

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

C & R ENTERTAINMENT, INC.
d/b/a WAREHOUSE ON 15TH
2121 N. 15TH AVENUE
MELROSE PARK, IL 60160-1409

Appellant,

vs.

MELROSE PARK LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 21 APP 11

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 C & R Entertainment, Inc. d/b/a Warehouse on 15th Appellant, (hereinafter “Warehouse”), the Commission being otherwise fully informed and a majority of its members do hereby state the following:

Procedural History

On or about December 31, 2020, the Melrose Park Liquor Control Commission (hereinafter “Local Commission”) sent a Notice of Hearing to Warehouse for it to appear before the Local Commission on a multiple count charge against the Warehouse Class A liquor license.¹ The Local Commission held hearings on January 21, 2021, February 24, 2021, May 20, 2021, and May 27, 2021, on the multiple count charge. On August 13, 2021, the Local Commissioner issued an Order

¹ The 12/31/2020 notice of hearing on the charges against the Class A liquor license are distinguished from the summary closure “Order of Closure” served on the licensee at the same time but pursuant to the Local Commissions summary closure authority of 235 ILCS 5/7-5. The summary closure action is not a formal disciplinary action against the Class A license, but rather an action taken by the Local Commissioner pursuant to the judgment of Local Commissioner that the continued operation of the licensed business immediately threatens the community. This State Commission Order herein does not review the actions taken by the Local Commissioner pursuant to summary closure authority of Section 7-5 of the Liquor Control Act.

Furthermore, the Village of Melrose Park sent a Notice of Hearing to the Appellant related to the Appellant’s business license (20-BL-13) which is also not considered a part of this Order.

revoking the Warehouse Class A liquor license and issued a \$1,000 fine against the licensee. In addition, the Local Commissioner refused to the renew the license on similar grounds. The Local Commissioner found sufficient evidence to prove five counts of the original charge. On September 2, 2021, Warehouse filed a Notice of Appeal before the State Commission. After status calls and one continuance, the State Commission represented by Chair Cynthia Berg and Commissioner Melody Spann Cooper heard on the record arguments on the matter on June 23, 2022. The State Commission as a whole reviewed the entire record and deliberated on the matter at the August 24, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission AFFIRMS the order of the Local Commission to revoke and refuse to the renew the Warehouse Class A liquor license and affirms the assessment of a \$1,000 fine against the Warehouse.

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 State Commission may only review the evidence found in the official record. *Id.* Melrose Park has adopted a local ordinance requiring any appeal from an order of the Local Commission to be a review of the official record. *Melrose Park Municipal Code, Ordinance 2350 Amending Chapter 5.12*. 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.'" *Koehler*, 405 Ill. App. 3d at 1080 (2nd Dist. 2010).

A. Whether the local liquor control commissioner has proceeded in a manner provided by law.

The Local Commission acted in a manner provided by law by providing Warehouse with the due process necessary to defend against the charges identified in the Local Complaint. As to technical notice requirements, the Liquor Control Act requires a local commission to provide a minimum of three days written notice of the charges to a licensee to answer revocation or suspension charges at a hearing. *235 ILCS 5/7-5*. In this case, the Local Commission executed a Notice of Hearing on December 31, 2021, for an initial January 7, 2022, hearing. *ILCC 519-536*. Because the first substantive hearing was January 21, 2021, the Local Commission gave

Warehouse additional time to prepare a defense. The eighteen-page Notice of Hearing alleged facts and referenced violations of various statutes, ordinances, and executive orders in a multi-count charge. *ILCC 533-536*. Warehouse was represented at the hearing by counsel and was permitted to cross-examine Local Commission witnesses and present its own case in defense of the charges. *ILCC 107-461*. The hearing process occurred over a four-month period of time with on four separate hearing days. *Id.*

B. Whether the order is supported by the findings.

The Local Commission order 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 Local Commission order to revoke, refuse to renew, and fine the Warehouse license is supported by the findings because the Local Commission found multiple violations of law occurring over a long period of time to which Warehouse ownership either knew or should have known threatened the health, safety, and welfare of the surrounding community. The Count I finding that the Warehouse violated Governor of Illinois COVID-19 Executive Order directly threatened the health and safety of the community by allowing people to congregate in close proximity to each other at a time when the coronavirus was highly transmissible and deadly prior to the availability of vaccinations. The Count II violation of making a false statement on an application relates to actual or constructive knowledge of the failure to appropriately disclose the

ownership of the licensed business to determine if the new owners were eligible to hold a license. Because the Warehouse owners failed to disclose their ownership interest, they were not fingerprinted for a background check according to Local Commission application procedures. The finding of Counts III and IV relate to conduct of illegal acts on the licensed premises and the operators intentional act to deny inspection of the premises to law enforcement officials that may have curbed some of the illegal acts. The Count V violation of failing to maintain a possessory interest for a minimum of one year as required by local ordinance and state statute implies an intentional effort by the licensed owner of record to limit exposure and liability for any of the activities occurring at the licensed location. The aggregation of the finding of all violations supports the penalties of license revocation, refusal to renew, and a \$1,000 fine which are not arbitrary nor an abuse of the Local Commission's discretion to protect the health, safety, and welfare of the community.

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

The Local 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 record is clear that the Local Commission relied on substantial evidence to support its findings that Warehouse committed a five-count violation of both state and local laws.

Count I – Violation of Governor’s Executive Order for COVID 19 Restrictions

The Local Commission found the Warehouse to have committed a violation of the Governor of Illinois COVID 19 Executive Orders which restricted capacity and hours of operation for bars and restaurants during the final few months of 2020 at the height of the COVID 19 pandemic and prior to the distribution of vaccines. Successive thirty-day Executive Orders in place at the time restricted bars and restaurants by prohibiting in-door consumption of food and drink at any time and prohibited all indoor and outdoor activity after 11 p.m. every night. The bars and restaurants of the Village of Melrose Park were subject to Tier 3 Region 10 mitigation restrictions which began on October 27, 2020, and were extended twice through December 12, 2020, and January 9, 2021. *See Governor of Illinois Executive Orders 2020-63, 2020-71, 2020-74.*

Even though the Warehouse argues that it did not operate as a bar or restaurant but rather as a private social club under the name “The West Side Social Klub,” the facts in the record dictate otherwise. First, and likely conclusive in its own right, the location is licensed to sell alcoholic liquor for the consumption on the licensed premises to the public not as a private club. The Warehouse Class A license subject to this disciplinary action authorizes the sale of alcoholic liquor for the consumption on premises until 2 a.m. to the public. The local Class F license, not held by the Warehouse, is a “Private Club and Association License” and authorizes “the retail sale of alcoholic liquors in private clubs, associations, or organizations-organized nonprofit under the laws of the State of Illinois.” *Melrose Park Code, Section 5.12.100(7)*. Such licensing is prima facie evidence that the business is a bar/restaurant. If the business was in fact a private social club, the licensee would meet the definition of “club” in the Illinois Liquor Control Act (“Act”). The first requirement of a “club” licensee in Section 1-3.24 of the Act requires the licensee to be “a corporation organized under the laws of this State, not for pecuniary profit, solely for the

promotion of some common object other than the sale or consumption of alcoholic liquors” (in addition to a litany of other requirements). 235 ILCS 5/1-3.24. In this case, the license holder, C & R Entertainment, Inc. does not meet the first requirement of a “club” licensee which is to be a not-for-profit entity.² Even though The West Side Social Klub, Inc. may be an active not-for-profit corporation, such entity is not the licensee of record at the Warehouse address 2121 N. 15th Avenue, Melrose Park.

Second, the facts in the record demonstrate that the licensed location under C & R Entertainment Inc. operated as a night club not a private social club. According to advertisements in the record, the business referred to itself as “Club 2121.” *ILCC 456-461*. Through various advertisements in mid to late December 2020, the business announced, “Doors Open at 7:00” with “Bottle/Hookah Service” and that patrons should text for reservations and “BOOK YOUR RESERVATIONS NOW!! CHRISTMAS DAY & NYE!!” *Id.* Advertisements demonstrate the business offered DJ Entertainment and comedians. *Id.* Another advertisement read:

\$10 tickets \$20 @ the door
Doors Open: 6PM Showtime: 7PM
Location: 2121 15th Ave., Melrose
Park, IL 60160

ILCC 188. Such announcements show the licensed premises was open for business as a public bar/nightclub as Club 2121, not as a private social club.

Under these circumstances, it is clear the Warehouse committed multiple violations of the Governor Executive Orders from early November 2020 through the end of 2020. The Executive Orders in place at the time prohibited indoor dining and drinking and all indoor/outdoor activity after 11 p.m. Testimony from multiple police officers on November 1, 2020 (twice), December

² This Commission takes notice that pursuant to the Illinois Secretary of State website as of September 2, 2022, C & R Entertainment Inc. was involuntary dissolved as a corporate entity on March 11, 2022.

17, 2020, December 19, 2020, December 20, 2020 (twice), and December 28, 2020, revealed numerous persons drinking inside the Warehouse location both before and after 11 p.m. in clear violation of the Executive Orders. *ILCC pp. 041-042, 051-052, 054-055, 059-060, 062-063*. Furthermore, even the owner of the licensee testified persons were inside dining and drinking at the licensed location on December 18, 19, 20, 23, 26, and 27, 2020, during the Executive Order time periods. *ILCC 030-031*.

Therefore, there is substantial evidence to support the findings that the Warehouse violated the Governor Executive Orders related the COVID 19 pandemic.

Count II – False Statement on License Renewal Application

There is evidence in the record to support the finding that the licensee made a false statement on a liquor license renewal application in violation of the Illinois Liquor Control Act and Melrose Park Ordinance. The Illinois Liquor Control Act requires that a person who “make[s] any false statement ...in obtaining any license hereunder ... shall be guilty of a petty offense....” *235 ILCS 5/10-1(c)*. Melrose Park also requires applicants to not knowingly make false statements. *Melrose Park Municipal Code 5.06.030*. Melrose Park ordinances further state:

Nothing in this chapter shall excuse or relieve any saloon, tavern or liquor store, in the village, from the restrictions and requirements of any other ordinance or ordinances of the village or of the statutes of the state of Illinois.

Melrose Park Municipal Code, Section 5-12-180. Therefore, if a Melrose Park liquor license applicant makes a false statement on a liquor license application, it is in violation of Section 5-12-180.

It is clear that the licensee made such a false statement on an application in failing to disclose the 100% owner of the business, Joe DeSimone. Evidence in the record demonstrates that Melrose Park originally issued the liquor license to C & R Entertainment Inc. in 2017 when Kevin

Cahill owned 100% of the shares of C & R Entertainment. *ILCC 012*. Cahill clearly signed the 2017 application documents and was fingerprinted as the licensed owner of the business. *ILCC 156-163*. Per the testimony of Joe DeSimone, Cahill sold DeSimone 100% of the shares of C & R Entertainment, Inc. in January 2019. Purchase/Sale, Assignment, and Promissory Note documents clearly indicate that Cahill sold the business in January 2018. Notwithstanding the sale of the business in January 2018, subsequent license renewal documentation signed by new owner Joe DeSimone indicates that there were no changes to the license since the original application filing date in 2017 (*ILCC 171*), nor is there any evidence that the new owner/s of the licensee ever reported the change to the Local Commission or were properly fingerprinted to determine license eligibility. Thus, there is sufficient evidence the licensee violated State statute and local ordinance in failing to report new ownership of the license holder.

Count III – Interference with an Official Inspection of the Premises

For the third count, there is evidence the licensee refused an inspection contrary to local ordinance. The Melrose Park ordinance reads very clearly that a condition of a liquor license is that the licensee “shall consent to periodic inspections of premises” by a police officer or other village official. *Melrose Park Ordinance, Section 5-12-080*. Furthermore, it is a local ordinance violation to “interfere with, hinder or resist any officer ...of the village” who is engaged in official responsibilities. *Id., Section 9-08-020*. The licensee even acknowledged and consented to such inspections during the license application/renewal process. *ILCC 165*.

The evidence of the record clearly shows agents for the Warehouse interfered with at least one official inspection. On July 25, 2020, agents for the Warehouse refused to allow a Melrose Park police officer entry to the licensed premises at 2:05 a.m., even though the officer observed patrons inside and could hear loud music coming from the business. *ILCC 041*. When the officer

attempted to enter the premises while some persons were exiting the premises, a bouncer pulled the door closed to prevent the officer from entering. *Id.* Even though the Warehouse argues the business was operating as a private, members only club, not subject to inspection, such an argument belies that the location is a liquor licensed premises which is subject to inspection. The licensee's agents clearly denied the right of an officer to inspect the premises during a reasonable time period. There is sufficient evidence in the record to satisfy the finding that the licensee violated Count III – refusal of inspection.

Count IV – Licensee Permitted Unlawful Acts on the License Premises or Reasonably Related to the Sale of Alcohol

There is some evidence in the record that the License committed unlawful acts on the license premises or committed unlawful acts reasonably related to the sale of alcoholic liquor. As referenced in the violation to Count I, Melrose Park ordinance requires license holders to abide by all laws and statutes related to the sale of alcoholic liquor. *Melrose Park Ordinance, Section 5-12-180.* As proven by other counts in the failure to disclose new owners, refusal of inspection, failure to maintain a lease for one year, and a multipole violations of the Governor of Illinois COVID 19 Executive Order operational restrictions, Warehouse regularly violated a multitude of local ordinances and state laws related to the sale of alcoholic liquor. Again, even though Warehouse alleges the business operated as a private club and did not sell alcoholic liquor during the times when ordinances and statutes were violated, the evidence in the record overwhelmingly contradicts such claims. Even if Warehouse did not directly sell alcoholic liquor or directly operate a tavern/restaurant/club, Warehouse is the license holder at the licensed address and is responsible for all alcohol sales and violations occurring at the licensed location. The evidence in the record

demonstrates repeated ordinance/statutory violations at the licensed location for which Warehouse was responsible under its license.

Count V – Licensee Operated at the Licensed Location the Required Fully Year Term Lease

Both the Illinois Liquor Control Act and the Melrose Park Liquor Code require a licensee to either own the premises on which the license is issued or to have a leasehold interest in the licensed premises for a minimum of one year. *235 ILCS 5/6-2(13); Melrose Park Code, Sections 5.12.060(c)(7); 5.12-090(o)*. When the license was originally issued in 2017, the Warehouse had a leasehold interest in the property for two years. Licensee entered into a two-year lease for the licensed premises at 2121 N. 15th Avenue which expired August 30, 2019. *ILCC 455*. Once the original lease expired, the lease converted to a month-to-month tenancy violating state statute and local ordinances for liquor license holders. *Id.* Per stipulation of parties, the month-to-month tenancy terminated on February 28, 2021. *Id.* Therefore, the evidence in the record clearly demonstrates the finding that, from August 30, 2019-February 28, 2021, the Warehouse violated the lease requirements of state statute and local ordinance by having a leasehold interest in the license premises for less than one year. The licensee further violated licensing law by not having any ownership or leasehold interest in the licensed location as of February 28, 2021. Under these facts, the Count V finding is supported by the evidence in the record.

Therefore, as demonstrated, the Local Commission relied upon substantial evidence to support the findings on all Counts.

IT IS HEREBY ORDERED:

For the reasons stated herein, the Melrose Park Liquor Control Commission decision to fine Warehouse \$1,000, revoke the Warehouse liquor license, and refuse to renew the Warehouse liquor license at the premises located at 2121 N. 15th Avenue, Melrose Park, 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 August 24, 2022.



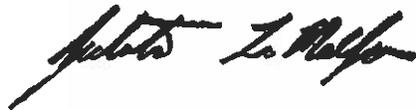
Cynthia Berg, Chairman



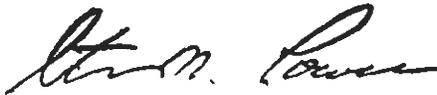
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner



Patricia Pulido Sanchez, Commissioner

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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: September 16th, 2022.

/s/ Richard R. Haymaker

Richard R. Haymaker

C & R Entertainment, Inc.
c/o Gianna Scatchell
gia@dispartilaw.com

Melrose Park Liquor Control Commission
c/o Shantel Perez
sperez@pjmchicago.com