

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

PHANTOM INC.
D/B/A THE CLARK BAR
207 W. CLARK STREET
CHAMPAIGN, IL 61820

Appellant,

vs.

LOCAL LIQUOR COMMISSIONER FOR
CHAMPAIGN, ILLINOIS

Appellee.

Case No.: 22 APP 05

FINAL ORDER

LICENSE NUMBER: 1A-0081486

FINAL 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 PHANTOM, INC., Appellant, (“Phantom”) the State Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

Phantom is the holder of a Champaign retailer liquor license number A-41 originally issued in May 2019. The Champaign Local Liquor Control Commission (“Champaign Commission”) and Phantom previously mutually executed a Stipulation in Lieu of a Hearing on October 18, 2021, resulting in a Champaign disciplinary order against the Phantom on October 19, 2021. On January 11, 2022, the Champaign Commission ordered Mitigation Requirements related to the operation of Phantom due to a prior December 26, 2021, “Major Incident.” On March 17, 2022, the Champaign Commission issued a seven-day emergency closure order of the Phantom licensed

premises through March 24, 2022. A hearing on the March 17, 2022, emergency closure was held on March 24, 2022, and was agreed to be continued until March 28, 2022. By agreement between the Champaign Commission and Phantom, the Champaign Commission allowed Phantom to be open for a private event under certain conditions on March 24, 2022. On March 25, 2022, Champaign again issued a summary closure, and a notice of hearing alleging Phantom violated the terms of the agreement to be open for a private event on March 24, 2022. On April 28, 2022, the Champaign Commission held an evidentiary hearing on the charge of violating the terms of the March 17, 2022, emergency closure order. The Champaign Commission issued an order revoking the Phantom's A-41 license and Phantom filed an appeal of the order to the State Commission on May 23, 2022. The State Commission represented by Commissioner Steven Powell held an "on the record" hearing on the matter on October 25, 2022, and the full State Commission reviewed the entire record and deliberated on the matter on December 14, 2022.

Decision

For the reasons stated herein, the State Commission AFFIRMS the decision of the Champaign Commissioner to revoke Phantom's A-41 retail liquor license.

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 ("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.* Champaign has adopted an ordinance which requires any

appeal from an order of the Local Liquor Commissioner to be a review of the official record. *Champaign Resolution Sec. 5-81(b)(1)*. 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, Champaign proceeded in the manner provided by law by providing Phantom with a hearing with sufficient advance notice to allow Phantom to prepare a defense to the charge of violating the summary closure order. Champaign provided Phantom with a notice of the charges on March 25, 2022, for a hearing ultimately held on April 28, 2022. *ILCC p. 005-008*. In the notice of the charges, the Champaign Commission specifically charged that Phantom had failed to comply with a March 17, 2022, summary closure order and an agreed exception to the closure order. *Id.* The Illinois Liquor Control Act and Champaign Municipal Code authorize the Champaign Commission to issue a summary suspension of a liquor license for not more than seven days if the Champaign Commissioner has determined the “continued operation of the of the particular licensed premises will immediately threaten the welfare of the community.” *Champaign Municipal Code, Section 5-82; 235 ILCS 5/7-5*. Phantom was represented by counsel at the evidentiary hearing, was given the opportunity to examine Champaign witnesses, and 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 findings are supported by substantial evidence in the light of the whole record.

The Champaign 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 charge against Phantom is that it violated an agreed exception to a summary suspension order of the Champaign Commission. On March 17, 2022, the Champaign Commission issued a summary suspension of Phantom’s liquor license giving Phantom the opportunity for a hearing on March 24, 2022. By agreement of the parties, Phantom would remain closed on March 24 except for an authorized Champaign Commission exception to the closure. The agreed exception to the suspension stated as follows:

Per agreement - alcoholic liquor may be served at a private runner’s event for approximately 30-40 people plus staff on 3/24/22. The premises may not be open to the public and will close at 1:00 a.m.

Local Commission Exhibit 8, ILCC p. 260.

The Champaign Commission relied upon substantial evidence to support its finding that Phantom had breached the agreement allowing Phantom to have a private party for a runner’s club on March 24, 2022 (“Runner’s Club Exception”). First, Phantom breached the Runner’s Club Exception by remaining open after 1:00 a.m. Video evidence produced at the evidentiary hearing clearly demonstrates persons sitting at the bar at 1:19 a.m. and the bartender preparing a drink. *Local Commission Exhibit 20.* Second, the Champaign Commission provided sufficient evidence to prove that Phantom was open for a non-private “runner’s event” on March 24, 2022. Evidence in the record demonstrates that there was a runner’s event at Phantom at approximately 6:30 p.m. on March 24. A Facebook notice entered into evidence states:

The running group will meet every Thursday at 6:30 p.m. for 5 weeks at [Phantom].
Each training session will focus on running/walking. All fitness abilities are welcome and encouraged to participate. Runs will be held rain or shine.

Local Commission Exhibit 17, ILCC p. 262 (emphasis added). This notice demonstrates that the runner’s club event held at Phantom on March 24, 2022, was a participatory event in which

attendees would be engaged in a “training session” and “running/walking” with all persons “encouraged to participate.” This advertisement is corroborated by audio/video evidence identifying persons leaving Phantom at approximately 6:30 pm on March 24, 2022, planning and engaging in running/walking activity. *Local Commission Exhibit 18*. Persons identified in the video were dressed in clothing typically worn to engage in the exercise.

In contrast to the evidence of the actual runner’s club event, the Champaign Commission provided evidence of another event held at Phantom later in the evening March 24, 2022, which is not supported in the record as a runner’s event. First, the evidence demonstrates that the persons present in Phantom from at least 11:45 p.m. through 1:19 a.m. a (“Non-Runner’s Event”) were not dressed in attire used for running. *ILCC p. 049, Local Commission Exhibit 9*. While it is true that there is a possibility that not every person attending a private runner’s club event necessarily has to be dressed for exercise, it is clear that the runner’s event in this case was a participatory event. (*See advertisement and video in Local Commission Exhibits 17, 20*). Persons dressed for the Non-Runner’s Event at Phantom were dressed in attire typically worn at a nightclub or bar. Video evidence from a police officer body camera walking throughout the premises at the Non-Runner’s Event shows just over 40 persons in a nightclub environment with the performance of a guest DJ. *Local Commission Exhibit 9*. Moreover, the guest DJ was the same guest DJ performing regularly on Thursday evenings at Phantom when Phantom was not closed due to a suspension of the license. *Local Commission Exhibit 12, ILCC p. 261*. The Champaign Commission produced additional evidence of a traffic stop and arrest in which an interview conducted with the person arrested was that he had been at Phantom on March 24, 2022, and that he was not a runner. *Local Commission Exhibit 11*. Finally, there is testimony by the owner of Phantom that the Non-Runner’s Event was

not a contracted event which is required for all private events in Champaign. *ILCC p. 098, Champaign City Code, Sec. 5-1.34.*

Therefore, the totality of the evidence demonstrates that Phantom did not abide by the agreement to allow it to remain open on March 24, 2022, for a private runner's club event. The totality of evidence relied upon by a reasonably prudent person shows that, even though Phantom initially complied with the agreed exception to the suspension, Phantom then violated the agreement by remaining open for the Non-Runner's Event past its allotted time.

C. Whether the order is supported by the findings

The Champaign Commission's order to revoke Phantom's liquor license is supported by the findings because the Champaign Commission did not act arbitrarily or unreasonably, nor did it abuse its discretion by issuing the revocation penalty. In reviewing whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to revoke 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, the Champaign Commission decision to revoke the Phantom license is reasonable based on the entirety of the evidence provided by the Champaign Commission. Phantom's violation of the agreed exception to the March 17, 2022, summary suspension order was not its first violation or the only incident at Phantom's premises. Prior to October 2021, the

Champaign Commission filed a complaint against Phantom resulting in a Stipulation in Lieu of a Hearing signed by both parties on October 18, 2021. The Stipulation resulted in the imposition of a Champaign Commission order conditioning Phantom's license on various operational requirements designed to promote public safety. Approximately two months after the October 2021 order, a "Major Incident" occurring at Phantom on December 26, 2021, required the Champaign Commissioner to impose Mitigation Requirements on the Phantom license on January 11, 2022. Lastly, again on March 17, 2022, the Champaign Commission issued a summary suspension of the license because, as authorized by law, the Champaign Commission deemed the "continued operation of the of the particular licensed premises will immediately threaten the welfare of the community." *Champaign Municipal Code, Section 5-82*, The Champaign Commission thoroughly provided notice to Phantom that its license was conditioned on strict compliance with conditions set forth in prior Champaign Commission order. Notwithstanding the March 17, 2022, summary suspension order, the Champaign Commission reasonably allowed Phantom to remain open for a previously scheduled runner's event. The fact that Phantom knowingly and intentionally took advantage of the Champaign Commission limited exception to the closure further justifies revocation of the licensee.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Champaign Local Liquor Commission revoking the Phantom Inc. Class A-41 retailer liquor license is AFFIRMED.

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

Donald O'Connell

Donald O'Connell, 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) 22APP05

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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