

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

2635 S. WABASH INC.
D/B/A L. RESTAURANT AND/OR L LAKE
LOUNGE
21490 LINCOLN HWY.
LYNWOOD, IL 60411

Appellant,

vs.

LYNWOOD LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 22 APP 04

License Number: 1A-1150446

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (“State Commission”) upon the appeal of 2635 S. Wabash Inc. d/b/a L. Lake Lounge, Appellant, (“L. Lake Lounge”) the Commission being otherwise fully informed, and a majority of its members do hereby state the following:

Procedural History

L. Lake Lounge holds a Lynwood Class A liquor license at 21490 Lincoln Highway, Lynwood, Illinois. The Lynwood Liquor Control Commission (hereinafter “Lynwood Commission”) previously issued a Class A liquor license (restaurant with separate bar facilities) to L. Lake Lounge on January 20, 2022, which expired on April 30, 2022. L. Lake Lounge filed a renewal application with the Lynwood Commission to renew the Class A license for the term May 1, 2022, through April 30, 2023. The Lynwood Commission issued a preliminary ruling to refuse to renew the Class A license in an April 26, 2022, written “Renewal Application Denial.” On the same day, the Lynwood Commission provided L. Lake Lounge with a Notice of Hearing scheduled

initially for May 2, 2022. Presumably, as a result of a motion for a continuance filed by L. Lake Lounge, the Lynwood Commission continued the matter for a hearing ultimately held on May 12, 2022. The result of the hearing held on May 12 was a May 23, 2022, “Decision and Order.” The Decision and Order denied the renewal of the L. Lake Lounge Class A liquor license concluding “the licensee does not qualify under Section 10-58(18) of the Code of Ordinances of the Village of Lynwood as the licensee does not have a lease thereon for the full period for which the license is to be issued.” *ILCC p. 173*. On May 24, 2022, L. Lake Lounge filed a Notice of Appeal with the State Commission. On September 27, 2022, the State Commission represented by Commissioners Patricia Pulido Sanchez and Steven Powell heard on the record arguments of counsel on the matter. The State Commission as a whole reviewed the entire record and deliberated on the matter at the December 14, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission REVERSES the order of the Lynwood Commission to deny the renewal of the L. Lake Lounge 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 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.* Lynwood has adopted a local ordinance requiring any appeal from an order of the Lynwood Liquor Control Commissioner to be a review of the official record. *Lynwood*

Ordinances, Section 10-65(d). 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 Lynwood Commission acted in a manner provided by law by providing L. Lake Lounge with the minimum due process necessary to defend against the charges identified in the preliminary decision to deny the renewal of the license and in the notice of hearing. 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 suspend or revoke a license. 235 ILCS 5/7-5. Because a decision to refuse to renew a license is tantamount to revoking a license (See *City of Wyoming v. Liquor Control Commission of Illinois*, 48 Ill.App.3d, 404, 409), a local commission must provide a hearing on charges against an existing liquor license holder.

In this case, the Lynwood Commission served a Notice of Hearing on L. Lake Lounge on or about April 26, 2022, for a May 2, 2022, hearing, six (6) days later. *ILCC*, pp. 002. While the six-day notice period complied with the express provisions of the Liquor Control Act requiring three-days' notice (235 ILCS 5/7-5), the Lynwood Commission extended the hearing date from May 2, 2022, to May 12, 2022, providing L. Lake Lounge the opportunity to prepare a defense to the charges. Moreover, the Lynwood Commission alleged very specific facts by detailing that L. Lake Lounge did not qualify for the renewal of the license under Section 10-58(18) of the Code of Ordinances because it did not have a lease for the full license term. In the Denial, the Lynwood Commission specified multiple reasons for its allegation that L. Lake Lounge did not have a valid lease for the premises. For these reasons, the Lynwood Commission ruled according to law.

B. Whether the order is supported by the findings.

In reviewing whether the order is supported by the findings, this Commission analyzes whether the findings contained within the order constitute grounds to refuse to renew 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).

In this case, if the Lynwood Commission met all evidentiary standards to prove L. Lake Lounge did not have a valid lease, a pre-condition for the local (and State) liquor license, then the Lynwood Commission would have appropriately acted within its discretion to deny license renewal.

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

The Lynwood Commission did not, however, issue 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).

In this case, the record is clear that the Lynwood Commission ruled against the manifest weight of the evidence that L. Lake Lounge did not have a lease for the licensed property at 21490 Lincoln Highway in Lynwood. In fact, the owner of the licensed property is the Village of Lynwood (“Village”) which signed a lease with L. Lake Lounge on August 1, 2022, for the operation of a “Restaurant with alcohol on premises.” *Exhibit A, ILCC p. 133*. Per the lease, L. Lake Lounge would pay monthly rent of \$3,500 beginning October 1, 2021. *Id.*, *p. 134*. The term of the lease is 5 years. *Id.*, *p. 132*. In addition, L. Lake Lounge paid the required rent of \$3,500 per month from October 2021 through March 2022 per the testimony of the Village. *ILCC p. 057, Exhibit F*. As with most leases, penalties are assessed for late payments and various other privileges and obligations are assigned to both L. Lake Lounge and the Village. On January 20,

2022, the Village and Local Commission issued the Class A license to L. Lake Lounge. *Exhibit B, ILCC p. 144*. Presumably, because retail license holders are required by Section 10-58(18) of the Code of Ordinances (and State law) to own or lease the property, the Local Commission agreed at the time of license issuance that L. Lake Lounge had a valid lease.

At the renewal hearing in May, however, the Local Commission argued and attempted to provide evidence that the lease was invalid in late April/early May of 2022 for various underlying reasons. The reasons include: 1. L. Lake Lounge failed to pay a lease mandated \$25,000 bond; 2. L. Lake Lounge made late rent payments; 3. L. Lake Lounge made physical improvements to the licensed premises without obtaining necessary work permits for the improvements, and; 4. L. Lake Lounge failed to pay Village liquor sales taxes for alcoholic liquor sold at the licensed location. *Exhibit D, ILCC p. 149-150*. While such reasons may prove a breach of a lease or an underlying license violation, they do not prove the L. Lake Lounge operated the licensed location without a lease. Section 14 of the lease clearly spells out default and breach provisions requiring notice of monetary or non-monetary breach of the lease and allowing either party 30 days to cure the defect. *Exhibit A, ILCC p. 137*. As the record shows, the Village is, in fact, engaging the provisions of Section 14 to evict L. Lake Lounge from the premises (See 5/14/2022 Letter from Village Counsel to licensee, *Exhibit D, ILCC p. 149-151*). By definition, however, if the Village is evicting licensee for failing to abide by the lease, it further justifies the validity of the lease.

An alternative theory posed by the Lynwood Commission that the lease with L. Lake Lounge is invalid because it was never ratified is also not convincing. First, while the Lynwood Commission argues that State law requires village boards to ratify leases as a condition of validity, there is no law referenced in the record that mandates such an action by the Village Board. The State law (*65 ILCS 5/11-76.1-1*) referenced in the April 14, 2022, letter sent to L. Lake Lounge to

vacate the premises requires board action on village *purchases or leases* (as lessee), but such law does not mandate board action for a village to *lease property as the landlord*, as is the case here. Second, even if such a law existed, L. Lake Lounge should not be forced to give up a liquor license because the Village of Lynwood failed to take the necessary action to obtain Board approval of the lease. Besides, no evidence in the record suggests the lease was not, in fact, ratified. Section 1x of the lease states: “Tenant shall be given occupancy when all of the following is met: 1. This Lease is duly approved, signed **and executed** by the parties . . .” *Exhibit A, ILCC p. 133.* (emphasis added). If tenant occupancy means that the lease was executed, then the record is clear that the lease was executed because L. Lake Lounge was given occupancy of the location in the fall of 2021. Subsequent to taking possession, L. Lake Lounge began to make alterations to the business and paid at least \$21,000 in rent. In January 2022, over 5 months after L. Lake Lounge was given possession of the location, the Lynwood Commission issued a retail liquor license. A qualification for obtaining a liquor license is for the applicant to own the property or to lease the property. Presumably, the issuance of the license was reviewed by the Lynwood Village Board without objection. Even absent an express or implied approval of the Lynwood Village Board, however, the actions of the Village, which include signing a lease, handing over possession, accepting rent payments, and issuing a license, demonstrate constructive lease ratification.

The basis for the Lynwood Commission not renewing the liquor license is that L. Lake Lounge “does not qualify under Section 10-58(18) of the Code of Ordinances of the Village of Lynwood as the licensee does not have a lease thereon for the full period for which the license is to be issued.” *ILCC p. 17.* While it is possible L. Lake Lounge violated the lease, local building codes, and tax codes, there is no substantial evidence that it did not have a valid lease on the date of the license hearing on May 12, 2022. The Village of Lynwood may or may not have a valid

basis to claim L. Lake Lounge has committed a default of the lease and that it should vacate the premises. The more appropriate determination of a lease breach, however, should be in the Circuit Court through an eviction proceeding and not through an action against the liquor license.¹

IT IS HEREBY ORDERED:

For the reasons stated herein, the Lynwood Commission did not rely on substantial evidence in light of the whole record to prove L. Lake Lounge did not have a valid lease to be issued a liquor license. The Lynwood Commission decision to deny the renewal of the L. Lake Lounge Class A liquor license is REVERSED.

¹ See Lynwood Pre-Hearing Memorandum Footnote 1, ILCC p. 196, Cook County Circuit Court case 20226005996.)

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 December 14, 2022.



Cynthia Berg, Chairman



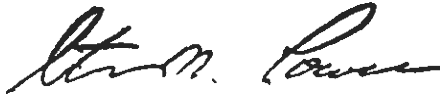
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner

STATE OF ILLINOIS)
COUNTY OF COOK) 22 APP 04

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 R. Haymaker

Richard R. Haymaker

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