

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

MC GEE'S BAR & GRILL, INC

Premises Located at:
1112 STATE ST
MADISON IL 62060-1222

Appellant,

vs.

MADISON LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 21 APP 06

License Number: 1A-0074804

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 McGee's Bar & Grill, Inc., Appellant, (hereinafter "McGee's") the Commission being otherwise fully informed and a majority of its members do hereby state the following:

Procedural History

On or about March 24, 2021, the Madison Commission sent McGee's a letter/notice of hearing alleging local ordinance violations because McGee's allegedly had been operating with an undisclosed owner of the business. On April 8, 2021, the Madison Commission held a hearing on the allegation. On April 12, 2021, the Madison Commission entered an "Order" finding McGee's had willfully made a false statement of material fact on an application for a liquor license by failing to disclose a partner/shareholder of the business. As a result of the finding, the Madison Commission suspended the McGee's license for six (6) months and assessed a fine of \$750. Due

to a prior summary suspension of the liquor license¹, the Madison Commission's Order acknowledged that McGee's had already partially served a suspension and permitted McGee's to reopen on September 8, 2021. On or about, April 30, 2021, McGee's filed a Notice of Appeal with the State Commission appealing the Madison Commission fine and suspension. Even though the City of Madison has not passed an ordinance requiring appeals of a local commission decision be heard "on the record," both parties stipulated that the State Commission review this matter "on the record." On June 10, 2021, the State Commission represented by Chair Cynthia Berg heard an on the record argument on the matter by the Madison Commission and reviewed written statements submitted by the Madison Commission and McGee's.² The State Commission as a whole reviewed the entire record and deliberated on the matter at the July 20, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission AFFIRMS the finding of a license violation and \$750 fine and MODIFIES the six (6) month suspension order to a 30-day suspension of the liquor license with the suspension already served.

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

¹ The decision and order herein does not comment or evaluate the decision of the Madison Commission to issue an emergency/summary closure order suspending McGee's license beginning March 10, 2021 pursuant to 235 ILCS 5/7-5. Similar to the Madison Commission, however, the State Commission recognizes that McGee's license was effectively suspended and the business was closed from March 10, 2021 through and likely beyond the hearing date of April 8, 2021.

² After three continuances, the State Commission mandated oral presentations of arguments be heard on June 10, 2022, and that if either side could not appear, then a written summary of the arguments were to be provided. The Madison Commission appeared but McGee's did not but submitted written summation of the argument. The Commission has considered such written submission.

Commission will conduct an “On the Record” review of the official record of proceedings before the Local Liquor Commission. 235 ILCS 5/7-9. The State Commission may only review the evidence found in the official record. *Id.* Madison has not adopted a local ordinance requiring any appeal from an order of the Madison Commission to be a review of the official record, but both the Madison Commission and McGee’s have stipulated that the State Commission hear this appeal “on the record” pursuant to 11 Ill. Admin. Code 100.360(c). See “*Stipulation To On the Record Hearing.*” 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 State 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 the local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm’n*, 405 Ill. App. 3d 1071, 1080, (2nd Dist. 2010). The Court held that “[s]uch review mandated assessment of the discretion used by the local authority, stating that “[t]he function 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 a manner provided by law.

The Madison Commission ruled according to law in providing McGee's with the necessary fair and legal process to defend against the license charges levied against McGee's but did not rule according to law in the imposition of a six-month suspension.

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 fine and suspend the license. In order to provide adequate legal notice of charges, the local commission must provide the licensee with at least three days written notice of the charges before a hearing and, in addition, give the licensee the opportunity to prepare a defense to the charges. *235 ILCS 5/7-5*.

In this case, on March 25, 2021, the Madison Commission personally served Robert McGee, owner of record, a notice to appear at a hearing scheduled to occur on April 8, 2021. *ILCC pp. 009-010*. The notice adequately informed McGee's of the allegation that McGee's had failed to disclose the interest of a 40% owner of the business, Jason Tucker. At the hearing, McGee's was represented by counsel and did not appear to require additional time to prepare a defense. The Madison Commission presented witnesses and exhibits to support its allegations and McGee's was allowed to cross-examine witnesses and challenge such exhibits. Four days after the hearing, on April 12, 2021, the Madison Commission issued a written order finding McGee's violated local ordinance 111.07 by willfully misrepresenting statements made on a liquor license application by failing to disclose the interest of Jason Tucker, a 40% owner of the business. *ILCC p. 006*.

Therefore, the Madison Commission proceeded according to law by providing McGee's with sufficient due process to answer the license violation charges.

Having found McGee's had committed a license violation, the Madison Commission Order issued a six-month suspension against the McGee's license which exceeded the maximum suspension permitted by the Illinois Liquor Control Act, and therefore, such suspension requires modification. Section 4-4 of the Illinois Liquor Control Act ("Act") grants local liquor control commissioners the authority to suspend licenses, however, such suspension authority is capped at 30 days. Per the Act, a "local liquor control commissioner shall [] have the following powers, functions, and duties with respect to licenses,....:"

1. To grant or suspend *for not more than 30 days* or revoke for cause all local licenses issued to persons for premises within his jurisdiction.

235 ILCS 5/4-4 emphasis added. Since the Madison Commission Order is for a \$750 fine and a six (6) month license suspension, the Order has exceeded the authority in the Act authorizing local liquor control commission license suspensions. The Order, therefore, is modified to a \$750 fine and 30-day license suspension with time already served.

B. Whether the order is supported by the findings.

The Madison \$750 fine and a modified 30-day suspension is supported by the findings. The Illinois Appellate Court has ruled that, as a reviewing body, "[t]he 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 Madison Commission found that McGee's willfully misrepresented on a liquor license application the fact that Robert McGee was the only person with an interest in the liquor license. Furthermore, there is evidence in the record that McGee's previously was cited for violating COVID-19 closure protocols, and thus had accrued a negative license history. *ILCC p. 032*. Because of the willfulness in the misrepresentation of McGee's ownership and the prior negative license history, the imposition of a \$750 fine and a modified 30-day suspension is not an arbitrary penalty nor an abuse of discretion. Therefore, the modified order and penalty is supported by the findings.

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

The Madison 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).

The sole basis of the Madison Commission decision to fine and suspend the McGee's license is due to the willful failure to disclose the equitable ownership interest of Jason Tucker on a September 2020 liquor license application and a January 2021 license renewal application. Tucker also has been convicted of a felony and is not eligible to have an ownership interest in a business with a liquor license, and thus, there is reason and motive to have kept Tucker's ownership interest in McGee's off of liquor license applications. The local hearing record provided sufficient

and substantial evidence that Robert McGee and Jason Tucker had an agreement and that Tucker held a 40% partnership interest in McGee's at or near the time of the original application. Because the evidence demonstrates Robert McGee knew of Tucker's interest at the time the original liquor license application was filed in September 2020, there is substantial evidence in the record to prove McGee willfully misrepresented on the application that he held the sole interest in McGee's.

Substantial facts demonstrating Tucker's interest are as follows:

1. A Madison application for a liquor license (executed on September 3, 2020, by Robert McGee) inquired "Will there be any partners or stockholders" to which the answer was "No." *ILCC pp. 152-155.*
2. Jason Tucker ("Tucker") testified he held a 40% interest in McGee's memorialized in a November 2020 partnership agreement between Robert McGee and Tucker. *ILCC 065-066; Exhibit 1.*
3. Tucker is a convicted felon. *ILCC p. 078; Exhibit 3.*
4. Tucker testified
 - a. He was "part owner of bar" *ILCC p. 058.*
 - b. He "bought a bunch of equipment for -we was doing hot wings – you know, food." *Id.*
 - c. "We have a partnership. I'm 40 percent owner. He's 60 percent owner." *ILCC p. 060.*
 - d. Discussions on the partnership agreement occurred in August/September. *ILCC p. 061.*
 - e. To establish his ownership interest, Tucker would work on the interior of the bar and pay for the equipment. *ILCC p. 062.*

5. Robert McGee testified an agreement between he and Tucker existed as early as mid-August 2020. *ILCC pp. 100-101.*
6. Robert McGee acknowledged Tucker worked at the bar but he did not pay Tucker a wage. *ILCC p. 103.*
7. September 2020 text messages between Robert McGee (“McGee”) and Tucker evidence a prior agreement (at the time of the original liquor license application) between McGee and Tucker:
 - a. September 2020 Text between McGee and Tucker: “We need to talk about signing the contract bro let me know whats going on.” *ILCC 176.*
 - b. McGee text to Tucker: “As far as anybody ask me I’m telling them you part-owner in bar you run the show.” *ILCC p. 179.*
 - c. September 28, 2020, Text from Tucker to McGee indicates that Tucker wanted to memorialize the partnership in writing because Tucker had been working at the bar and invested in its operation. *ILCC p. 192.*

The evidence in the record demonstrates McGee and Tucker had an equitable partnership agreement in McGee’s as early as mid-August 2020 and the Robert McGee (and Jason Tucker) intentionally omitted Tucker’s interest in McGee’s on the September 3, 2020, liquor license application.

IT IS HEREBY ORDERED:

For the reasons stated herein, the Madison Commission decision to fine McGee’s \$750 is **AFFIRMED** and the decision to suspend McGee’s license for six (6) months is **MODIFIED** to a 30-day suspension with the suspension days having already been served.

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 July 20, 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)
COUNTY OF COOK) 21APP 06

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

McGee's Bar & Grill, Inc.
c/o Attorney Tanja Cook
tcook@cooksedabreslaw.com

Madison Liquor Control Commission
c/o Attorney Derek Filcoff
derekfilcoff@gmail.com