

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

In the Matter of the Appeal of:

Playmakers Sports Bar and Grill LLC

2107 4th Avenue
Rock Island, IL 61201

Appellant

v.

ROCK ISLAND LOCAL LIQUOR CONTROL
COMMISSIONER

Appellee

Case No.: 23 APP 06

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 PLAYMAKERS SPORTS BAR & GRILL, LLC. d/b/a PLAYMAKERS, Appellant, (“Playmakers”) the State Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

Playmakers is a Rock Island retailer liquor licensee. On April 12, 2023, the Rock Island Local Liquor Control Commissioner (hereinafter “Rock Island Commissioner” or “Rock Island Commission”) issued a “Combined Motion for Immediate Closure, Complaint for Revocation, and Notice of Hearing” (“Notice of Hearing”) alleging Playmakers had committed a two-count violation for having permitted Unlawful Acts/Fighting (Count 1) and a Nuisance in Fact (Count

II) in violation of Rock Island municipal ordinances. The summary closure order immediately suspended the Playmakers liquor license on April 12, 2023, through April 18, 2023 (7 days). On April 17, 2023, the Rock Island Commissioner held an evidentiary hearing to consider the ordinance violation charges. As a result of the hearing, the Rock Island Commissioner issued an order revoking the Playmakers' liquor license finding Playmakers committed the two-count violation by violating Section 3-11(p) of the Rock Island city ordinances. After status calls and a receipt of the administrative record, the State Commission conducted an "on the record" hearing before State Commission Chair Cynthia Berg and Commissioner Pat Pulido Sanchez on June 20, 2023. The State Commission reviewed the administrative record and deliberated on the matter at the July 19, 2023, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission MODIFIES the order of the Rock Island Commission revoking the Playmakers retail liquor license to a 30-day license suspension minus seven (7) days for time already served during the summary suspension from April 12, 2023, to April 18, 2023.

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.* Rock Island has adopted a local ordinance requiring any

appeal from an order of the Rock Island Commission to be a review of the official record. *City Code of Rock Island, Section 3-12(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 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 the State 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). "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.

The State Commission must judge whether a local commissioner committed an "abuse of discretion" on several different factors including whether the local commissioner proceeded according to law. In evaluating the Rock Island Commissioner's actions, the State Commission must balance the broad discretion given a local liquor control commissioner in the adjudication of

alcohol beverage cases versus the requirement that the local liquor control commissioner give the retail licensee the opportunity to adequately defend itself against the charges.

First, in determining if the Rock Island Commission gave Playmakers the opportunity to prepare a defense, the State Commission examines the substance and the timing of the notice of the charges. As to timing, the Illinois Liquor Control Act requires a local liquor control commissioner to provide no less than three days written notice of the charges prior to a hearing. 235 ILCS 5/7-5. Here, the Rock Island Commission Notice of Hearing was dated April 12, 2023, for a hearing on April 17, 2023, which met the technical 3-day notice requirement of Section 7-5 of the Liquor Control Act. Moreover, even though Playmakers was not represented by counsel at the April 17, 2023, hearing, the Notice of Hearing advised that Playmakers may be represented by counsel and present witnesses and evidence in defense of the charges.¹ *ILCC p. 242*. As to substance, the Notice of Hearing specified the charges leveled against Playmakers with references to the Rock Island ordinances. In the Notice of Hearing, the Rock Island Commissioner alleged very specific facts and dates referencing the Rock Island ordinances that Playmakers had violated. *ILCC pp. 239-242*. The record, therefore, demonstrates that the Rock Island Commission met the basic notice requirements in prosecuting the case giving Playmakers sufficient opportunity to prepare a defense and providing Playmakers with notice of the charges.

¹ The fact that Playmakers was not represented by counsel at the local hearing is not the preferred manner that local hearings should be prosecuted. Counsel for Playmakers argues that the law mandates Playmakers, as a limited liability company, be represented by counsel. While the State Commission does not agree that the failure of a corporation or limited liability company to be represented by counsel requires a judgment in favor of Playmakers, the State Commission agrees that the local commission should give the licensee every opportunity to retain counsel before a hearing. This is notwithstanding the fact the licensee was, at times, very effective in the cross-examination of City witnesses. Counsel for Rock Island, in this case, suggested an expedited hearing was required because Section 7-5 of the Act mandates the local commission provide the licensee with an “opportunity to be heard” within the seven-day summary closure period. A Section 7-5 summary closure seven-day hearing, however, does not require the local commission to bring charges related to incidents that lead to the seven-day closure. The local commission may bring charges later or may give the licensee the time to hire an attorney and prepare a defense. Nevertheless, because Rock Island advised Playmakers to obtain counsel and gave the minimum three-days’ notice of hearing, the Rock Island Commission met technical notice requirements.

For the above stated reasons, the Rock Island Commissioner proceeded according to law.

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

The Rock Island Commission issued findings supported by substantial evidence considering the whole record for one alleged violation of a municipal ordinance but not a second alleged violation. “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 Flanboyen 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 evidentiary case leading to the revocation of Playmakers liquor license centers on two separate incidents, one on April 8, 2023, and one on April 10, 2023. Both incidents were violent incidents at or near the Playmakers licensed location and parking lot. The April 8, 2023, incident involved a shooting that did not take place on Playmakers property or an adjacent parking area but may have involved a patron who had exited Playmakers. The State Commission disagrees with the Rock Island Commission that the facts in the record support a violation of a Rock Island ordinance related to the April 8, 2023, incident. The April 10, 2023, incident involved a fight in the Playmakers parking lot, originating within Playmakers, resulting in a stabbing, or slashing of a person, likely with a broken bottle. The State Commission agrees with the Rock Island Commission that there are sufficient facts in the record to demonstrate Playmakers committed a violation of a Rock Island ordinances related to the April 10, 2023, incident.

As a result of both incidents, in addition to issuing an emergency closure order for seven days, the Rock Island Commission filed charges against the license holder for a violation of Section 3-11(p) of the Rock Island City Code.² Section 3-11(p) states:

(p) Loitering/Disorderly Conduct: No licensee hereunder shall allow any loitering, gathering of unruly individuals or crowds or any unlawful or dangerous behavior whether in the premises or in any parking lot or other adjacent area serving the premises; and the licensee shall have primary responsibility for hiring such security personnel and taking other appropriate measures to observe compliance with this subsection. In the event a violation of law has taken place, the licensee or his agents shall immediately notify the police department.

Rock Island City Code, Section 3-11(p) ("Section 3-11(p)"). Section 3-11(p), therefore, places a duty on Rock Island liquor license holders to: 1) Not "allow loitering, gathering of unruly individuals or crowds or any unlawful or dangerous behavior;" 2) Not allow such activity on the licensed premises, their parking lot or any other adjacent areas "serving the premises;" 3) To hire sufficient security personnel "and take all appropriate measures" to prevent such unruly gatherings or loitering of a unlawful or dangerous nature; and, 4) If unruly gatherings or loitering of an unlawful or dangerous nature occur, the licensee "must notify the police department."

The State Commission finds there is sufficient evidence in the record to support the finding that Playmakers violated Section 3-11(p) for the April 10, 2023, altercation between two groups of people resulting in a violent stabbing in the Playmakers' parking lot. The local order concisely summarizes Playmakers' actions and inactions related to the April 10 incident resulting in the violation of Section 3-11(p). The Order states:

Within 48 hours, police responded to a fight in progress at Playmaker's. The Licensee's staff reported that the fight broke out inside the bar. The licensee had banned the two people fighting approximately one month previously but did not have them formally trespassed by the police. The Licensee's staff sent one party out of the bar and keeping (sic) the second party separated and inside. The first party

² The Notice of Hearing alleges a two-count violation for: 1. Unlawful Acts/Fighting resulting in statutory and municipal violations of disorderly conduct; 2. Statutory and municipal violations of Nuisance in Fact laws. Since both disorderly conduct and nuisance in fact laws depend on the finding of a violation of Section 3-11(p), the State Commission focus of this case is on the facts related to the elements of Section 3-11(p).

did not leave, however, so the fight resumed in the parking lot. Two victims suffered knife wounds, one had a slash to the temple, and the other was stabbed and had to be transported to Iowa City for surgery. The Licensee did not control the large and unruly crowd in the parking lot and adjacent to the premises. The Licensee did not report the incident to the police. The Licensee's interior and security systems did not work during either this incident or the April 8 incident.

ILCC p. 247.

There are some facts that are not contested and others that are. First, both sides agree there was an altercation between two groups in Playmakers' parking lot which resulted in a stabbing and that the altercation began with a dispute inside of Playmakers. It is also not disputed that no representative from Playmakers called the police at any time during or after the altercation. The main disputed fact is whether a female police officer was present in the Playmakers parking lot during the altercation between the two parties, but prior to the stabbing incident. The defense offered by Playmakers is that it did not make any sense to contact the police if the police were already on site. To that end, the parties disagree about the presence of a police officer because the head of security testifies that a female police officer was present, while Rock Island police officer witnesses testify there was no female police officer present prior to the stabbing. On this issue, the Rock Island Commissioner order sided with the credibility of the police officers and not the head of security.

The testimony of Playmakers' head of security establishes the timeline and evolution of the April 10 altercation, and except for the presence of the female police officer, is not contested. There was a physical assault of one woman against another woman inside the bar after 12:45 a.m. *ILCC p. 072, 073-074.* One of the women proceeded to the restroom while the other woman remained. *ILCC p. 073.* At the time of initial assault, Playmakers' security was called to the back of the premises to address the "commotion." *ILCC p. 074.* At approximately the same time, a rush of people emerged from the restroom to confront the woman who had been part of the initial

assault. *Id.* Playmakers' security separated the groups by having one of the groups leave first followed by the second group. *ILCC p. 075.* The separation of the two groups is confirmed by police officer witness Brian Thompson who had taken a statement from Playmakers' security that the groups were separated by a fifteen-minute interval. *ILCC p. 150.* At this time, Playmakers' security "assumed police was out there." *ILCC p. 076.* Security for Playmakers did not "realize the magnitude of the fight" until they went outside with the rest of the patrons. *ILCC p. 077.* When Playmakers' security followed the second group out to the Playmakers' parking lot, the other group was still in the parking lot and a man from one group struck a woman from another group for which Playmakers' security had to intervene. *ILCC p. 078.* Per Playmakers' head of security, the female police officer arrived as security was attempting to break up the outdoor fight but prior to the time one woman re-engaged with another woman resulting in the stabbing. *Id. at p. 078.* At no time from when the altercation occurred inside the business after 12:45 to when the officers were dispatched to the scene at 1:21 a.m. did any security representative from Playmakers call 9-1-1. *ILCC p. 087.* Per the head of security, there was a video of the incident taken by an individual with a phone, but such video is not a part of the record. Furthermore, the licensee does not have an active video surveillance camera system on the outside of the building, nor is there a recording system with playback capability inside the premises. *ILCC p. 118.*

Without the consideration of any additional facts, most of which are established by Playmakers, there is sufficient evidence to prove a violation of Section 3-11(p). First it is clear there was an assault inside the licensed premises sufficient for all five Playmakers' security personnel to be called to control the situation. At the time of this assault and resulting "commotion," Playmakers' was required by Section 3-11(p) to call the police. If circumstances did not allow a phone call to the police because of the need to separate the groups, a call could

then have been placed during the separation period when one group left before the other group. If this had been done, there would have been a better chance for the police to have been on the scene to assist with the control of the two groups once the second group exited into Playmakers' parking lot. Once the second group exited, the groups reengaged which resulted in an assault of a woman by a man and ultimately to the violent stabbing incident. The fact that there is a dispute over whether a female police officer was present in the parking lot before or after the stabbing is not relevant. Playmakers had a duty to call the police after the initial assault inside the premises and a duty to prevent the reengagement in the parking lot.

While it is true that such security prevention duties can be difficult and complicated, the record shows that Playmakers' security failed in some of the most basic security measures of calling the police, assuming the police were outside, maintaining a separation of the groups once outside, and having a recorded surveillance camera system that could deter criminal activity. The facts support a violation of Section 3-11(p) by failing: 1) to prevent the "gathering of unruly individuals or crowds or any unlawful or dangerous behavior;" 2) to hire sufficient security personnel "and take all appropriate measures" like installing recording security cameras to prevent such "unruly gatherings or loitering of an unlawful or dangerous nature;" and 3) to call the police during or shortly after an illegal or dangerous act. All the security breakdowns occurred inside the licensed premises or in the Playmakers' parking lot.

In relation to the shooting incident on April 8, 2023, there are insufficient facts in the record to establish a violation of Section 3-11(p) because the record demonstrates the shootings by two parties did not occur on property adjacent to Playmakers. The Rock Island Commissioner order summarizing the finding for the April 8, 2023, incident states as follows:

On April 8, 2023, police officers responded to a shots-fired call at Playmaker's. Shell casings were recovered **adjacent** to Playmaker's. Witnesses reported seeing the

shooter emerge from Playmaker's and open fire in an **adjacent** parking lot. One shooting victim was hospitalized. Playmaker's staff heard the shots but did not call to report the event.

ILCC p. 247 (emphasis added).

While the State Commission agrees that the licensee would have violated Section 3-11(p) if the shootings had occurred on adjacent property, the State Commission disagrees that there is any evidence in the record to demonstrate the shootings occurred on adjacent property. A plain reading and reasonable interpretation of Section 3-11(p) imposes a duty on a liquor license holder to prevent illegal activity on its licensed premises and on adjacent property. Section 3-11(p) requires the licensee to provide adequate security on its premises or in "any parking lot or other **adjacent** area serving the premises." In addition, a reasonable interpretation of Section 3-11(p) is that the licensee has a similar duty to call the police only if the licensee witnesses illegal or dangerous activity on its premises or in "any parking lot or other **adjacent** area serving the premises." Even though it may be responsible for the license holder to notify the police of illegal or dangerous activity in areas outside the immediately adjacent areas, the ordinance does not impose such a legal duty on the licensee even if the illegal acts or dangerous activity may have been perpetrated by a patron of the licensee.

The record in this case clearly demonstrates the April 8, 2023, shooting incident did not occur in "*any parking lot or other adjacent area serving the premises.*" All evidence in the record demonstrates that the shooting occurred between two persons on or near 22nd Street between 3rd and 4th Avenues. Neither Playmaker's licensed premises nor Playmakers parking lot is adjacent to 22nd Street. Between Playmakers and 22nd Street is an alley, another liquor licensed establishment named Broadways, and Broadways' parking lot. *Exhibit A, ILCC p. 302.* The evidence is not contested that the shootings occurred either at or near the Broadway's parking lot, at the

intersection of 22nd Street and 4th Avenue, or north of the intersection on 22nd Street. Playmakers' owner Michelle Veasey correctly identified on her Exhibit that shell casings from the shooting on April 8 were found at two different areas on 22nd Street. *Id.* Rock Island Detective Michael Wood confirmed Ms. Veasey's testimony:

Yeah. So the first night, the patrolman found 23 shell casings. It was on 22nd Street just north of Fourth Avenue. There was a grouping of 12 shell casings and 11 shell casings on either side of that street.

ILCC p. 123. Detective Wood further testified additional shell casings were found in the Broadway/Roosters parking lot. *ILCC p. 125.* In addition, on cross-examination, Detective Wood clarified that the parking lot from which the shooter or shooters emerged was in the Broadway/Roosters parking lot, not the Playmaker's parking lot. *ILCC pp. 126-127.* Additional testimony from Rock Island police witnesses described the crime/shooting scene on "22nd Street from Third Avenue to Fourth Avenue" (*ILCC p. 143*) with some gun shell casings "about a third of the way going north on 22nd Street from Fourth Avenue" and "a large group closer to the intersection, just north of the intersection [22nd Street/Fourth Avenue]" *ILCC p. 146.* Therefore, for the April 8 shooting incident, Playmakers did not violate Section 3-11(p) because all sides agree the shooting occurred on or near 22nd Street which is not adjacent to Playmakers or Playmaker's parking lot.

C. Whether the order is supported by the findings

The Illinois Appellate Court has ruled that, "it is well established that the violation of any statute, ordinance, or regulation related fairly to the control of liquor, upon liquor-licensed premises, generally constitutes cause for revocation," but the reviewing body must still determine whether a "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). To determine the reasonableness of a penalty, the State Commission may consider both mitigating and aggravating factors that undermine or support the reasonableness of the Rock Island Commission revocation order.

The consideration of mitigating evidence demonstrates that the penalty of revocation should be modified to a lesser penalty than license revocation. First, there is no evidence admitted into the record that Playmakers has had prior violations related to its security measures. While it is true the Rock Island Commissioner order referred to various prior incidents at Playmakers resulting in formal warnings, such evidence was not admitted into the formal record at the hearing. If the prior record had been admitted at the hearing, Playmakers would have had the chance to address the circumstances surrounding such incidents. Second, while there is a reference in the record that there have been 30 calls for service at Playmakers, (*ILCC p. 066*) there is no evidence to determine if such calls were the result of Playmakers failed security measures. The State Commission recognizes the Catch-22 dilemma related to calls for service. If Playmakers' staff calls the police because of a security issue, then such a call for service could be used as evidence against Playmakers in a future case (*See Rock Island Commission Order, ILCC p. 282*). Of course, if Playmakers does not call the police, then it may be in violation of Section 3-11(p). Such a Catch-22 exposes the complex nature and, at times, ill-defined expectations of the licensee's duty to adequately provide security. At a minimum, however, without a history of prior security violations in the record, and only one of the two charges in this matter having been proven, the immediate penalty of revoking Playmakers' license when its security attempted, but failed, to satisfy the conditions of the Section 3-11(p) is an unreasonable and arbitrary penalty.

Just because there is only one proven charge and no license history in evidence, however, it does not mean the Rock Island Commissioner cannot hold its liquor license holders to a high standard of conduct, especially if such a high standard directly relates to the licensee's responsibility to take every reasonable measure to protect its patrons and nearby persons impacted by the operation of the licensed business. Both the April 8 and April 10 incidents involved extremely violent incidents resulting in serious bodily harm on April 10, and no less than 23 gunshots in a densely populated area on April 8. Even though the State Commission has ruled that Playmakers did not technically violate Section 3-11(p) on April 8 because of the adjacency examination, the record is clear that the shootings related to the operation of Playmakers. There was no other business in the area operating at that time. At least one of the shooters was a patron of Playmakers. Playmakers' security heard the gunshots but did not call the police. Even if Playmakers did not technically violate Section 3-11(p) on April 8, Playmakers seemed to lack an interest in monitoring the external areas occupied by its patrons, and then did not find it necessary to call 9-1-1 when no less than 23 shots were fired less than a block away. Therefore, even though the facts may not warrant a revocation of the liquor license, the facts do warrant the next most severe penalty of a thirty-day suspension of the license.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Rock Island Liquor Control Commission revoking the Playmakers' retail liquor license is MODIFIED to a thirty (30) day suspension of the retail liquor license, minus seven (7) days for time already served from April 12, 2023, through April 18, 2023.

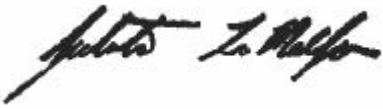
ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on July 19, 2023.



Cynthia Berg, Chairman



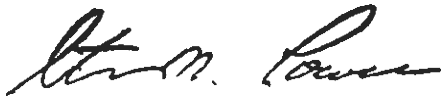
Melody Spann Cooper, Commissioner



Julieta LaMalfa, Commissioner



Thomas Gibbons, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner



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.

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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 1, 2023.

/s/ Richard Haymaker

Richard Haymaker

Rock Island Liquor Control Commission
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