

STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION

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

Case No.: 21 APP 05

Appellant,

ORDER

vs.

HARVEY LIQUOR CONTROL  
COMMISSION

Appellee.

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 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, 2020. On or about August 5, 2020, 4-Play received a liquor license renewal packet from the Harvey Commission. On October 2, 2020, 4-Play submitted a renewal application to the Harvey Commission with missing applicant signatures and missing excise tax forms and excise tax payments. On or about November 13, 2020. The Harvey Commission sent a copy of a Citation and Notice of Hearing for Intent to Not Renew a City of Harvey Liquor License to be held on November 20, 2020. The Harvey Commission granted

continuances to the renewal hearing on 11/20/2020, 12/17/2020, 1/19/2021, and 1/25/2021. The Harvey Commission held an evidentiary license renewal hearing with counsel present on February 2, 2021. On February 10, 2021, 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, 2020. On February 25, 2021, 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, (2<sup>nd</sup> 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 the 4-Play with the necessary fair and legal process to defend against the license renewal charges. In reviewing the actions of a local liquor commission, the State 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 Harvey Commission sent a license renewal package to 4-Play on or about August 5, 2020. *City Exhibit 104-105*. The renewal notice contained a letter from Mayor Christopher J. Clark which highlighted the renewal deadline date in the following paragraph:

**The deadline to submit a completed application and all required information and documentation is Friday, October 2, 2020. No applications will be accepted for consideration for liquor licenses for the 2020-2021 license year after that date, and no supplemental information or documentation will be accepted after that date.**

*City Exhibit. A-104*. The application renewal packet included a checklist of items that all license holders needed to provide with the renewal application by the application deadline of October 2, 2020. *City Exhibit A12-A13*. Furthermore, the letter advised applicants of renewal application assistance offered by city officials and legal counsel for an additional \$500 and that applicants must assume the risk of application denial if the applicant submitted a “deficient or incomplete” application. *City Exhibit A104-105*. Applicants would not be permitted “to amend, correct, or supplement your documentation” after submission. *Id.*

The remainder of the timeline of the renewal denial as detailed in the Harvey Commission denial order is not contested and demonstrates the Harvey Commission provided 4-Play with fairness and due process prior to denying the renewal of the license. It is not contested that 4-Play did not sign an affidavit to the application (“License Affidavit”) and a Financial Disclosure Form related to the financial background of the license holder, required of all applicants. *City Exhibits, A14-A20*. 4-Play’s application submission also did not include City of Harvey excise tax forms

(“Liquor Returns”) nor remitted excise taxes as required in the application checklist. *City Exhibit A12-13*. Because of the deficiencies of the renewal application, the Harvey Commission sent 4-Play a “Citation and Notice Hearing for Intent not to Renew a City of Harvey Liquor License” on November 13, 2020, for a November 20, 2020, hearing. *City Exhibit A7-A8*. Upon request of 4-Play at three out of four scheduled hearings, the Harvey Commission granted continuances and a hearing was ultimately held on the fifth attempt on February 2, 2021, more than three months after the 4-Play license expired. *City Exhibits B, C, D*.

The Harvey Commission has relied on both State and local law to notify 4-Play of its renewal obligations and to justify its decision to deny the renewal of the application. Pursuant to the Illinois Liquor Control Act, 235 ILCS 5/4-5 and 235 ILCS 5/6-10, the Harvey Commission has the authority to request all of its renewal applicants, including 4-Play, provide books and records prior to renewal so that the Harvey Commission may review applicants’ compliance with State and local law. Books and records related to whether 4-Play filed Liquor Returns and remitted local excise taxes (“Liquor Taxes”) is particularly relevant to the renewal of the license. 4-Play was obligated to file Liquor Returns and pay Liquor taxes pursuant to Chapter 3-34 of the City of Harvey Code of Ordinances.

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 the Liquor Returns, Liquor Taxes and requisite signatures on the application supporting documentation required of all renewal applicants. In addition, the Harvey Commission gave 4-Play the opportunity to explain its application deficiencies at the February 2, 2021, hearing. The Harvey Commission relied on local and state 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, (1<sup>st</sup> 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 Comm’n of the City of Chicago*, 394 Ill.App.3d 516, 522 (1<sup>st</sup> Dist. 2009).

As local liquor control commission, the Harvey Commission has the authority and the responsibility to ensure that all of its license holders comply with State and local laws.

The Illinois Liquor Control 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, or any licensee upon whom notice of revocation or suspension has been served in the manner hereinafter provided, and to examine or cause to be examined, the books and records of any such applicant or licensee; to hear testimony and take proof for his information in the performance of his duties, and for such purpose to issue subpoenas which shall be effective in any part of this State.

235 ILCS 5/4-5 (See also 235 ILCS 5/6-10). Specifically related to the collection of the local Liquor Tax, Chapter 3-34 of the Harvey Municipal Code requires all on-premises Harvey liquor license holders to file monthly returns and remit excise or drink taxes. *City of Harvey Code of Ordinances, Chapter 3-34*.

In this case, the evidence is clear and not contested that 4-Play did not submit Liquor Returns or remit actual Liquor Taxes. Per the testimony of Harvey Chief of Staff

Corean Davis who manages the liquor license renewal process, 4-Play never submitted the Returns and Taxes. *Local Transcript*, pp. 12-14. Per Davis, all applicants received the same application requirements and contacted her if they had any questions about the process. *Id.*, p. 15. Davis indicated that neither the owner nor any of the officers of 4-Play ever contacted her to submit the forms. *Id.* As stated in the August 5, 2020, renewal packet sent to all licensees, renewal applicants with questions about the renewal process could have reached out to Davis at her email address at any time between August 5, 2020, and October 2, 2020. *City Exhibit A-105*. From October 2, 2020, to February 2, 2021, 4-Play had the opportunity to submit all necessary tax forms and pay the actual taxes but nothing in the record demonstrates they made any attempt to submit the Liquor Returns or Liquor Taxes at any point prior to the local order to deny license renewal.

4-Play's defense against the charge of failing to submit monthly Liquor Returns and failing to remit Liquor Taxes lacks relevancy and credibility. First, the Harvey Ordinances are clear that a condition of an on-premises license is for the license holder to file monthly excise tax returns and remit monthly excise taxes. *Harvey Code of Ordinances, Chapter 3-34*. Ignorance of this law is not a defense for a failure to file and remit taxes. Admittedly, however, the record implies the Harvey Commission had not regularly enforced the filing of Liquor Returns or payment of Liquor Taxes prior to the 2020-2021 license renewal period. Notwithstanding a prior lack of enforcement, however, the Harvey Commission made it clear at least two months before the license renewal deadline, that on-premises license holders would be held accountable for submitting previously unsubmitted Liquor Returns and Liquor Taxes. The Harvey Commission did not spring this requirement on license holders at the last moment. In the August 5, 2020, renewal packet, the Application Checklist clearly states the

applicant is required to submit:

“Copies of all reports you filed with the City of Harvey in 2019-2020 for excise taxes and copy of receipts from City of Harvey for excise tax payment.”

*City Exhibit A-13*. Even if it was unlikely that 4-Play or any other Harvey on-premises licensee filed local excise taxes during 2019-20 or before, Harvey provided an opportunity for license holders to come into compliance before the October 2, 2020, renewal date. The Harvey Commission gave clear instructions to applicants to reach out to Chief of Staff Davis if they had any questions. Davis testified that no person from 4-Play ever requested her assistance on obtaining tax forms or filing tax returns. *Local Transcript, p. 15*. Even though there is some testimony that 4-Play was confused about how to submit tax forms and pay taxes, such testimony lacks credibility when the record establishes that the owner of 4-Play satisfied the excise tax requirement for a different business she owns in Harvey. *Local Transcript, pp. 46-48*. 4-Play either knew or should have known its license renewal depended on the submission of Liquor Returns and Liquor Taxes.

Furthermore, the evidence in the record of 4-Play’s defense that it paid a \$10,000 deposit to the City of Harvey for the belated payment of previously unpaid excise taxes is not a defense to the tax related charges forming the basis of the renewal denial. The record is clear that 4-Play paid a \$10,000 deposit to the City of Harvey on September 22, 2020, for the payment of excise taxes that 4-Play may not have paid either prior to the 2019-2020 license year or prior to the 2020-2021 license year. *City Exhibit, A-38*. Whatever years the \$10,000 deposit was meant to cover, it is not relevant to the renewal application requirement that 4-Play submit the actual monthly tax forms and remit the actual tax payments. 4-Play does not contest that it did not submit the monthly returns nor pay the actual monthly taxes. It argues that the \$10,000 deposit should have substituted for its responsibility to file returns



and remit the actual tax or that Harvey needed to tell 4-Play exactly how much tax they owed before 4-Play agreed to submit the returns and taxes (*See Statement of Annette Smith, City Exhibit A-60*). In this regard, 4-Play seems to require the City of Harvey conduct an audit of the 4-Play business and provide a tax bill before 4-Play can be held accountable for tax requirements of a renewal application. If the deposit payment confused 4-Play, it could have requested assistance from Chief of Staff Davis. Even after the renewal deadline, when it should have been clear to 4-Play that the deposit was insufficient to satisfy application requirements, the record further implies that 4-Play could have submitted its returns and remitted the actual taxes at any point between the October 2, 2020, deadline and the February 2, 2022, hearing. 4-Play did not do this even though the owner of 4-Play had submitted the excise tax returns for a different Harvey business. 4-Play's \$10,000 deposit defense to the charge that it failed to submit Liquor Returns and actual Liquor Taxes lacks credibility and does not justify its continued failure to abide the renewal application tax requirement.

In addition to the failure to file excise tax returns, the evidence in the record clearly shows 4-Play failed to certify renewal application documents. As a prerequisite for renewal, the Harvey Commission reasonably requires all of its license holders to certify answers on its application forms in lieu of conducting a full investigation of every license holder for every renewal period. The Harvey Commission application forms requiring signature of the applicant include common certification language found on any application. Harvey's standard Financial Disclosure Form, intended to verify the beneficial owner of the licensed business, includes the following certification language:

I hereby certify, under penalty of perjury, that I am authorized to execute this form and that all information I have provided on this form is complete, true, and correct. I certify that I understand that information provided on this Financial Disclosure Form may be corroborated. The City of Harvey reserves

the right to request any and all documentation it determines necessary to perform this verification. I and/or my representative will have three business days to meet such requests, and failure to do so may result in a disapproved or suspended license application. I understand and accept that any falsification or purposely holding back of this information is grounds for recalling the license(s) issued.

*City Exhibit A-21.* Likewise, the Harvey Commission requires all of its license renewal applicants to sign a standard application affidavit (“License Affidavit”) in which the applicant certifies the application is “true and correct,” untrue statements “shall be cause for ...non-renewal,” and the applicant will not violate federal, State, or local laws. *City Exhibit A-17.* The Harvey documentation certifications are standard and reasonable application certification statements.

The evidence in the record clearly demonstrates 4-Play refused to sign the License Affidavit and Financial Disclosure Form. Even though 4-Play signed some forms that were a part of the renewal application packet (*See City Exhibits A-23, A-26*), 4-Play left the License Affidavit and Financial Disclosure Forms unsigned and, thus, the information contained in such documents was left uncertified. 4-Play’s defense for not signing application forms was a concern that the Harvey Commission was setting a trap to get 4-Play to acknowledge that it owed excise taxes. *Local Transcript, pp. 37-38.* It is difficult to understand, however, why 4-Play would not sign the License Affidavit and Financial Disclosure Form in order to simply verify the statements made in such documents and also certify that it would comply with all laws related to business operation. If 4-Play complied with the local excise tax law, then it would have nothing to fear in signing the application documents. Refusing to make standard application certifications for fear that such certifications might be used against it to prove non-compliance seems to reinforce the Harvey Commission basis for refusing to renew the

4-Play license.

For the stated reasons, the Harvey Commission relied on substantial evidence in light of the whole record to refuse to renew the 4-Play 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 discretion 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, (1<sup>st</sup> Dist. 1996).

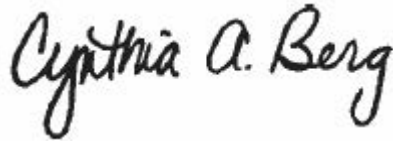
In this case, the Harvey Commission decision not to renew the 4-Play license is reasonable based on the entirety of the evidence reviewed by the Harvey Commission. As stated, the Harvey Commission's bases to deny the 4-Play license renewal was due to 4-Play's failure/refusal to file Liquor Returns and pay actual Liquor Taxes for the 2019-2020 license year and because 4-Play failed/refused to certify statements and information provided with the renewal application. Because Harvey's defenses to its renewal application deficiencies do not have merit for reasons stated herein, the Harvey Commission's order to refuse to renew the 4-Play license is reasonable, is not arbitrary, and is not an abuse of discretion.

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.



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Cynthia Berg, Chairman



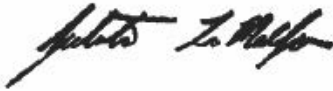
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Melody Spann Cooper, Commissioner



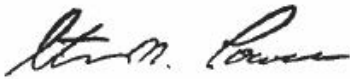
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Thomas Gibbons, Commissioner



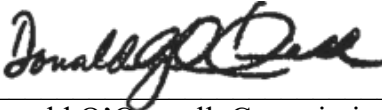
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Julieta LaMalfa, Commissioner



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Steven Powell, Commissioner



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Donald O'Connell, Commissioner



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Patricia Pulido Sanchez, Commissioner

