any managerial role or responsibilities with respect to Club O.
36. Asa Powell ("Powell") was convicted of a felony in 1992.
37. Powell plead guilty to the crime and served 121 months in federal penitentiaries from 1992 to 2000.
38. Powell has not been convicted nor arrested for a crime since 2000.
39. Powell is self-employed as a promoter in the entertainment business.
40. Powell has conducted multiple speaking engagements with colleague Victor Woods at many State and federal prisons.
41. Powell organized the Chicago Peace League basketball tournament between rival gangs on the southside of Chicago. The basketball tournament has been played every year between 2007-2021.
42. Powell emphasizes public safety at his promoted events and has instituted pat downs of patrons prior to entrance into the promoted events.
43. Powell's events have been relatively safe but there have been two shootings at the events over a fifteen-year period.

Legal Conclusions

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. Unless the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of a local order to be heard on the record, the State Commission will review the matter *de novo*. *Id.* At the time of the December 2019 and January 2020 Harvey Commission hearings on the Club O Class A liquor license, the City of Harvey had not adopted a local ordinance requiring an appeal from an order of the Harvey Liquor Commissioner to be a review of the official record. Accordingly, the State Commission may consider new evidence presented at the July 19, 2020, hearing related to the renewal of the Club O Class A liquor license.

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." *Id.*

Rehabilitation of Asa Powell

One basis for the disapproval of the Club O renewal application was due to the criminal

history of Asa Powell, who was listed on the renewal application as a manager of Club O and who held an interest in Last Coast Entertainment, LLC, the management entity of Club O. *Stipulation of Parties*, ¶¶ 22-25, *ILCC p. 003*. In general, the Illinois Liquor Control Act prohibits a person who has been convicted of a felony from being the owner, operator, or manager of a liquor licensed business, “unless the [State] Commission determines that such person will not be impaired by the conviction ... after considering matters set forth in such person’s application in accordance with Section 6-2.5 of the Act and the Commission’s investigation.” *235 ILCS 5/6-2(a)(4)*. Pursuant to Sections 6-2 and 6-2.5 of the Liquor Control Act, the State Commission finds that Asa Powell has been sufficiently rehabilitated to be the owner, operator, or manager of a liquor licensed business.

Under the conditions set forth in Section 6-2.5 of the Liquor Control Act, Asa Powell is rehabilitated from a 1992 felony conviction for which he served a jail sentence of approximately 8.5 years from 1992 to 2000. Both Powell and colleague Victor Woods testified credibly to circumstances related to Powell’s conviction, incarceration, and post-incarceration activities. Specifically, over twenty years have passed from the time Powell was released from prison without a subsequent conviction or even an arrest.² *Transcript ILCC p 070*. Furthermore, Powell was 22 years old when he committed the felony and is 53 years old currently.³ *Id at ILCC pp. 070, 095*. The State Commission also has determined there is significant evidence in the record of Powell’s present fitness and professional character in that Powell has been a longstanding and frequent speaker (over twenty years) in the prison system to help reduce recidivism and has successfully organized community initiatives for the purpose of reducing gang crime.⁴ *Id. at ILCC pp. 046, 050, 054-055, 086, 092*. Finally, Powell’s efforts to promote safe events through mandatory pat downs with high security presence demonstrates that Powell accepts responsibility for the impact his promoted events have on patrons and the community even though he is not the licensed owner of the business. *Id. at ILCC p. 098*.

Therefore, under the authority granted by the Illinois Liquor Control Act, the State Commission rehabilitates Asa Powell from his 1992 felony conviction and such offense shall not prohibit Powell from holding an ownership, operational, or management interest in an Illinois

² See condition for rehabilitation from 235 ILCS 5/6-2.5(b)(2) which requires consideration if the person has not been convicted of a crime for three years since the date of the person’s release from confinement.

³ See conditions for rehabilitation from 235 ILCS 5/6-2.5(b)(4) considering the person’s age at the time of conviction.

⁴ See conditions for rehabilitation from 235 ILCS 5/6-2.5(b)(6) considering the person’s fitness and professional character.

liquor license.

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

Related to the decision of the Harvey Commission to deny the renewal of the Club O Class A liquor license for the 2019-2020 license period, the Harvey Commission ruled according to law in providing Club O with the necessary fair and legal process to submit all of the necessary license renewal information and documentation. 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.

The evidence in this case demonstrates the Harvey Commission offered Club O appropriate legal process to renew its liquor license. On or about October 24, 2019, Club O received correspondence and informational packets from the Harvey Commission dated October 21, 2019, and October 22, 2019, respectively, providing it, and all liquor licensees in the City of Harvey, an extension of time until November 25, 2019, to submit a completed liquor license renewal application. *Stipulation of Parties* ¶4, *ILCC p. 001*. The correspondence detailed the Harvey Commission's request for certain records related to Club O's liquor sales, sales taxes, and property ownership or lease information. *Exhibit 1, ILCC pp. 012-024*. Club O timely applied for renewal of its License and accompanying records by the Deadline. *Stipulations of Parties*, ¶6, *ILCC p. 002*. Club O's submittal consisted of a liquor license renewal application and a certificate of liability insurance for the property. *Exhibit 2, ILCC pp. 026-029*. The City served Club O with a Citation and Notice of Hearing for Intent to Not Renew A City of Harvey Liquor License ("Hearing Notice") at least three days prior to the initial hearing date of December 18, 2019. *Stipulations of Parties*, ¶7, *ILCC p. 002*; *Exhibit 3, ILCC pp. 030-031*. The Hearing Notice was timely served in accordance with 235 ILCS 5/7-5. *Stipulations of Parties*, ¶8, *ILCC p. 002*. When the non-renewal hearing began on December 18, 2019, the Harvey Commission identified certain additional information and records that Club O would need to submit in order to supplement its initial application and fulfill the renewal requirements. *Id.*, ¶9. The Harvey Commission gave Club O an additional two hearings and one and half months to submit the newly required documents. *Id.* ¶¶11-14, *ILCC p. 002*. Only after Club O did not submit the required documents by the January 31, 2020, hearing, did the Harvey Commission draft an Order and Decision of the Local Liquor

Control Commissioner to deny the renewal of the license which is the subject of this appeal. *Id.* ¶¶15-16, *ILCC p. 002*. Finally, even though the Harvey Commission did not give Club O an opportunity to offer rehabilitation evidence for manager Asa Powell, who was deemed ineligible for a license because of a prior felony conviction, this was due to its determination that only the State Commission has the authority to conduct a felony rehabilitation hearing per 235 ILCS 5/6-2(a)(4).

For the above stated reasons, the Harvey Commission acted according to law.

B. Whether the order is supported by the findings;

The Harvey Commission's order to refuse to renew Club O's liquor license would have been supported by the findings if the evidence in the record established more than a *de minimis* reason to refuse the renewal of the license. The denial of a license based on a felony conviction of a manager and failure to submit required documentation are valid reasons for denial of a liquor license, but upon further review by the State Commission in a *de novo* proceeding, Club O cured such deficiencies. 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 the 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). Absent a denial because of a disqualifying felony conviction of a manager or a failure to submit documentation, the refusal to renew the license is unreasonable.

In this case, the Harvey Commission decision not to renew the Club O license is not reasonable but only because the reasons for denial of the renewal have been subsequently cured through a State Commission rehabilitation hearing and a State Commission *de novo* appeal hearing. As authorized by 235 ILCS 5/6-2(a)(4) and 235 ILCS 5/6-2.5(b), the State Commission considered evidence of the rehabilitation of licensee manager Asa Powell and unanimously chose to rehabilitate Mr. Powell of the crime. Furthermore, subsequent to the last renewal hearing on January 31, 2020, but prior to the July 19, 2022, State Commission *de novo* appeal hearing, the licensee filed the missing ST-1 tax returns and the missing sales reports that would have completed the documentation requirements needed to renew the local license. Having filed the necessary

renewal documents, albeit late, Club O has satisfied the Harvey Commission's documentation requirements.

While it is true that Club O failed to provide the missing ST-1s and sales reports by the final local deadline of January 31, 2020, the Harvey Commission requirements for the 2019-2020 license renewal were subject to soft renewal deadlines fluctuating under the discretion of the Harvey Commission. First, Harvey extended the renewal date from October 31, 2019, to November 25, 2019, to give license holders more time to comply with new Harvey renewal requirements not previously demanded of prior local commission administrations. Second, the record shows the Harvey Commission required Club O to submit ST-1 tax returns and sales reports for the first time during the December 18, 2019, hearing. *Stipulations of the Parties*, ¶10, *ILCC p. 002*. The fact that the Harvey Commission gave Club O approximately a month and half to provide the documentation suggests that even Harvey found it reasonable to provide a soft deadline on new renewal documentation requirements. Ultimately, the Harvey Commission's hard, but discretionarily imposed, deadline became January 31, 2020, and the failure to supply a complete set of ST-1s and sales reports by the new deadline resulted in the denial order and Club O's subsequent appeal to the State Commission. Because, however, at the time of the decision and appeal, the City of Harvey had not passed an *on the record* review ordinance, the State Commission is authorized to consider new evidence to determine compliance with local renewal requirements. While, arguably, Club O's post January 31, 2020, documentation compliance still failed to meet the Harvey Commission deadline, Club O did eventually comply with the new renewal requirements. Therefore, because Club O eventually complied with Harvey's new renewal requirements and the State Commission is authorized to consider new evidence in a *de novo* appeal hearing, the State Commission finds Club O's failure to submit documentation to the Harvey Commission by the January 31, 2020, deadline to be a non-sustainable reason for the denial of the renewal. Therefore, in combination with the rehabilitation of manager Asa Powell, Club O's failure to submit documentation to the Harvey Commission is not sufficient to support an order denying the renewal of the Club O 2019-2020 retail liquor license.

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

At the time of the denial of the renewal of Club O's 2019-2020 Class A license, the Harvey Commission issued findings supported by substantial evidence in light of the whole record, but additional evidence provided after the renewal denial does not support the denial. 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). Based on the evidence provided to the State Commission at the State Commission *de novo* hearing, the State Commission finds the decision to deny the renewal of the Club O license to be unsupported by substantial evidence in light of the whole record.

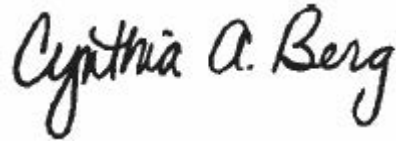
The record established at the State Commission *de novo* appeal hearing does not contain evidence that would support the continued denial of the Club O 2019-2020 Class A license renewal. As previously stated, one of the reasons for license denial, the ineligibility of the manager Asa Powell, has been overturned by the State Commission decision to rehabilitate Mr. Powell of the prior offense. The second basis for license denial, the failure of Club O to provide ST-1 tax returns and sales reports, was also cured the subsequent submission of the documentation which is considered a part of the State Commission *de novo* record. A third basis for denial not yet previously considered is the evidence that Club O refused to amend its hours of operation on its renewal application in line with the hours of operation for all Harvey Class A license holders. The record, however, does not contain evidence that Club O actually violated the hours of operation ordinance by operating beyond its legal hours. Without such evidence, the Harvey Commission cannot sustain any violation that Club O illegally operated after hours. Since there is no apparent ordinance violation for threatening to violate the hours of operation requirements, there is not substantial evidence to support the finding of a violation. Therefore, the State Commission record does not contain substantial evidence to support the Harvey Commission findings to deny the renewal of the Club O Class A 2019-2020 liquor license.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Harvey Local Liquor Commission refusing to renew the Club O Class A 2019-2020 liquor license is REVERSED. Furthermore, the State Commission REHABILITATES Asa Powell from a 1992 felony conviction and such conviction does not prohibit Powell from holding an interest in a State or local liquor license.

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.

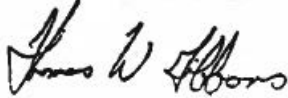
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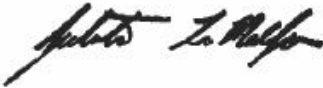
Cynthia Berg, Chairman



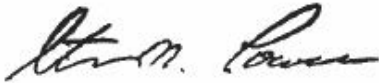
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner



Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS)
COUNTY OF COOK) 20APP 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: October 14, 2022.

/s/ Richard R. Haymaker

Richard R. Haymaker

Triple Location, LLC
c/o Attorney Francis Ostian
francisostian@gmail.com

Harvey Liquor Control Commission
c/o Attorney Mark Heinle
mheinle@ancelglink.com