

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

4-PLAY SPORTS BAR & GRILL, LLC
d/b/a Let's Play
15420 Dixie Highway
Harvey, IL 60426

Appellant,

vs.

HARVEY LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 20 APP 04

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 4-Play Sports Bar & Grill, LLC., Appellant (hereinafter "4-Play"), the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

4-Play is an applicant for the renewal of a liquor license at 15420 Dixie Highway, Harvey, Illinois. The Harvey Liquor Control Commission (hereinafter "Harvey Commission") previously issued a Class A liquor license to 4-Play at 15420 Dixie Highway in Harvey. The Class A liquor license related to this appeal expired on October 31, 2019. On or about November 25, 2019, 4-Play filed a liquor license renewal application. On December 16, 2019, the Harvey Commission emailed a representative of 4-Play a copy of a Citation and Notice of Hearing for Intent to Not Renew a City of Harvey Liquor License to be held two days later on December 18, 2019. A representative of 4-Play appeared at the December 18, 2019, hearing which was rescheduled to December 30, 2019, in order to comply with the three-day notice requirement for local commission actions against liquor licenses, and to allow the licensee to retain counsel. The Harvey Commission held substantive license renewal hearings with counsel present on December 30, 2019, January 31, 2020, and February 10, 2020. On February 14, 2020, the Harvey Commission issued an Order and Decision of the Local Liquor Control Commissioner formally refusing to renew 4-Play's Class A liquor license expiring on October 31, 2019. On March 3, 2020, 4-Play appealed the Harvey

Commission's refusal to renew order to the State Commission. After multiple status calls and a submission of the administrative record, the State Commission represented by Chair Cynthia Berg and Commissioner Julieta LaMalfa heard on the record arguments of counsel on the matter on December 8, 2021. The State Commission as a whole reviewed the entire record and deliberated on the matter at the January 19, 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 4-Play's 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.” *Id.*

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

The Harvey Commission ruled according to law in providing 4-Play with the necessary fair and legal process to defend against the license charges levied against 4-Play. 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 offered 4-Play appropriate legal process to defend against the alleged charges. The record suggests Harvey Commission notified 4-Play both prior to and after its Class A liquor license expired on October 31, 2019. *Exhibit 6*. In its Notice of Hearing for Intent to Not Renew (“Notice of Hearing”), the Harvey Commission referenced two prior renewal reminders sent to 4-Play on October 24, 2019, and November 7, 2019. *Exhibit 1*. The Notice of Hearing further references a November 25, 2019, Harvey Commission allegation that 4-Play “failed to allow the Local Liquor Control Commissioner to examine or cause to be examined its books and records for purposes of liquor license renewal.” *Id.* The Harvey Commission initially served the Notice of Hearing on 4-Play on December 16, 2019, for a hearing to be held December 18, 2019. Although this two-day notice was not sufficient to satisfy the three-day notice requirement of Section 7-5 of the Illinois Liquor Control Act (“Act”), the Harvey Commission continued the December 18, 2019, hearing to December 30, 2019, with subsequent hearings on January 31, 2020, and February 10, 2020. *Exhibits 2, 4, 5*.

At the December 30, 2019, hearing, 4-Play was represented by counsel and was required to complete tasks and provide documentation for the consideration of the renewal. Up through December 30, 2019, two months after the expiration of the Class A license, 4-Play had not presented its manager, Rayshawn Williams, for background review or approval; it had failed to provide application documentation of a lease and worker’s compensation insurance; it had failed

to provide evidence of a building inspection approval; it failed to provide evidence of filed tax returns; and it failed to provide monthly gross sales numbers as required in the renewal process. *Exhibit 4*. The Harvey Commission gave 4-Play another month to provide the manager for fingerprint processing and provide the required documentation. *Id.* At subsequent hearings, 4-Play did not present manager Rayshawn Williams for fingerprinting instead representing he was no longer employed as a manager. 4-Play did, however, provide the other documentation the Harvey Commission had requested. *Exhibit 7 (Insurance), Exhibit 8 (Building Inspection), Exhibit 9 (Food Sanitation), Exhibits A-1 through A-16 (ST-1 Tax Returns), Exhibit B (2018, 2019 Sales Report), City Exhibit D (Lease)*. On February 10, 2020, the Harvey Commission held a hearing to determine if information contained in the submitted tax returns and sales reports complied with local ordinance and State law.

As stated in the “Order and Decision of Local Liquor Control Commissioner” (“Local Order”), 4-Play’s Class A liquor license authorized it to sell alcoholic liquor in compliance with local and State law. *Local Order* ¶13 (*Local Ordinance Section 5-06-060*). The Local Order found 4-Play to have failed to sell alcoholic liquor in accordance with local ordinance 3-32-010 by underreporting sales “resulting in outstanding taxes owed to the City.” *Local Order*, ¶¶38-39. Moreover, per the Local Order, 4-Play also violated 235 ILCS 5/6-3 of the Illinois Liquor Control Act by filing a fraudulent return and willfully violating tax laws. *Id.* at ¶37. Because of these violations, the Harvey Commission found the owner/officers of 4-Play ~~to~~ failed to possess the necessary “good character and reputation in the community” pursuant to 235 ILCS 5/6-2(a)(2). *Id.* at ¶42.

By the time the Harvey Commission issued the Local Order not to renew the 4-Play liquor license, it had given 4-Play over three months to provide documentation and testimony related to its license renewal *after* the 4-Play license had already expired on October 31, 2019. The Harvey Commission gave 4-Play the opportunity to explain its tax reporting deficiencies at the February 10, 2020, hearing. The Harvey Commission relied on local and state law licensing laws to form the basis of its decision. For these 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 st 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 st Dist. 2009).

In this case, the Harvey Commission substantiated its refusal to renew the Class A liquor license by providing evidence that 4-Play violated Section 3-32-010 of the Harvey City Code and 235 ILCS 5/6-3. 4-Play failed to meet its license operational requirements by consistently underreporting its gross sales on tax forms, paying a significantly smaller amount of taxes than was owed, and failed to pay the City of Harvey its share of its home rule tax. These consistent and repeated acts and omissions related to tax filings in addition to inaccurate information contained in the application relating to liquor sales, supports Harvey’s reliance on substantial evidence to refuse to renew the 4-Play liquor license.

Through its renewal process, the Harvey Commission found evidence and established cause not to renew the 4-Play license for its failure to file accurate tax returns to the State of Illinois and remit the accurate tax payments to both the State and other taxing bodies including the City of Harvey. Having finally received the required documents three months after license expiration, the Harvey Commission examined the documents and determined that 4-Play had filed incorrect State of Illinois Retailer Occupation Tax forms (“ST-1s”). The evidence demonstrates 4-Play failed to accurately identify its general merchandise revenue on the tax forms because 4-Play had placed the general merchandise receipts or revenue (Step 2) in “Tax on Purchases” (Step 5). *City Exhibits A1-A16*. 4-Play confirmed the inaccuracy at the February 10, 2020, hearing. *Local Transcript, p. 12, 2/10/2020*. More importantly, 4-Play assigned the incorrect 6.25% tax rate for City of Harvey sales. *City Exhibits A1-A16*. The 6.25% tax rate is a State of Illinois tax rate, but it fails to account for additional local taxes that amount to a 10.5% tax rate. Part of the 10.5% tax rate is a City of Harvey home rule tax on merchandise of 1.5%. *Harvey City Code 3-32-010*. 4-Play therefore failed to remit the City of Harvey home rule tax as well as other taxes.

Even if 4-Play had identified the correct tax rate, they would have still

underreported and underpaid State and local taxes. Because the Harvey Commission requested annual sales reports (*City Exhibit B*) in addition to tax returns, it verified that 4-Play underreported and underpaid its Sales and Use taxes by a large margin. For 2018, a comparison of the 4-Play sales reports and 2018 ST-1s shows 4-Play paid taxes on \$26,430 of general merchandise revenue but actually recorded \$116,278 in sales revenue. City Exhibits *A1-A16*, *City Exhibit B*. For 2019, a comparison of the sales reports and 2019 ST-1s shows 4-Play paid taxes on \$58,093 of general merchandise revenue but actually recorded \$298,999 in sales revenue. *Id.* At the hearing, the owner of 4-Play acknowledged the accountant had filled out the returns but that she had reviewed them. *Local Transcript*, p. 8, 2/10/2020. 4-Play's explanation for the deficiency was that they thought only alcohol sales needed to be reported. *Id.*, at pp. 27-28. Nothing on the ST-1 tax forms, however, suggests that only alcohol sales are reported. The form clearly states that sales of general merchandise need to be reported which would include the sale of all beverages, food and other "general merchandise." While there might be deductions or subtractions for exempt items, there is no evidence in the record that 4-Play's reported revenue was net revenue less exemptions or credits. The fact that there is a separate reporting of "alcoholic liquor purchases" (Step 1) has nothing to do with the tax owed on the sale of "general merchandise" which would have included the tax on food that 4-Play alleged was part of their overall sales. Upon review of the 4-Play sales reports and tax returns, the Harvey Commission clearly demonstrated 4-Play failed to fully report its total sales on the State ST-1 forms and thus violated Harvey Ordinance 3-32-010 and the Illinois Liquor Control Act 235 ILCS 5/6-3.

Moreover, while not a basis for denial in the Local Order, the record is clear that 4-Play inaccurately represented its alcoholic liquor sales on its liquor license application or at the renewal hearing. On the renewal application, 4-Play identified that alcoholic liquor sales constituted 85% of its overall sales. *City Exhibit C-1*, p. 2. At the hearing, however, in an attempt to justify why it may have underreported its overall sales on its ST-1 tax forms, 4-Play represented that alcohol sales were far less than was represented on the application. Instead of selling 85% alcoholic liquor, 4-Play represented that it only sold 17% alcoholic liquor. *Local Transcript*, p. 44, 2/10/2020. The difference between the sale of 85% and 17% is not a small discrepancy and suggests the owner either negligently reported 85% liquor sales on the renewal application or intentionally misrepresented alcohol sales at the hearing

in order to explain the underreporting of sales on State ST-1 tax forms (even though the discrepancy between liquor and other sales should not matter when reporting general merchandise sales on an ST-1). Whether the owner negligently or intentionally erred in reporting alcohol sales on the application or at the hearing, the significant disparity between what was reported on the application and at the hearing is evidence to support the finding that the renewal applicant does not possess the requisite character to be issued a liquor license.

The Harvey Commission provided sufficient evidence to prove 4-Play's deficiencies in tax reporting and tax remittance in violation of local and State law and additionally proved the renewal applicant's lack of good character. The Harvey Commission, therefore, relied on substantial evidence in light of the whole record to prove the charges against 4-Play.

C. Whether the order is supported by the findings;

The Harvey Commission's order to refuse to renew 4-Play's 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 4-Play 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 4-Play license is reasonable based on the entirety of the evidence reviewed by the Harvey Commission. Admittedly, if 4-Play had committed only minor errors in the conduct of its license operation or the renewal process itself, the Harvey Commission may not have refused to renew the license. This is demonstrated in the record by Harvey's willingness to give 4-Play the opportunity to submit its renewal application after the October 31, 2019, deadline, and even to submit required supplementary documentation

and inspection requirements two months after the renewal deadline. Once Harvey reviewed the 4-Plays tax returns and sales reports and had the opportunity to question the owner of 4-Play under oath, however, it became clear that 4-Play had committed serious tax reporting and application errors that the Harvey Commission could not ignore.

4-Play's reliance on the fact that it may have subsequently complied with all tax laws or that the Harvey Commission should not be attempting to enforce tax laws is misguided. Both local and State law required 4-Play to pay retailer occupation taxes. *Harvey Ordinance 3-32-010; 235 ILCS 5/6-3*. Under its authority to issue liquor licenses, the Harvey Commission has the authority and the responsibility to determine if its license holders are abiding by all laws, especially tax laws. A core concern of licensing is the collection of taxes. The Harvey Commission did not need to be certified tax auditor or an IRS Agent to determine that 4-Play failed to report all general merchandise sales and failed to remit all taxes to taxing bodies. After examination, the evidence clearly demonstrates a prima facie case that 4-Play did not regularly and consistently pay its business taxes. 4-Play could have provided evidence that it had fully paid all of its taxes by rebutting the prima facie case, but it did not. There is no testimony by a certified accountant hired by 4-Play that the tax returns are correct. Casual references in the record to having complied with State tax requirements don't adequately overcome the evidence presented by the Harvey Commission that 4-Play did not pay all of its taxes. The evidence in the record suggests that 4-Play self-reported its sales and use taxes to the State but was not subject of an audit. Presumably, therefore, by reviewing 4-Play's sales records, the Harvey Commission had more information on 4-Play's tax status than State revenue authorities. Absent such proof of tax compliance, 4-Play failed to rebut Harvey's prima facie proof of tax violations. Clearly, the Harvey Commission did not abuse its discretion by holding 4-Play accountable for its negligence or willfulness in its tax reporting and remittance deficiencies.

Even if 4-Play eventually admitted to underreporting taxes and paid all of its back taxes, the Harvey Commission may reasonably choose not to renew 4-Play's license because 4-Play's actions demonstrated a lack of required character to hold a liquor license. The record demonstrates that 4-Play did not renew its license by the requisite deadline after two prior reminders by the Harvey Commission. *Notice of Hearing, Ex. 1, p. 1*. The record suggests that 4-Play initially refused records inspection during the renewal process. *Id.* In order to obtain the necessary application documentation and inspections, the Harvey Commission had to schedule three hearings

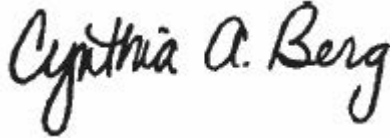
just to obtain the necessary documentation to enable a review of the application more than three months *after* the expiration of the license. The Harvey Commission should not be forced to expend considerable resources in the license renewal process to force its license holders to comply with the law. Add all of these factors to the evidence already discussed about 4-Play's tax reporting and remittance deficiencies as well as its inconsistencies in reporting the percentage of its alcohol sales, and the totality of the record shows 4-Play lacks good character to hold a license and that the Harvey Commission did not abuse its discretion by refusing to renew 4-Play's license.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Harvey Local Liquor Commission refusing to renew the 4-Play Sports Bar & Grill, 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 January 19, 2022.



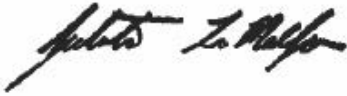
Cynthia Berg, Chairman



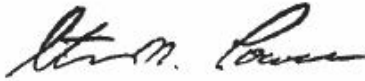
Melody Spann Cooper, Commissioner



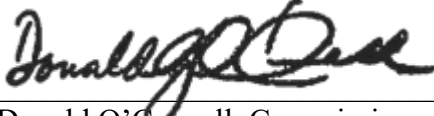
Thomas Gibbons, Commissioner



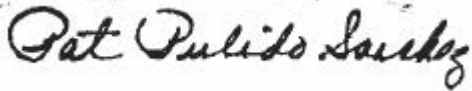
Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Donald O'Connell, Commissioner



Patricia Pulido Sanchez, Commissioner

