

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

CRUSEN & KLEIN, INC.,

2117 W. FARMINGTON RD., WEST
PEORIA, IL 61604

Illinois Lic. # 1A-0077329

Appellant,

vs.

LOCAL LIQUOR COMMISSIONER FOR
WEST PEORIA, ILLINOIS,

Appellee.

Case No.: 20APP13

FINAL ORDER

FINAL ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the Commission”) upon the appeal of CRUSEN & KLEIN, INC. Appellant, (hereinafter “Crusen”) the Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

CRUSEN & KLEIN, INC, dba Crusens II is the holder of a Retailer license issued by the Commission and a Class B & G with sub-class 1 & 2 permissions, issued by the Local Liquor Commissioner for the City of West Peoria (hereinafter West Peoria) for the premises located at 2117 W. Farmington Rd, West Peoria, Illinois 61604. On or about August 21, 2020, Mayor James R. Dillon serving in his capacity as the Local Liquor Commissioner for West Peoria issued a notice and citation to Crusen for violations of the Liquor Control Act, City Code of West Peoria, and the Firearm Concealed Carry Act. A hearing was held before West Peoria on September 9, 2020. On September 14, 2020, West Peoria entered an order revoking the Class 1 designation of Crusen for the remainder of 2020. On October 3, 2020, Crusen filed this appeal. A

hearing was held before the Commission on January 26, 2021. The matter was heard by agreement of all parties via video conference. Crusen was represented by its attorneys Jack Teplitz. West Peoria was represented by its attorney William C. Connor. The matter was deliberated by the Commission on February 17, 2021.

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 State 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. West Peoria has adopted as part of the West Peoria, Illinois Code of Ordinances and ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the official record. West Peoria Resolution 94-01. Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing 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, (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.**

Section 7-5 of the Liquor Control Act (the Act) sets forth the procedures for which a Local Liquor Commissioner can discipline a license. 235 ILCS 5/7-5. The Act mandates the licensee shall be afforded with at least a three-day written notice of hearing and be given the opportunity to defend itself before taking disciplinary action. Id. Following a hearing, the Local Liquor Commissioner shall issue a written order stating the reasons for the suspension and fine within five days. Id.

In this case, West Peoria proceeded in the manner provided by law. The notice and citation were issued on August 21, 2020 for a hearing to be held on August 26, 2020. On its own this would have been sufficient as the Liquor Control Act only requires 3-day notice. However, the hearing was then continued to September 9, 2020 giving Crusen ample time to prepare itself for the hearing. The hearing was held on September 9, 2020, and an order was entered five days later on September 14, 2020 as required by the Liquor Control Act. Furthermore, Crusen was given a full hearing with the opportunity to present evidence and cross examine witnesses. Accordingly, we find that the local liquor commissioner proceeded in the manner provided by law.

B. Whether the order is supported by the findings;

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 license. 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, (2001). We take guidance from Administrative Review Law jurisprudence. We limit our review to whether the local liquor commissioner’s order contained factual findings that support the imposed sanctions.

The order contains sufficient findings of fact and conclusions of law from which to base the ultimate decision. The findings indicate that a hearing was held and that witnesses provided testimony on behalf of the prosecution and that Crusen presented testimony in its defense. The findings set forward sufficient facts by which a decision could be reached and contains an analysis of the facts and the law. Accordingly, the order is supported by the findings.

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

Finally, this Commission must review whether the findings are supported by substantial evidence in the light of the whole record. We find that findings are not supported by substantial evidence in light of the whole record.

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, (1996).

These matters stem from events which occurred on August 13, 2020. On Thursday, August 13, 2020, several events occurred at Crusen which necessitated police involvement. The first event involved a fight that resulted in two individuals being stabbed. LLC Transcript at 10. The second event that evening involved a loaded firearm being found inside the Crusen premises. Id at 12. The third event involved a social media video post in which an individual depicted playing with a gun in the bathroom of Crusen. Id at 36.

Following the events of August 13, 2020, West Peoria charged Crusen with several violations of West Peoria Code and State law. Crusen was charged with a violation of Section 5-1-19(A)(3) of the West Peoria Code for allowing weapons on the premises or failing to provide adequate security to prevent weapons from being on the premises; a violation of Section 5-1-25 of the West Peoria Code for failing to promptly report the stabbing and the firearms; a violation of Section 5-1-26 by allowing the illegal possession and use of weapons on the premises; a violation of 430 ILCS 66/65(A)(9) for failing to post appropriate signage barring possession of handguns on the premises; that they were subject to the penalties as found in 235 ILCS 5/10(c).

Following the hearing held on September 9, 2020, West Peoria entered an order finding Crusen guilty of some of the charges and not guilty of others. Crusen was found not guilty of the charge of failing to promptly report the stabbing and firearms. Crusen was further found not guilty regarding the failure to post appropriate signage due to evidence not being presented at the hearing on this issue. However, West Peoria found Crusen guilty of creating a threat to the welfare of the community and illegal activities occurring on the premises. West Peoria found that it is clear that criminal activity occurred on the premises of Crusen on the night in question. West

Peoria sanctioned the license of Crusen by revoking its Sub-Class 1 entertainment license for the remainder of 2020.¹

West Peoria presented the testimony of Lieutenant Matthew Mathias and Lieutenant Daniel Corpus. Crusen presented the testimony of John Ray and Wayne Klein.

The events that occurred that evening are undisputed. The issue is whether Crusen should have done more to prevent weapons from being brought into their establishment. Crusen could have done more, however, the record is clear that Crusen did enough.

We can take guidance from Illinois courts in the realm of the duty owed by a business to protect others from harm. Illinois courts have looked to see if the incident is reasonably foreseen by the landowner. Sameer v. Butt, 343 Ill. App. 3d 78, 86, 796 N.E.2d 1063, 1069 (2003) “Anyone “can foresee the commission of a crime virtually anywhere and at any time.” *Bence v. Crawford Savings & Loan Ass’n*, 80 Ill.App.3d 491, 495, 35 Ill.Dec. 902, 400 N.E.2d 39 (1980), quoting *Goldberg v. Housing Authority*, 38 N.J. 578, 583, 186 A.2d 291, 293 (1962). “ ‘The question is not simply whether a criminal event is foreseeable, but whether a duty exists to take measures to guard against it. Whether a duty exists is ultimately a question of fairness. The inquiry involves a weighing of the relationship of the parties, the nature of the risk, and the public interest in the proposed solution.’ ” (Emphasis omitted.) *Bence*, 80 Ill.App.3d at 495, 35 Ill.Dec. 902, 400 N.E.2d 39.” Id.

In the case of Getson v. Edifice Lounge, Inc., 117 Ill. App. 3d 707, 708, 453 N.E.2d 131, 132 (1983), the plaintiff was injured outside of the business as the result of a fight from a biker gang. The Appellate Court overturned the trial court’s finding that a duty was owed to the plaintiff. It reasoned that “We cannot say as a matter of law that someone who is a member of a motorcycle group and who happens to carry a buck knife is *per se* dangerous. There must be

¹ The Commission notes, Peoria County is located in Region 2 of Governor Pritzker’s Restore Illinois Plan in response to the COVID-19 pandemic. The West Peoria order was entered on September 14, 2020. The order revokes Crusen’s Entertainment subclass license for the remainder of 2020. On October 29, 2020, Governor Pritzker issued Executive Order 2020-69, which ceased indoor dining as well as standing and dancing. Region 2 only returned to Phase 4 of the Restore Illinois plan, which permits limited indoor activities on January 25, 2021. During this time period, Crusen was incapable of utilizing its Entertainment subclass license.

evidence of actions of Talmadge of which DeAcetis was aware, or should have been aware, which would have compelled a reasonably prudent person to conclude that it was likely Talmadge might endanger an invitee.” Id. at 712. Furthermore, the court found that there was no evidence to suggest that the attack was foreseeable prior to the attack. Id. Finally, the court noted that once the fight began, efforts were taken to respond and mitigate. Id.

John Ray testified that he was working as the acting manager on duty on the night of August 13th. LLC Transcript at 40. He testified that he found a gun on the dance floor, used a towel and placed the gun in the safe. Id. at 41. The time between finding the gun and calling police was approximately three minutes. Id at 42. He further testified the protocol when a fight occurs is to immediately break up the fight. Id at 44. He explained that the employee at the door would be used to assist in resolving the situation. Id. If the fight could not be broken up, the police would be called. Id. He further testified that following finding the gun, he instructed security to pat down all customers upon entry. Id. at 48. Following the incidents, he closed Crusen for the night. Id. at 49. He also testified that he opened the side door to allow patrons inside to quickly exit and not create additional harm.

Wayne Klein also testified that during the previous 18 years there had never been a previous weapons incident. Id. at 55. He further testified that the fight protocol is to immediately break up the fight, try to diffuse the situation and then call the police to follow up. Id. Employees are pulled from other positions to assist in the resolving the situation. Id. at 56. Crusen employs private security. On the night in question, there were two private security guards in addition to Crusen employees. Id. It is clear from the record that Crusen did enough to ensure safety at its establishment and once the fight occurred, they promptly took measures to remedy the situation.

Additionally, there is nothing in the record which shows that Crusen could have foreseen the incidents would occur. They have not had prior issues related to patrons and events and took steps to ensure that incidents would not occur. (The only prior issues referenced in the record relates to an afterhours incident between two employees.) The assertion presented that Crusen’s security was lacking because they had transitioned from off-duty Peoria County Sheriff’s Deputies to private security is just an assertion. No evidence was presented that reflects that the transition somehow made the business more susceptible to armed violence. For example, West Peoria could have presented evidence in which similar incidents occurred following a transition or that there had been warnings regarding specific performers or guests who planned on

attending. West Peoria merely raised an assertion that the security was insufficient without presenting evidence to prove that assertion. West Peoria presented no evidence to reflect the appropriate number of security personnel that would have been sufficient for the night of the incident. Crusen could not have reasonably foreseen that their security was insufficient.

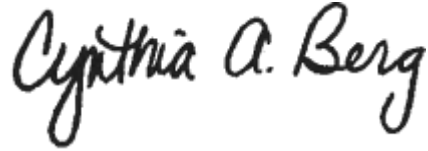
West Peoria further raises the assertion that the type of music performed should have raised concerns in that “pop” music would raise the likelihood of violence or criminal activity. However, West Peoria does not present any testimony or evidence by which to prove such a claim. The only testimony presented was that the type of music may change the crowd. LLC Transcript at 71. However, there is no evidence in the record to sustain this assertion that this type of crowd would have put Crusen on notice that it required additional security measures. There is reference to discussions that Crusen had with West Peoria regarding upgrading security, however, that discussion related to operating in a manner which would draw larger crowds than currently authorized such as holding outdoor events. LLC Transcript at 78. West Peoria could have presented evidence which reflects that “pop” style music is more susceptible to criminal elements. However, that evidence is not found in the record.

Accordingly, West Peoria’s decision to revoke the Sub-Class 1 entertainment license for the remainder of 2020 was not supported by the evidence in light of the entire record.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Local Liquor Commissioner for West Peoria, Illinois is reversed.

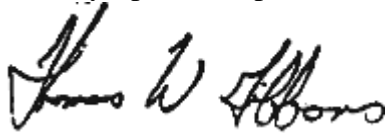
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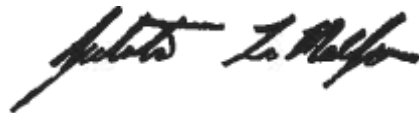
Cynthia Berg, Chairman



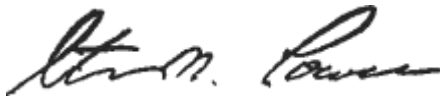
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



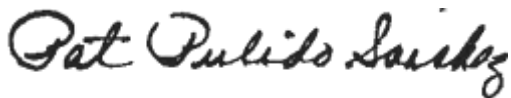
Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Donald O'Connell, Commissioner



Patricia Pulido Sanchez, Commissioner

THIS IS A FINAL ORDER

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 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 Petition is a jurisdictional prerequisite to the Administrative Review.

STATE OF ILLINOIS)
COUNTY OF COOK) 20APP13

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: April 12, 2021.



Abraham Zisook

Crusen & Klein, Inc.,
C/O Jack Teplitz
jteplitz@teplitzlaw.com

Local Liquor Commissioner for West Peoria, Illinois
C/O William Connor
lawyer_bc@attywilliamconnor.com