

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

JOHN A. SIMS, JR

L.A. CONNECTION INC.

1219 S. WESTERN AVE.

PEORIA, IL 61605

Illinois Lic. N/A

Appellant,

vs.

LOCAL LIQUOR COMMISSIONER FOR

PEORIA, ILLINOIS

Appellee.

Case No.: 20 APP 18

FINAL ORDER

FINAL ORDER

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

Procedural History

Sims filed a Change of Officers liquor license application with the Peoria Local Liquor Control Commission (“Peoria Commission”) on or about September 25, 2020. The pre-existing liquor license is issued to L.A. Connection Inc., d/b/a L.A. Connection, 1219 S. Western Avenue, Peoria, IL 61605. The Peoria Commission reviewed the application and sent a denial letter to Sims on October 30, 2020. Sims appealed the denial of the Peoria license on November 20, 2020. Pursuant to local ordinance and state statute, the State Commission held a hearing (via webex) on April 21, 2021, presided over by State Commission Chair Cynthia Berg, Commissioner Donald O’Connell, and Commissioner Thomas Gibbons. After reviewing the

entire record of proceedings, the full State Commission (absent Commissioners Patricia Pulido Sanchez and Julieta LaMalfa) deliberated on the matter on June 16, 2021.

Decision

On June 16, 2021, the State Commission AFFIRMED the decision of the Peoria Commissioner to deny a retail liquor license to Sims because Sims does not meet the qualifications of the Peoria Municipal Code to hold a liquor license.

Findings

Facts related to the Peoria Commission denial of Sims' change of officers/owner liquor license application are as follows:

1. On or about September 25, 2020, Appellant JOHN SIMS, JR. (hereinafter, "Sims") filed an application with the Peoria Commission requesting a change of corporate officers/owners for liquor license holder L.A. Connection, Inc., d/b/a L.A. Connection.
2. On the application, subsection twelve, Sims answered he had been charged with or convicted of a felony offense, which Sims described as "aid or assisting [sic] in a false tax return 2010."
3. On the application's individual data form, Sims indicated his prior employment as the owner of several businesses, including "Maxx Taxx, Maxx Insurance, and Maxx Wireless."
4. Sims also attached to his application an affidavit signed by Linda K. Randle regarding her transfer of all the stock of L.A. Connection, Inc., to Mr. Sims on September 14, 2020.
5. As part of the liquor license application process, Sims underwent a routine background investigation by the Peoria Police Department. The Peoria Police Department obtained and reviewed information regarding Sims' criminal history during the process.
6. The investigation confirmed that Sims was convicted of a federal felony tax offense, which occurred in the United States District Court for the Central District of Illinois, case

number 15-10035-001. Sims was charged with 16 offenses. Sims pleaded guilty to one violation of 26 USC § 7206(2), Aiding and Assisting in Preparation of False Income Tax Returns, and the remaining charges were ultimately dismissed.

7. Contrary to Sims' application indicating a date of 2010, the plea and judgment were entered in September 2016. Sims was sentenced to the custody of the Federal Bureau of Prisons for a term of twelve months and one day. Sims was ordered to surrender and begin his term on January 10, 2017. Sims was also ordered to pay restitution of \$59,091.00.
8. Sims was sentenced to one year of supervised release after the completion of his incarceration. The Peoria Police Department confirmed that Sims' supervised release was completed in January 2019.
9. Based upon the Peoria Police Department's findings, Police Chief Loren Marion recommended that the Peoria Commission deny Sims' liquor license application.
10. The Peoria Liquor Commissioner cited the City of Peoria Municipal Code section 3-63(5), which provides, in relevant part, "No license authorized by this chapter shall be issued to. . . (5) A person who has been convicted of a felony under any federal or state law, if the mayor determines after investigation that such person has not been sufficiently rehabilitated to warrant the public trust."
11. The Peoria Liquor Commissioner noted that Sims' conviction for a federal felony offense occurred within approximately four years of his application. The Peoria Liquor Commissioner also noted that Sims was sentenced to a period of federal incarceration for over one year and only completed his supervised release in January 2019.

12. The Peoria Liquor Commissioner found that the offense, Aiding and Assisting in the Preparation of False Income Tax Returns, is a crime of deception.
13. The Peoria Liquor Commissioner determined that Sims has not been sufficiently rehabilitated to warrant the public trust based upon the severity of his federal felony offense, the element of deception involved in that crime, and the recency of the completion of all the terms of his conviction.
14. Sims subsequently filed a timely appeal of the Peoria Liquor Commissioner's decision with the Illinois Liquor Control Commission.

Conclusions

Section 7-9 of the Liquor Control Act of 1934 ("the Act") places the statutory responsibility to hear appeals from final orders entered by Local Liquor Commissioners on the State Commission ("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 Peoria Municipal Code requires that decisions of Peoria Commission be reviewed "on the record." Peoria Municipal Code, Section 3-30. Peoria and Sims have also stipulated that this matter is to be reviewed "On the Record." Accordingly, the State 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 District 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 4-5 of the Liquor Control Act ("Act") authorizes a Local Liquor Control Commissioner to conduct criminal background checks of applicants for a liquor license to determine license eligibility. The Act states the "local liquor control commissioner shall have the right to examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof," 235 ILCS 5/4-5. The Act further authorizes a local liquor control commissioner "to require fingerprints of any applicant for a local license or for a renewal thereof...." 235 ILCS 5/4-7. The Peoria Code requires the Peoria Commission to deny a license of an applicant "who has been convicted of a felony under any federal or state law, if the mayor determines after investigation that such person has not been sufficiently rehabilitated to warrant the public trust." Section 4-63(5).

The Peoria Commission offers a process by which prospective purchasers of an existing liquor licensed business be approved as the new owner and officer of such existing licensed business. The Peoria Commission allows a new purchaser to file a change of officer/owner application to determine if the new owner/officer meets license eligibility requirements. If the new owner/officer meets eligibility requirements, the Peoria Commission approves the application and the purchaser of the existing licensed business becomes the approved owner/officer of the licensee. Through the change of officer/owner application process, the Peoria Commission allows for the transfer of an existing license from one person to another.

In this case, the Peoria Commission offered the applicant Sims the opportunity to file a change of officer/owner application which required the submission of applicant fingerprints for a criminal history background check. The Peoria Commission followed its application processing procedures as required by the Peoria Commission and as authorized by the Act. The Peoria

Commission accepted Sims' application to change the officer/owner of an existing licensed business. Pursuant to the review of the application, Peoria required Sims to be fingerprinted and subsequently investigated Sims' criminal background. After considering the results of the investigation and background check, the Peoria Commission denied the license application.

Sims has not contested the results of Peoria's criminal background investigation nor does he allege any application process irregularities except that he was not offered a hearing to prove that he is sufficiently rehabilitated to warrant the public trust to hold a liquor license. Sims alleges that Peoria did not give him an opportunity to prove that he has been sufficiently rehabilitated and that the denial of the right to have a rehabilitation hearing before the Peoria Commission requires the reversal of the Peoria Commission decision.

Neither the Peoria Liquor Code nor the Illinois Liquor Control Act, however, require the Peoria Commission to have offered Sims a hearing to demonstrate that he has been fully rehabilitated from a felony conviction. The Peoria Code requires the Peoria Commission to deny a license application for a person convicted of a felony "if the mayor determines after **investigation** that such person has not been sufficiently rehabilitated to warrant the public trust." Peoria Code, Section 3-63(5) (emphasis added). Moreover, the Liquor Control Act does not require that a local liquor control commissioner offer an applicant a hearing prior to the denial of a license application (See 235 ILCS 5/7-5 requiring the Local Commission to hold a hearing prior to liquor license suspensions and revocations, not license denials). In this case, the Peoria Commission determined after an "investigation" that Sims was not eligible for a liquor license which is sufficient to satisfy the local ordinance requirement and the State Act "according to 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, (1st District 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 the Peoria Commission conducted an examination of Sims' criminal background, considered the type of crime Sims committed, and considered the recency of the crime. The findings set forward sufficient facts by which a decision could be reached. Accordingly, the order of the denial of the license supports the findings that Sims is ineligible for a license because of his criminal background.

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 hold that findings related to the denial of Sims' change of officer/owner liquor license application are 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, (1st District 1996).

The Peoria Commission decision to deny Sims change of officer/owner application was not unreasonable or arbitrary and is supported by evidence in the record. The investigation confirmed that Sims was convicted of a federal felony tax offense, which occurred in the United States District Court for the Central District of Illinois, case number 15-10035-001. Sims was charged with 16 offenses and pleaded guilty to one violation of 26 USC § 7206(2), Aiding and Assisting in Preparation of False Income Tax Returns. Sims was sentenced to the custody of the Federal Bureau of Prisons for a term of twelve months and one day. Sims was ordered to surrender and begin his term on January 10, 2017 and ordered to pay restitution of \$59,091.00. Sims was also sentenced to one-year supervised release which was completed in January 2019.

The Peoria Code expressly states that "No license authorized by this chapter shall be issued to. . . (5) [a] person who has been convicted of a felony under any federal or state law, if the mayor determines after investigation that such person has not been sufficiently rehabilitated to warrant the public trust." The Peoria Liquor Commissioner noted that Sims' conviction for a

federal felony offense occurred within approximately four years of his application and that his completion of supervised release in January 2019 was even closer to the license application date. While it may have been advisable for the Peoria Commission to offer Sims a hearing to provide him an opportunity to present evidence of his rehabilitation, there is no requirement they offer Sims such a hearing. Furthermore, the Peoria Commission did examine the nature of the offense (federal crime of deception) and the recency of the crime (2016) and concluded that such factors prevented rehabilitation. Either way, hearing or no hearing, the fact that the Peoria Commission investigated and reviewed the circumstances of the Sims conviction is sufficient to demonstrate that the Peoria Commission did not abuse its discretion. In the review of this matter, the State Commission does not find the decision of the Peoria Commission to deny Sims a license based on his criminal background to be unreasonable or arbitrary.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Local Liquor Commissioner for Peoria is **AFFIRMED.**

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on August 23, 2021.



Cynthia Berg, Chairman

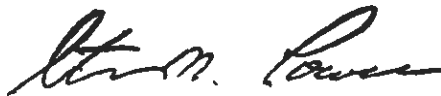


Melody Spann Cooper, Commissioner

Julieta LaMalfa, Commissioner



Thomas Gibbons, 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.

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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: XXX, 2021.

/s/ Richard Haymaker

Richard Haymaker

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Local Liquor Commissioner for Peoria, Illinois
c/o Michael Toren
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