

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

BOOGIE NIGHTS, LLC
14701 Wood Street
HARVEY, IL 60426

Appellant,

vs.

HARVEY LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 20 APP 12

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, 2019. On or about November 25, 2019, Boogie Nights filed a liquor license renewal application. On or about March 4, 2020, the Harvey Liquor Control Commission (“Harvey Commission”) sent to a representative of Boogie Nights. by email, regular mail, and certified mail 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 March 13, 2020. On or about March 20, 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, 2019. The Local Commissioner Order was served

on a representative for Boogie Nights on or about August 27, 2020. On or about September 16, 2020, Boogie Nights filed a Notice of Appeal of the Local Commission Order with 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 offered Boogie Nights appropriate legal process to defend against the alleged charges. The record demonstrates the Harvey Commission offered Boogie Nights the opportunity to comply with license renewal

documentation requests after the expiration of the Class A license on October 31, 2019. Initially, the Harvey Commission extended the license application review from October 31, 2019, through November 25, 2019, so that Boogie Nights could comply with Harvey Commission records requests. *ILCC p. 120*. In fact, after the October 31, 2019, renewal deadline, the Harvey Commission allowed Boogie Nights to remain open up through and including the date of the renewal hearing on March 13, 2020, and through August 27, 2020, until the service of the Local Commission Order. *ILCC p. 001, 165*.

In its Citation and Notice of Hearing, the Harvey Commission stated Boogie Nights would have the opportunity to appear at a hearing to defend against the charges contained in the Notice. Two of the charges for operating without a valid license and for operating after hours were not founded by the Harvey Commissioner after the March 13, 2020, hearing. The remaining charge for “failure to submit a complete liquor license renewal application” was founded by the Harvey Commission, *ILCC p. 001, 114*. The Harvey Commission provided adequate notice and gave Boogie Nights more than sufficient time to comply with documentation requests. First, the Harvey Commission requested Boogie Nights’ books and records on October 22 (served on October 24) due on October 28, 2019. In line with the extension of the renewal date, however the books and records due date was initially extended through November 25, 2019. *ILCC p. 120*. The Harvey Commission seemingly accepted Boogie Nights submissions on December 4, 2019. *ILCC p. 141-157*. On January 21, 2020, the Harvey Commission again requested documents related to the application renewal. *ILCC p. 160-163*. Up through the date of the March 13, 2020, renewal hearing, the Harvey Commission gave Boogie Nights the continued opportunity to submit renewal documentation while the license remained active.

The record reflects a significant debate between the parties about the extent to which the Harvey Commission gave adequate notice to representatives of Boogie Nights about application renewal documentation requirements. The only credible evidence in the record on whether adequate notice was provided came from the Harvey Commission. On October 24, 2019, the Harvey Commission personally served the manager of Boogie Nights, Rashawn Williams, with a notice that Boogie Nights needed to provide liquor sales reports, sales tax records, property ownership/lease records, and a certification of records statement. *ILCC p. 128-132*. From the document, the Harvey Commission made clear that a failure to provide the documents could result in the “non-renewal” of the liquor license. *ILCC p. 128*. Also, the Harvey Commission provided contact information of Harvey staff to assist Boogie Nights if it had any questions about the documentation requirements. *ILCC p. 129*. This notice was personally served on Rashawn Williams, who was listed on the Boogie Nights liquor license application under “Management and Operations Experience and Certification.” *ILCC p. 135*. If Harvey did not accomplish any other service of process of the documentation request to anyone other than to Rashawn Williams, the Harvey Commission would have satisfied the notice requirement.

There is significant evidence, however, that Boogie Nights knew or should have known about documentation requirements for license renewal. First, because Boogie Nights ownership held a Harvey liquor license at another location and was involved in similar renewal hearings at such location from December 2019-February 2020 with the same renewal requirements (*See ILCC Appeals 20 APP 04; 21 APP 05, 4-Play Sports Bar v. Harvey*), it is more likely than not that Boogie Nights ownership knew of Harvey’s renewal documentation requirements. Furthermore, the fact that Boogie Nights partially complied with the October documentation request to provide State of Illinois sales tax returns is further evidence that they knew the renewal application required

submission of the sales tax records. The Harvey Commission did not deny the license renewal on the basis of a failure to submit sales tax returns because Boogie Nights seemingly provided the returns as early as December 4, 2019. *ILCC pp. 141-158*. Exhibiting further restraint nearly three months after the October 31, 2019, license expiration, the Harvey Commission again drafted a letter to Boogie Nights on January 21, 2020, again requiring the applicant to provide renewal documentation including proof of worker's compensation insurance (as required by the application), food service certifications, property ownership/lease records, and liquor sales reports (verbatim copy of the October request for liquor sales records). At the hearing, while there was some confusion about how and to whom the January 21 letter was served, it is certified that the letter was sent to two Boogie Nights' related addresses including the business address. This is the same business address to which other Harvey notices were sent and delivered including the liquor license renewal application and the October request for documentation which clearly elicited a response from Boogie Nights in the form of document submissions related to the application.

Boogie Nights' argument that the Harvey Commission did not treat it fairly because the Harvey Commission did not grant a continuance to the March 13, 2020, hearing is not supported by the evidence in the record. The evidence in the record identifies no less than three separate opportunities after their license expired on October 31, 2019, but before March 13, 2020, that Boogie Nights could have complied with documentation requests. After the original renewal notice, the Harvey Commission added documentation requirements in an October 21, 2019, letter but gave Boogie Nights an extension to provide application documents by November 25, 2019. Still without meeting the documentary requirements, the Harvey Commission continued to accept documents after November 25, 2019. Again, the Harvey Commission reminded Boogie Nights of its application deficiencies in a January 21, 2020, letter. On each occasion, the Harvey

Commission provided contact names and phone numbers of Harvey staff to contact with any questions. Throughout the process, Boogie Nights' liquor license remained active.

The claim from Boogie Nights that they did not know what they needed to provide is not credible. Boogie Nights ownership holds a liquor license at another Harvey location with identical renewal requirements. Boogie Nights' manager was personally served with document requests in October 2019. Harvey sent other notices by regular mail and certified mail throughout the process prior to the March 13, 2020, appeal hearing. The only defense Boogie Nights alleges is that they did not receive the notices which detail documentary requirements notwithstanding their clear receipt of application renewal documents and renewal extension documents; and notwithstanding that they did comply with some of the documentary requirements. Furthermore, in attempting to deny any knowledge of receipt of the October 2019 documentary request served on manager Rashawn Williams, Boogie Nights' owner Annette Smith denied even knowing Mr. Williams despite Williams being named on Ms. Smith's liquor license application renewal application for Boogie Nights. In the end, over a 4.5-month period, the Harvey Commission gave Boogie Nights more than sufficient opportunity to comply with documentary requests and had no obligation to give Boogie Nights additional opportunities. In fact, arguably, the Harvey Commission's obligation was to finally issue an order that prevented the renewal of the liquor license to an applicant who refused to comply with documentary requests

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 failed to produce books and records in violation of 235 ILCS 5/6-10 of the Illinois Liquor Control Act (“Liquor Control Act”) and failed to possess the necessary character to hold a liquor license pursuant to 235 ILCS 5/6-2(a)(2) of the Liquor Control Act. Pursuant to 235 ILCS 5/7-5 of the Liquor Control Act, a local liquor control commissioner may revoke, suspend [or refuse to renew] a liquor license for cause after a hearing and after a showing that the licensee failed to comply with the Liquor Control Act or local ordinances. (*See also City of Wyoming v Illinois Liquor Control Commission*, 48 Ill.App.3d 404 (3rd Dist. 1977)).

The Harvey Commission provided evidence at a hearing demonstrating that Boogie Nights failed on multiple occasions to comply with application renewal records requests after adequate notice was provided. Prior to license renewal or at any time during the term of a liquor license, a local 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,... and to examine or cause to be examined, the books and records of any such applicant or licensee.” 235 ILCS 5/4-5. Pursuant to such authority and prior to the expiration of local retail liquor licenses, the Harvey Commission required renewal applicants to provide supplementary documentation with the liquor renewal application.

Related to the Boogie Nights renewal application, as already detailed, the Harvey

Commission formally made multiple document requests, gave Boogie Nights multiple chances to comply, and ultimately proved at the March 13, 2020, hearing that Boogie Nights failed to comply. Again, on October 22, 2019, and January 21, 2020, the Harvey Commission served Boogie Nights with document requests. The documents requested included proof of: State of Illinois Sales Tax filings for the prior license year; monthly liquor sales reports for the prior license year (with certification document); property ownership/lease; worker's compensation insurance; and food sanitation certification. *ILCC pp. 128-131 160-162*. Ultimately, the Harvey Commissioner's Order found the licensee to have complied with the submission of the State sales tax records but ruled that Boogie Nights had failed to submit and certify monthly liquor sales records, a lease, food sanitation certificate, and evidence of workers compensation insurance. *Local Commission Order ¶38, ILCC pp. 112-113*. Boogie Nights did not contest that they had submitted the missing documentation but argued they did not receive sufficient notice and needed more time to comply

The evidence overwhelmingly demonstrates that the Harvey Commission did, in fact, provide adequate notice of the document requests. The October document request was personally served on Boogie Nights manager Rashawn Williams. The January document request was sent regular and certified mail to two separate known addresses for Boogie Nights' representatives. While it contends it did not receive the October 22 and January 21 notices, Boogie Nights does not contest that it did not receive other notices related to the license renewal application, the renewal application extension to November 25, 2019, and the March 13, 2020, hearing notice. Boogie Nights' owner Annette Smith also had notice of renewal document requirements through her ownership of another retail licensed establishment which was required to furnish the same documentation. Ms. Smith's defense that she didn't know what documentation she needed to submit lacks credibility because of the high likelihood that she either knew or should have known

the renewal requirements for both of her licenses instead of just one license.

Furthermore, in attempting to deny responsibility for knowing about the documentation requests, Ms. Smith severely damaged her credibility and reputation to be eligible for a liquor license. The Liquor Control Act requires persons on a liquor license to possess the necessary “good character and reputation in the community” to hold a liquor license. *235 ILCS 5/6-2(a)(2)*. The Harvey Commission Order found that Ms. Smith is not a person of good character because she failed “to testify credibly as to her professional relationship and personal knowledge of Rashaun Williams, claims to not have received the October Packet, and filed a pre-notarized Sales Certification devoid of any content and unaccompanied by any accompanying records” *Local Commission Order ¶¶ 44-45; ILCC p. 113*.

There is sufficient evidence to prove that Ms. Smith’s testimony lacked credibility which negatively impacts her character. Under oath, Ms. Smith denied that she knew the person on whom renewal documents were undeniably served, Rashawn Williams. As it turns out, Rashawn Williams was the manager of record for Boogie Nights. Ms. Smith revised her testimony once she was confronted with the fact that Williams was the named manager on a Boogie Nights liquor license application. *See Local Transcript for Smith Testimony at ILCC pp. 028-033*. Moreover, Ms. Smith’s repeated denial under oath that she received any renewal document requests is not credible when: 1) She is the owner of another liquor licensed business (4-Play Sports Bar) to which the same renewal requirements apply; and 2) she does not contest she received other notifications which did not contain document requests (e.g. renewal extension, notice of hearing). Therefore, because of Ms. Smith’s lack of credibility under oath and her failure to be accountable for ensuring compliance with the liquor license renewal process, there is sufficient evidence to support the Local Commissioner finding that Ms. Smith lacks the character and reputation to continue to hold

a liquor license.

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 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. Admittedly, if Boogie Nights had complied with document requests at any time from October 2019 to the middle of March 2020, the Harvey Commission would have seemingly renewed the liquor license. This is demonstrated in the record by Harvey's willingness to give Boogie Nights the opportunity to submit its renewal application documentation up to 4.5 months after the October 31, 2019, deadline. The Harvey Commission demonstrated its flexibility and fairness related to the document requests by accepting the State sales tax returns in early December 2019, a month after the application deadline. The Harvey Commission did not include the failure to provide State sales tax records as a basis to deny the renewal of the license. The Harvey Commission renewal process was also a fair process because of the length of time and numerous notices and extensions the

Harvey Commission gave Boogie Nights to come into compliance. Because it is clear that supporting 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 March 13, 2020, hearing to become compliant. 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 requests for documentation. Even if Boogie Nights eventually provided all of the necessary documentation for license renewal after the March 13, 2020, hearing date, the Harvey Commission may still reasonably choose not to renew the license on the grounds that the owner of Boogie Nights lacks sufficient character and reputation to hold a license. If it turns out that Boogie Nights subsequently attempted to comply with document requirements, the Harvey Commission will have spent considerable resources bringing Boogie Nights to comply with simple documentation request. In this case, in addition to the application, the Harvey Commission sent two notices to produce documentation, a license extension authorization, a hearing before the Harvey Commissioner, and a hearing before the State Commission to bring the licensee into document compliance. The Harvey Commission should not be forced to expend considerable time and resources in the license renewal process to force its license holders to comply with the law. Moreover, if during the process, the license holder demonstrates a lack of credibility and character, the Harvey Commission may determine they no longer have the character to hold a liquor license. Either way, the evidence in this record

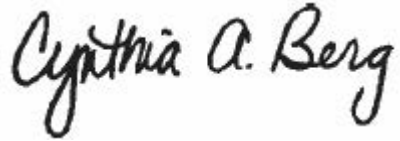
demonstrates the Harvey Commissioner did not abuse his discretion in the denial of the renewal of the Boogie Nights liquor license.

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.



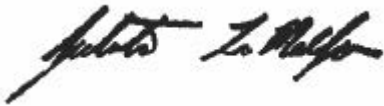
Cynthia Berg, Chairman



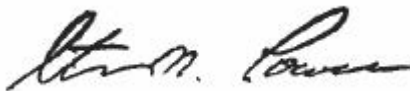
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



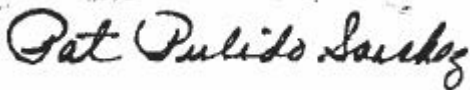
Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner



Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS)
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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: August 8th, 2022.

/s/ Richard R. Haymaker

Richard R. Haymaker

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