

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

17 NORTH, LLC
D/B/A IBIZA BAR & GRILL
17 N. GENESSEE STREET
WAUKEGAN, ILLINOIS

Appellant,

vs.

WAUKEGAN LOCAL LIQUOR
COMMISSIONER

Appellee.

Case No.: 22 APP 03

FINAL ORDER

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (“State Commission” or “Commission”) upon the appeal of 17 NORTH, LLC d/b/a IBIZA, Appellant, (“Ibiza”) the State Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

Ibiza is the holder of a Waukegan retailer liquor license. The Waukegan Local Liquor Control Commission (hereinafter “Waukegan Commission”) issued an emergency closure notice for Ibiza’s licensed premises effective February 19, 2022. In a February 23, 2022, notice, the Waukegan Commission charged Ibiza with violating Sections 3-35 (public nuisance) and 3-33 (underage/intoxicated persons) of the Waukegan Code of Ordinances (“Waukegan City Code”). The Waukegan Commission held evidentiary hearings on February 25 and March 1, 2022. As a result of the hearings, on March 7, 2022, the Waukegan Commission found Ibiza to have violated Sections 3-35(a) and 3-33(a) of the Waukegan City Code and suspended Ibiza’s license for 23

days, imposed a fine of \$6,000, required Ibiza to pay \$700 restitution for damages, and required Ibiza to operate pursuant to an approved security plan. Ibiza filed an appeal with the State Commission on March 25, 2022. The State Commission represented by Commissioner Steven Powell and Commissioner Pat Pulido Sanchez held an “on the record” hearing on September 27, 2022, and the full State Commission reviewed the entire record and deliberated on the matter on December 14, 2022.

Decision

Upon review of the entire certified record, the State Commission MODIFIES the order of the Waukegan Commission affirming the Waukegan Commission order to impose a 23-day suspension (time served), \$6,000 fine, and mandated security plan, but reverses the order to impose \$700 restitution.

Discussion

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. *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.* Waukegan has adopted an ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the official record. *Waukegan City Code, Section 3-34(e)*. 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, (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 7-5 of the Liquor Control 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 accorded 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, the Waukegan Commission proceeded in the manner provided by law by providing Ibiza with a hearing with sufficient advance notice to allow Ibiza to prepare a defense to the charges. In an order dated February 19, 2022, the Waukegan Commission issued a summary suspension of Ibiza's liquor license and in a letter dated February 23, 2022, the Waukegan

Commission provided Ibiza with a notice of the charges that Ibiza had violated Sections 3-35(a) and 3-33(a) on February 6, 2022, February 12, 2022, and February 18-19, 2022. (*ILCC p. 125-126, 132-133*). The Illinois Liquor Control Act and Waukegan City Code authorize the Waukegan Commission to issue a summary suspension of a liquor license for not more than seven days if the Waukegan Commissioner has determined the “continued operation of the Licensed Premises constitutes an immediate threat to the welfare of the City and its residents.” *ILCC p. 125; Waukegan City Code 3-34(e); 235 ILCS 5/7-5*. Ibiza was represented by counsel at the evidentiary hearing, was given the opportunity to examine Waukegan witnesses, and was allowed to present its own case in defense of the charges. The evidence used as the basis for the decision was the type of evidence relied upon by a reasonably prudent person as permitted in administrative hearings. Accordingly, the local liquor commissioner proceeded in the manner provided by law.

B. Whether the order is supported by the findings

The Waukegan Commission’s order to suspend, fine, and require security plan for the Ibiza liquor license is supported by the findings because the Waukegan Commission did not act arbitrarily or unreasonably, nor did it abuse its discretion by issuing these penalties. In reviewing whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to suspend and fine 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, (1st Dist. 1996).

The Waukegan Commission decision to suspend the Ibiza liquor license 23 days is reasonable based on the entirety of the evidence provided by the Waukegan Commission and the serious nature of the violations. The Waukegan Commission charged Ibiza with multiple counts of public nuisance violations involving public shootings and gun-related crimes and with multiple counts of sales of alcoholic liquor to underaged persons. Even if only one of the public nuisance charges is sustained along with five counts of sales to underaged persons, a 23-day suspension (which had been combined with a seven-day summary suspension order) is not an unreasonable penalty considering the violent nature of the incidents and the high number of underaged sales in a short period of time. By ordering a fine and suspension, the Waukegan Commission has stopped short of revoking the Ibiza license to allow Ibiza to make the necessary security changes to improve safety and “of age” alcohol sales. The suspension and fine, herein, are strict for a business licensed only for approximately one year, but Waukegan has the discretion and authority to send a strong message to its license holders that they make every reasonable effort to prevent underage sales and to maintain a safe environment for its customers and the community.

Moreover, the Waukegan Commission has been authorized by the Waukegan City Code to institute fines of up \$1,000 for license violations and to require preventative security plans for all license holders. In this case, the State Commission has found credible evidence in the record of five counts of underaged sales and at least one count of allowing a public nuisance. These six separate counts of license violations support a \$6,000 fine. Furthermore, the Waukegan City Code authorizes the Local Liquor Control Commissioner and Chief of Police to review and approve a security plan for any liquor license holder. Such approved security plan is authorized whether or not there is evidence of a prior violation. Therefore, imposing a \$6,000 fine and requiring an approved security plan as a penalty are supported by the local ordinance and are reasonable.

As authorized by the Illinois Liquor Control Act, the State Commission modifies the Waukegan Commission order by reversing the requirement to pay restitution of \$700 for damage to a police vehicle by one of the Ibiza patrons. As demonstrated by a video exhibit, one of the Ibiza patrons struck a Waukegan police vehicle with another vehicle as the patron was driving away from the licensed premises. *City's Exhibit 6*. While the evidence is clear that the person who struck the police vehicle was underage and served alcohol by Ibiza, Ibiza was also issued a suspension and a fine or such violation. The payment of an additional penalty involving restitution to a damaged vehicle that may or may not have been a consequence of serving the underage persons is too attenuated to discourage future underage sales. While the State Commission encourages strong penalties against licensees for repeated underage sales, the State Commission favors regulatory action directly against the license rather than penalties for indirect consequences of the underage sales. Direct penalties against the license will have a greater impact discouraging future underage sale rather than indirect penalties. The Waukegan Commission has taken such strong action in this case by imposing a lengthy suspension and fines for the five underage sales occurring here. There is no need for a restitution penalty, especially if Waukegan has obtained restitution from the driver involved in the accident.

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

The Waukegan 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 Comm’n of the City of Chicago*, 394 Ill.App.3d 516, 522 (1st Dist. 2009).

The basis for the charges against Ibiza is that it violated the public nuisance ordinance and the prohibition against underaged sales. The public nuisance ordinance prohibits a licensee from “allow[ing] its licensed premises to become a nuisance as defined in this chapter or as defined in the chronic nuisance ordinance.” *Waukegan City Code, Section 3-35(a)*. Like all jurisdictions, Waukegan states that a license holder shall not “sell, give, or deliver alcoholic liquor to any person under the age of 21.” *Waukegan City Code, Section 3-33(a)*. The State Commission agrees there is ample evidence in the record to show Ibiza either sold alcohol to a minor or, at a minimum, failed to prevent underage service in its establishment. The State Commission also agrees that Ibiza is culpable for violating the public nuisance ordinance on at least one instance for failing to adequately monitor its patrons causing a public nuisance.

The underage sales or service counts are egregious and, alone, could support the suspension and fine order. Without even conducting an underage sting enforcement action, the Waukegan Commission found evidence of five separate instances of underaged persons having been served alcoholic liquor on the Ibiza licensed premises. All instances were on the same night, February 18/19, 2022. During a random police engagement for other enforcement reasons, a police officer:

1. Found two underaged persons (20 and 19) leaving the bar with cups of alcoholic liquor (*City’s Exhibit 4*);
2. Found a person sitting next to a glass of alcoholic liquor in the establishment showing identification that she was 20 years old (*City’s Exhibit 3*);
3. Observed two persons in the bar on body camera footage consuming alcoholic liquor who were later determined to be 19 years old and intoxicated after one of the persons drove a car into a police car while leaving the premises (*City’s Exhibit 6*). Even the owner of the licensed establishment acknowledged that on the night of

February 18, 2022, “at least four individuals were served that were underage.” *ILCC p. 239*. These underage incidents all occurred after Waukegan law enforcement warned the business earlier in the evening to be extra vigilant in their carding and security procedures. *ILCC p. 058*. The fact that the owner of Ibiza testified that he is taking remedial measures by personally conducting ID checks in the future (*ILCC p. 241-242*) does not change the evidence in the record that, on just one night, at least five underaged persons were served alcoholic liquor.

The evidence related to the license holder’s accountability for public nuisance violations is less overt and more difficult to convincingly establish. On its face, Section 3-35(a) of the Waukegan public nuisance ordinance is not a strict liability standard unless the Waukegan Commission charges a violation of the “chronic nuisance ordinance.” *Waukegan City Code, Section 15-140*. Per the chronic nuisance ordinance, a property can be cited as a chronic nuisance if there are three or more various incidents including acts involving the unlawful use of a weapon or the unlawful discharge of a firearm. To identify a chronic nuisance property, however, the police must notify the property owner that “the property is in danger of becoming a chronic nuisance property” so that abatement actions can take place. *Waukegan City Code, Section 15-140(b)*. Without such procedures identifying a chronic nuisance property, Section 3-35(a) of the Waukegan Code requires proof the liquor license holder failed in a duty to prevent the establishment from becoming a nuisance.

In this case, the record does not show the City of Waukegan declared the Ibiza property or surrounding area to have become a chronic nuisance property. Even though the Waukegan Commission provided evidence of many incidents of unlawful firearm use and discharge on or near the Ibiza property, there is no record of Waukegan engaging the chronic nuisance property declaration process. There is evidence that the Waukegan Commission issued a summary

suspension order on February 19, 2022, but this is as result of and not prior to all of the criminal weapons' violations. Plus, the summary suspension is not a declaration of a chronic nuisance but simply an authorized summary act to close a business for public safety reasons pursuant to State law and municipal ordinance.

This, however, does not mean Ibiza did not violate the Waukegan liquor code prohibition against a license holder allowing a public nuisance, but rather means that the record should demonstrate the Ibiza's culpability in a public nuisance violation. In this regard, the State Commission agrees that Ibiza was accountable for at least one instance of a public nuisance violation. On February 12, 2022, the record shows there was an unlawful shooting between Ibiza patrons resulting in one Ibiza patron having been shot through the leg. The record shows that a fight between two parties began within Ibiza. *ILCC p. 041-042*. Ibiza appropriately ejected one of the parties to deescalate the chances of violence. Notwithstanding ejecting one of the parties, Ibiza failed to continue to monitor and prevent escalation by allowing the parties to re-enter the premises and again start a fight wherein they were ejected again. *ILCC p. 042*. At closing, one of the members of one party who had been ejected shot a member of the other party in the leg requiring medical attention. *Id.* Had Ibiza personnel been more vigilant in their prevention and security measures, it is unlikely the shooting, and public nuisance, would have occurred. The record shows that the licensee does not require its security staff to be formally trained or licensed. *ILCC p 240*. Perhaps if Ibiza security personnel were better trained, the illegal shooting on February 12, 2022, would not have occurred. Either way, the preponderance of evidence shows that Ibiza had culpability for the February 12, 2022, shooting and is liable for a public nuisance violation.

The evidence related to the public nuisance charges for February 6, 2022, and February 18/19, 2022 are less convincing. Absent the formal declaration of a chronic nuisance property, the

evidence in the record should demonstrate some form of culpability by Ibiza or Ibiza staff or the incidents occurring at and around Ibiza on February 6 and February 18/19. On February 6, 2022, the evidence shows there was a shooting occurring outside of the business approximately one hour after the business had closed. *ILCC p. 026*. A follow up investigation revealed a bullet shot through a vehicle and another shot at the outside of Ibiza building. *ILCC p. 033-037*. Nevertheless, there is no evidence that Ibiza personnel failed in a duty of some kind that either caused or reasonably failed to prevent the shooting.

Likewise, on February 18/19, 2022, again, absent the formal declaration of a chronic public nuisance at the location, there is little evidence that Ibiza staff caused or reasonably failed to prevent a public nuisance. As the business was closing and in the presence of Waukegan police, a fight broke out causing Ibiza security and Waukegan police to separate the combatants. *City's Exhibit 6*. During the altercation, a person who had been loitering on the sidewalk outside Ibiza illegally possessed a firearm and seemed poised to use it during the altercation. Waukegan police arrested the person before a dangerous and possibly deadly event occurred. Even so, it is difficult to identify what Ibiza could have done in this instance to either prevent the fight or to remove the person with a gun. Once the fight broke out, Ibiza security worked with law enforcement to quell the fight. Also, it is difficult to maintain that Ibiza staff could have prevented the person with the gun from loitering in front of the business when Waukegan law enforcement also did not require the person with the gun to disperse prior to the incident.

This is not to state that the conditions surrounding Ibiza's business in February 2022 are not cause for concern. When three shootings related to a business occur in three successive weeks, local authorities have every right and responsibly to take preventative action. Waukegan's chronic nuisance property ordinance spells out a procedure by which such public nuisances can be declared

and abated. In addition to taking all necessary action against a culpable liquor licensee as the Waukegan Commission as done here, local officials should also use other tools such as following the procedures of the chronic nuisance property ordinance to abate the problems.

The record is clear, however, related to the underage sales and at least one public nuisance violation, that there is substantial evidence in the record to support the findings of liability against Ibiza.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Waukegan Local Liquor Control Commission suspending the Ibiza license for 23 days (time served), fining the Ibiza license \$6,000, and mandating an approved security plan, is AFFIRMED. The decision of the Waukegan Commission to require Ibiza to pay \$700 restitution is REVERSED .

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on December 14, 2022.

Cynthia A. Berg

Cynthia Berg, Chairman

Melody Spann Cooper

Melody Spann Cooper, Commissioner

Julieta LaMalfa

Julieta LaMalfa, Commissioner

Thomas W. Gibbons

Thomas Gibbons, Commissioner

Steven M. Powell

Steven Powell, Commissioner

Brian Sullivan

Brian Sullivan, Commissioner

Pat Pulido Sanchez

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) 22APP03

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: January 4, 2023.

/s/ Richard Haymaker

Richard Haymaker

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