

LICENSE APPEAL COMMISSION CITY OF CHICAGO

Fine Fair Food & Liquor, Inc.)
Ghazy Salman, President)
Licensee/Revocation)
For the premises located at)
3357-3359 W. 16th St.)
Chicago, Illinois 60623) Case No. 20 LA 08
) 19-LR-0074
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

DECISION of Commission Chair PARRY with
Commissioner GIBBONS CONCURRING, and
Commissioner BERG CONCURRING

An of Order of Revocation was issued by the Department of Business Affairs/Local Liquor License Control Commission of the City of Chicago (“Local Liquor Control Commission” or “LLCC”) on June 15th, 2020, revoking the City of Chicago Retail Liquor License and all other City of Chicago licenses issued to Fine Fair Food & Liquor, Inc., Ghazy Salman (President) for the premises located at 3357-3359 W 16th St., City of Chicago, County of Cook, State of Illinois (“Licensee” or “Fine Fair”) upon the Local Liquor Control Commissioner sustaining the Findings made by the Hearing Commissioner after a public hearing on the charges set forth below. For the reasons stated herein, the Order of Revocation is AFFIRMED.

JURISDICTION

This appeal was heard pursuant to the authority granted to the License Appeal Commission of the City of Chicago (“License Appeal Commission” or “LAC”) by the State of

Illinois under (235 ILCS 5/) Liquor Control Act of 1934 (“Liquor Control Act”). The appeal was timely and properly filed by the Licensee. Licensee seeks review of an Order of Revocation issued subsequent to a public hearing before the Department of Business Affairs and Consumer Protection/Local Liquor Control Commission of the City of Chicago pursuant to 235 ILCS 5/7-5 and Title 4, Chapter 4, Section 280 of the Municipal Code of Chicago (“MCC”).

BASES FOR REVOCATION

The Local Liquor Commissioner sustained recommendations of revocation made by the hearing officer on four charges and entered an Order on June 15, 2020, revoking the City of Chicago Retail Liquor License and all other City licenses heretofore issued to Licensee. The findings made by the hearing officer on the four charges were as follows, in summary:

1. That based on a preponderance of the evidence, on or about May 24, 2019, Licensee acquired or possessed a loaded firearm on its premises in violation of 430 ILCS 65/2. That based on the totality of circumstances, including Licensee’s prior record, revocation was appropriate discipline.
2. That based on a preponderance of the evidence, on or about May 24, 2019, Licensee was in violation of Municipal Code of Chicago §4-60-141(a) because Licensee permitted and allowed the illegal possession of a firearm on the premises in violation of 430 ILCS 65/2. That based on the totality of circumstances, including Licensee’s prior record, revocation was appropriate discipline.
3. That based on a preponderance of the evidence, on or about May 24, 2019, Licensee, by and through its agent, permitted or allowed smoking within a public place, to wit: an employee smoking within the licensed premises, in violation of Municipal Code of Chicago § 7-32-015. That based on the totality of circumstances, including Licensee’s prior record, revocation was appropriate discipline.
4. That based on a preponderance of the evidence, on or about May 24, 2019, Licensee by and through its agent, permitted or allowed smoking within an enclosed public place, to wit: an employee smoking within the licensed premises, in violation of 410 ILCS 82/15. That based on the totality of circumstances, including Licensee’s prior record, revocation was appropriate discipline.

The Hearing Commissioner found Officer Salcedo to be credible, believable and uncontroverted as to his testimony regarding his observations on May 24, 2019 on Licensee's licensed premises, including: that an employee was smoking inside the store during business hours; that the officer personally examined a firearm that his team retrieved from an open safe in an interior office accessible to Licensee and employees; that the firearm was unregistered and the employees advised the officer none of them owned it and none of them presented any firearm licenses; that the officer called and spoke to the store manager who told the officer the firearm belonged to a former employee. The Hearing Commissioner also further found the testimony of Khalil Sweis not credible or generally believable, and that even if believed it did not controvert City's testimony and evidence. As to possession of the firearm, Licensee did not contest ownership of the premises or the safe where the firearm was found; Licensee had actual possession of the firearm. The Hearing Commissioner also found that Licensee had constructive possession because it was in the interior office of the store which Licensee controlled and store employees had immediate access to, and that Licensee had knowledge of the firearm on the premises – the manager advising the officer that the firearm belonged to a former employee and witness Sweis having testified he owned the firearm and left it there a few days prior.

REVIEW OF RECORD OF PROCEEDINGS

City of Chicago Department of Business Affairs and Consumer Protection ("City") refused Notice to Produce requests by Licensee for (1) notes and/or all of the computer recordings of meetings between individuals on dates in 2001, 2005, 2008 and 2014 regarding settlement of violations, and (2) the appearance of Local Liquor Commissioner to testify as to policy of offering into evidence charges not related to the current charge and dating back 11-to-

18 years. City argued that dispositions regarding the settlements would be offered at the close of the case solely for the purpose of aggravation as is allowed in the applicable hearing rules, and that those rules prohibit relitigating facts or law underlying prior orders or dispositions. City further argued that the Commissioner's testimony as to unrelated violations dating back to 2001-2014 was not relevant to the charges at issue and that any new discipline should be measured in light of the Licensee's prior history. Licensee argued that it was not relitigating the dispositions of the violations from 2001-2014, but rather sought the information to show what went into consideration of the decisions for the fine dispositions and whether they had any impact on later violations, and that they would also show those fine dispositions were specifically agreed to for the purpose of settling matters without going into a lengthy hearing. The hearing officer denied the requests to produce at hearing and noted in the Findings that the City's objection was compelling and the Licensee's stated reason for the request was not compelling, further finding that the information requested was not necessary because three of the four prior dispositions were listed as "voluntary fines." At the conclusion of the proceeding, the dispositions were offered as City Exhibit 3, Licensee commenting they showed four instances of violations in 35 years and that it was audacious for City to offer them as aggravation, and that had City produced the Local Liquor Control Commissioner there would have been questioning on this and Licensee counsel would make an offer of proof that in all the years he had been handling cases, the City had never gone back more than 10 years in disciplinary records for revocation, adding be that as it may, the total history should be considered. As to the violation occurring five years back, counsel argued it was for a violation unrelated to having a firearm on the premises.

City's Exhibit No.1, Notice of Hearing was admitted without objection.

Testimony of City witness Officer Salcedo

City witness Officer Salcedo, identified as a police officer with the Chicago Police Department (“Officer”), testified that on or about May 24, 2019, he visited the store at that location with two other officers as part of a license inspection and spoke to three-to-four employees that he saw behind the counter during the inspection. He described the premises as a store as having a counter on the right as one enters, and the rest of the store as having items for sale, including alcohol. The licenses were inspected and it was found Licensee had valid licenses for liquor, packaged goods; retail food; and tobacco retail. During the inspection Officer Salcedo observed an individual smoking a cigarette behind the counter inside the store, and that he was told by that individual that the individual was one of the store employees. On cross examination the Officer said he did not know the name of the employee he saw smoking, and on re-cross testified he could not recall the name. As to posted signs, the Officer testified on cross examination that he wasn’t sure where the “no smoking” signs were located and that the Licensee did not receive a ticket for failure to post the signs.

He testified that the officers proceeded with the inspection by going behind the counter to look at the proof of insurance and tobacco, and that while behind the counter he observed next to the counter an office with an open door. Officer Salcedo testified that another officer, his partner, entered the open door and saw a firearm in plain view in an open safe. He testified on direct and cross examinations that this occurred a few steps away from where he stood behind the counter, and his partner conveyed to Officer Salcedo from where she stood in the open office that there was a firearm in the open safe. On cross examination, he described the office as small, and that it was the room the employees referred to as the “office.” He did not know whether there was a key next to the safe when cross examined. On direct examination there was an objection to Officer Salcedo testifying as to what another officer saw, as Officer Salcedo did not view the

firearm himself at the same time. The objection was overruled. Subsequently his partner retrieved the firearm and showed it to Officer Salcedo. He further testified that he observed it was a loaded firearm and that it would have been accessible to anyone behind the register area. He subsequently found that it was not a registered firearm. He then asked the individuals behind the counter who had identified themselves as employees about the firearm. There was an objection to the officer testifying as to anything the alleged employees said because the officer did not identify them by name. After refreshing his recollection Officer Salcedo remembered speaking to Mohammed Hennawi who had identified himself to the officer as an employee, but that Hennawi said he did not know anything of the firearm. After inquiring of Hennawi and every other individual who'd identified themselves as an employee whether anyone had a FOID card or concealed carry or proper security identification, Officer Salcedo testified no one presented him with any such documentation. On cross examination he was asked if one of the individuals had produced identification for the firearm, would he have still have issued a ticket (presumably a violation notice), to which Officer Salcedo said it would depend, and that in this instance, if the individual with the identification for the firearm was not the owner of the establishment, there would have been a violation of a concealed carry license because the firearm was not on their person. Officer Salcedo testified there were multiple people in the store, customers and employees, and that he saw at least three employees behind the counter, and that those employees were the only individuals with access to the firearm. Officer Salcedo testified he asked one of the employees, perhaps Hennawi, to call the owner. Officer Salcedo testified that he spoke with who was identified as manager Mohamed Hmoud, who told the officer that the firearm belonged to a former employee. The Officer could not remember if he spoke the owner of the establishment.

With the admission of Licensee Exhibit 2, it was established that the Licensee was first licensed in 1985, being in business 35 years. Licensee Exhibit 1, the Administrative Notice of Violation (or “ticket” as referred to during questioning) was also admitted over objection. Officer Salcedo testified that the information he entered on the Licensee Exhibits 1 & 2 was accurate.

Officer Salcedo testified on cross that generally during inspections the areas behind the counter and offices are thoroughly inspected to see if there are unstamped cigarettes or other contraband. They also ask that a locked safe be unlocked for inspection. When cross examined on who asked to open the safe in this case, the Officer replied that the safe was open, and that he did not see his partner take the firearm out of the safe, so he did not know whether it was hidden in the safe or under papers, that his partner told him it was in plain view while she was still in the office.

Testimony of Licensee witness Khalil Sweis

The witness identified himself as realtor, retail owner, and a cousin to the Ghazi Salman (President/Licensee). He testified that he “technically” did not work for his cousin, but would work at the store when called if they needed him because he grew up in the business and is comfortable with it. When he was at the store he would “keep an eye on everything,” bag and do other things. Sweis also testified that he is “pretty much” familiar with the safe in the office and that generally, the safe is closed and “has a key right there by the safe.” He testified that he owned the firearm found at the store and has a Concealed Carry License, a copy of which was admitted as Licensee Exhibit 3. He testified that he attempted to get the firearm back from the police station, but was told he had to wait until the hearing was over. He testified that he left the

firearm in the safe when he was at the store and went to the bathroom. He forgot and left it in the safe a few days prior to the inspection. He had not been back to the store since.

Closing Arguments
City

City argued Officer Salcedo credibly testified that during an inspection the officers recovered a firearm that was in plain view from an unlocked, open safe in an open office, and that an individual who identified himself as an employee was smoking inside the store.

Licensee

Licensee questioned Officer Salcedo's ability to recall the events because he said the employee was smoking a cigarette while his report noted it was a cigar. Licensee argued the firearm was not in plain view because the safe was in the office, that the officer had to get into the safe to see it, and it was not Officer Salcedo who discovered the firearm. The officer who discovered the firearm was not present at hearing to testify as to whether the officer opened the safe, a key being near the safe. A gun does not have to be registered in Illinois. All that is needed is a Concealed Carry License, and the Licensee argued that the firearm owner had identification to that effect.

Licensee argued maybe someone was smoking on the premises, or maybe not, but if it did happen it does make a difference if it was an employee rather than a patron because the penalties would be higher for an employee, and that the City did not prove it was an employee,

Finally, counsel for Licensee argued that suspensions, revocations and penalties when he first started taking these types of cases were for charges like prostitution, someone physically beating someone, shootings, and cannabis possession, and that the system has come a long way if it is now penalizing a 35-year license holder for someone smoking on the premises and finding a

gun for which the firearm owner has a license, “who works there indiscriminately,” and who left it at his Licensee cousin’s store.

City Rebuttal

On rebuttal, it was pointed out that no one testified that the safe had to be opened, but rather the firearm was found in plain view, in an open safe. It was also argued that if witness Sweis was the firearm owner, by his own admission, he left the gun in an open office in an open safe, and has not been to the business since. Further, it was argued, it cannot be taken lightly the discovery of the loaded firearm in an open safe accessible to employees, none of whom produced a license to carry a firearm.

ARGUMENTS ON APPEAL

Licensee Argument on Appeal

In summary, Licensee argues the order of revocation should be reversed on the bases that follow: 1) It maintains the LLCC exceeded its statutory authority and did not proceed in a manner provided by law because 1) it based the revocation on violations that are not fairly related to liquor control; 2) the revocation was arbitrary, capricious and unreasonable, and that it served to revoke all licenses issued to the owner for any and all businesses he owned and any licenses held by a family member; and 3) LLCC erred in taking prior dispositions for violations into consideration in aggravation that were (a) too remote in time; (b) improperly inferred voluntary fines qualified as prior discipline, and (c) that the prior charges were unrelated to the ones in this case.

Licensee argues there were issues of law on which the LLCC erred and the revocation should be reversed: (1) that the statute relating to the FOID Card Act was not fairly related to

the control of liquor; and (2) under the FOID Card Act, there is an exception to the card requirement where there is a Concealed Carry License. Licensee argues that while deference is to be given to the findings of fact, the same deference may not be given to issues of law; that issues of law are to be examined on a de novo basis. As to the charges related to smoking for which each one was found to serve as a basis of revocation in and of itself without aggravation, Licensee argues that revocation was beyond rational application of the law when they could have been resolved with the imposition of a fine and/or ticket. Licensee argues the penalty was not proportional to the violation. Licensee provides Case Law and Citations Submitted in Support of Appeal.

As to aggravation by way of prior case dispositions, Licensee argues that the cases should not be given much weight because they were settled with no finding of liability, and that while the City may argue it is evidence of wrongdoing, Licensee argues it shows weakness in the City's cases. It also argues the dispositions were not recent in the Licensee's 35-year history of owning the business, and the violations were not of the same nature as the ones at issue in this case. Licensee argues that revocation in light of the totality of circumstances was not a logical, rational, reasonable expression of the LLCC's authority or discretion.

Licensee points out that the firearm found on the premises was not proven to have been used in a crime or to have been illegal in any way, and that the only issue was that Licensee did not have a valid FOID card for the firearm found in the safe. It argues that the FOID Card Act is not meant to enhance criminal penalties, but rather it is a registration to identify who may own a firearm, likening the failure of having the FOID card for the firearm to driving without a driver's license. Licensee argues that the Local Liquor Control Commission, being a creature of statute, cannot issue a notice of hearing or make a determination on an alleged violation that is not fairly

related to liquor; that it would be like imputing liability to a Licensee because an employee was issued a traffic ticket for speeding; that failure to have a FOID card or the FOID Card Act has nothing to do with liquor control.

Licensee argues even if the LLCC could act upon an alleged FOID card violation, there is an exception to the FOID card requirement if there is a valid Concealed Carry License, and, on the day the firearm was found on the premises, its owner had a valid Concealed Carry License which excuses anyone else from having to have had a FOID card for the firearm.

City Argument on Appeal

City iterated the applicable standard of review. As to whether LLCC proceeded in a manner provided by law, City argues that it was satisfied by service of notice of specific charges more than a month prior to public hearing held pursuant to MCC 2-25-120 with opportunity to present evidence and examine witnesses; the hearing officer issuing findings after a review of the evidence; and the commissioner issuing an order of revocation based on the findings. City argues that MCC 4-4-280 gave it authority to revoke any license for good and sufficient cause, or if the issuing department determines Licensee or its employee or agent violated any provision of the MCC or any rule or regulation promulgated thereunder, or any applicable state or federal law, citing *Roach Enterprises, Inc. v. License Appeal Comm'n*, 277 Ill.App.3d 523 (1st Dist 1996).

City argues that the order of revocation was supported by the findings, and that all four charges were sustained – (1) possession of a firearm without a FOID card in violation of state law 430 ILCS 65/2; (2) permitting illegal conduct on the licensed premise in violation of local law MCC 4-60-141(a); (3) permitting smoking on the licensed premises in violation of local law MCC 7-32-015; and (4) smoking on the license premises in violation of state law 410 ILCS

82/15. It argues that any violation of local, state or federal law was sufficient for revocation under MCC 4-4-280. Citing *Sip & Save Liquors, Inc. v. Daley*, 275 Ill.App.3d 1009 (1st Dist. 1995), it argues that a single firearm charge is deemed sufficient for revocation, and that revocation is only too harsh where no prior discipline and no clear awareness of wrongdoing is found (*Hanson v. Illinois Liquor Control Comm'n*, 201 Ill.App.3d 974 (1st Dist. 1990)). City argues there was prior discipline for the Licensee, and that contrary to Licensee's assertion, one of the fines was not voluntary. Furthermore, it argues the testimony as to why fines were paid would not be proper for consideration, citing *Addison Group, Inc. v. Daley*, 382 Ill.App.3d 1013 (1st Dist. 2008). In that case the court opined that a prudent person would see voluntary payment of a fine for a violation as evidence that the payer committed the violation charged. Further, that while courts have held voluntary payment should not preclude presenting evidence the payer did not commit the underlying violation, generally, the court in *Addison* explained LLCC rules expressly prohibit litigation of facts underlying prior dispositions and therefore the licensee in that case was properly prohibited from presenting testimony in defense of the underlying charges for prior dispositions. *Id.*

As to whether the findings were supported by substantial evidence in light of the record, City argued that the findings are presumed to be prima facie true and correct, and can only be disturbed if an opposite conclusion is clearly evident (*Byrne v. Stern*, 103 Ill.App.3d 601 (1st Dist. 1981)). Officer Salcedo was found to be credible. Licensee possessed a firearm on the licensed premises without a FOID card. The firearm was recovered by Officer Salcedo's partner from an open safe, in an office behind a counter only accessible to employees on the licensed premises. Officer Salcedo saw the firearm on the premises. All individuals behind the counter identified themselves as employees. None of them had a FOID card, Concealed Carry License or any other

firearm license. It was found Licensee had constructive possession of a firearm. City cited *Daley v. El Flanboyan*, 321 Ill.App.3d 68 (1st Dist .2001) in which it was found that in order to prove constructive possession, the presence of a controlled substance on a premises under the defendant's control gives rise to an inference that defendant has knowledge and possession of that controlled substance absent other facts and circumstances that create a reasonable doubt as to his guilt. City argues constructive possession is sufficient to prove actual possession as established in *People v. Mack*, 12 Ill.2d 151 (1957). City also cited *People v. O'Neal*, 35 Ill.App.3d 89 (1st Dist. 1975), which allowed the finder of fact to draw the inference that the licensee knew of the presence of a firearm on the premises and exercised control over the firearm because the firearm was located on the licensed premises in an area only accessible to employees.

Licensee Rebuttal

Licensee iterates its argument that LLCC did not have authority to act on any violation not fairly related to the control of liquor, and that by doing so it did not proceed in a manner provided by law. It further argues that the Illinois Liquor Control Act takes precedent over local laws in terms of the grant of authority, and that the Liquor Control Act specifically states that the LLCC authority to discipline a retail liquor licensee is for violations of the Liquor Control Act or local ordinances related to the Liquor Control Act. Licensee cited *Amigo's Inn v. License Appeal Comm'n*, 354 Ill App 3d 959; *Nappi v License Appeal Comm'n*, 50 IllApp3d 329; and *Lopez v. Illinois Liquor Control Comm'n*, 120 Ill App 3d 766. Licensee argues that if there's no authority to act on a specific statute, there's no authority to revoke a license based up on a violation of that statute, and that is why the LLCC in this case did not proceed in a manner provided by law.

As to substantial evidence, Licensee argues that while there was a firearm found in its safe on the licensed premises the firearm owner had a Concealed Carry License, so there was no violation because the FOID Card Act (430 ILCS 562) excuses the necessity of a FOID card where the owner has a Concealed Carry License. It further argues that the City, because it didn't know who the owner was at the time and without further investigation other than a phone call concluded that the owner must have been one of the employees under the theory of constructive possession, and that when it was presented with the actual owner who had a valid Concealed Carry License, the City should have investigated more or chose to not prosecute the Licensee.

Licensee argues counter to City's presentation of case law, that there is no Illinois case law addressing unreasonableness of a penalty that says a penalty can only be reversed if the licensee has no previous record, and the standard is that a revocation must be reversed if the LLCC acted unreasonably, capriciously or in a way beyond the reasonable exercise of discretion.

Upon Questioning by the Commissioners

City answered that it verified employment of the individuals behind the counter per the testimony of Officer Salcedo, who said the individuals identified themselves as employees, but that no employment records were requested or taken. It also answered that the testimony of witness Sweis¹ was that he'd left the firearm in the safe a couple of days before the inspection. As to why the safe was unlocked, Licensee indicated there was scant testimony as to that, but that the safe was not readily accessible to anybody other than the employees – that one would have to go behind the counter, through a steel gate², and then the safe is in a 4x4' enclosure or

¹ In its Argument on Appeal, Licensee refers to the testimony of a "Cleo Suisse," however the testimony from the hearing before the LLCC has the testimony of only two witnesses: Officer Salcedo and Khalil Sweis. It is assumed Licensee refers to "Khalil Sweis" when it references "Cleo Suisse," and thus the witness is referred to as Sweis in this Decision. This was not a transcription error, as Licensee spelled the name during its Argument on Appeal.

² A steel gate was not within the testimony of either witness.

office³, and that it is not in “plain view for all to see.” Licensee also noted there was a key next to the safe for easy access to employees. And, as to why the firearm was there, witness Sweis testified that he had it on him in the store, put in the safe to go to the bathroom, and that when he left the premises he forgot and left it in the safe. There was no evidence of what the policy was regarding the safe. When questioned as to witness Sweis’ relationship to Salman, Licensee President, it was indicated they are cousins.

ANALYSIS

Standard of Review for Appeals of Revocation Orders

In considering an appeal of an Order of Revocation issued by the Local Liquor License Commissioner, the License Appeal Commission shall determine the appeal by a review of the record of proceedings leading to the Order, and shall be limited to considering:

- 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.

Proceeding in the Manner Provided by the Law

Licensee puts forth several arguments to reverse the order of revocation. It maintains the LLCC did not proceed in the manner provided by law because it exceeded its statutory authority and based the revocation on violations that are not fairly related to liquor control. There is no issue as to timely notice, public hearing, a record maintained, or evidence reduced to writing.

The revocation order was based on the findings of violations of:

- 1) 430 ILCS 65/2, a State law which prohibits possession of a firearm without also having in his or her possession a Firearm Owner’s Identification Card.
- 2) Municipal Code of Chicago §4-60-141(a) which prohibits a licensee, or its employee or agent, from permitting or allowing any illegal activity on the licensed premises.

³ Measurements of the office area were not within the testimony of either witness.

- 3) Municipal Code of Chicago § 7-32-015 which prohibits smoking in a public place or place of employment.
- 4) 410 ILCS 82/15, a State law which prohibits smoking in public places and places of employment.

The Liquor Control Act gives authority to local liquor control commissioners to revoke a liquor license if they determine that the licensee has violated any provisions of the Liquor Control Act or an valid ordinance or resolution enacted by the particular city council, president, or board of trustees or county board or any applicable rule or regulations established by the local liquor control commissioner or state commission which is not inconsistent with law, provided that the licensee be given three days written notice and an opportunity to appear and defend in a hearing open to the public and for which all evidence is reduced to writing and official record of the proceeding maintained. (235 ILCS 5/7-5). That is all that is required to find that the LLCC proceeded in the manner provided by law. In its Case Law and Citations Submitted in Support of Appeal (“Case Law”), Licensee cites *Goral v. Dart*, 2020 IL 125085 to show that the LLCC is a creature of statute and must not exceed its statutory authority. In its Case Law, Licensee references the Liquor Control Act: “Local licensing authorities derive their authority from the Illinois Liquor Control Act, which was enacted to protect the health, safety, and welfare of Illinois citizens and to promote temperance ‘by sound and careful control and regulation of the manufacture, sale, and distribution of alcoholic liquors.’ (235 ILCS 5/1-2).” The Commission notes that the entirety of that sentence in 235 ILCS 5/1-2 reads, “This Act shall be liberally construed to the end that the health, safety and welfare of the People of the State of Illinois shall be protected and temperance in the consumption of alcoholic liquors shall be fostered and promoted by sound and careful control and regulation of the manufacture, sale, and distribution of alcoholic liquors” (235 ILCS 5/1-2). It is a well-established principle that agencies

established by statute must act within the authority given it by statute. City does not argue against that proposition.

Licensee argues that determining a violation of FOID Card Act provisions for purposes of discipline is outside the authority of the LLCC because it is not fairly related to liquor control for the reasons as stated within its Argument on Appeal above. Licensee cites to the Liquor Control Act in which local liquor control commissioners “shall be charged with administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted...” (235 ILCS 4/2).

Licensee also argues that the LLCC did not proceed in a manner provided by law because the revocation was arbitrary, capricious and unreasonable. We note that none of the cases cited by Licensee involved the same facts as presented here, and all of the cases cited for that proposition involved Licensees with no prior discipline. Licensee provides in its Case Law: “Regarding violations of laws relating to alcoholic liquor, the ILCA authorizes local commissioners to ‘suspend for not more than 30 days or revoke for cause all local licenses issued to persons for premises within his jurisdiction [235] ILCS 4/4-4(1).” It cites *Spiros Lounge, Inc. v. Illinois Liquor Control Comm’n.*, as standing for the proposition that the phrase “for cause” as having been construed as vesting local authorities “with broad discretionary power to be exercised reasonably.” (*Spiros Lounge, Inc. v. Illinois Liquor Control Com.*, 98 Ill. App. 3d 280, 287 (1st Dist. 1981)). Licensee argues in its Case Law that “reasonably” in the case of local liquor control commissioners “requires that a penalty may be imposed only in response to a violation of ‘statutes, ordinances, or regulations fairly related to liquor control. *Nappi v. License Appeal Com.*, 50 Ill. App. 3d 329, 300 (Ill. App. 1st Dist. 1977); *Lopez v. Illinois Liquor Control Com.*, 120 Ill. App. 3d 756, 765 (2nd Dist. 1983).”

No cases cited by either party were directly on point as to whether FOID Card Act violations are fairly related to liquor control. However, Illinois law recognizes a relationship between the regulation of firearms and alcohol/liquor consumption and sales. For example, the Illinois Firearm Concealed Carry Act references firearms and liquor control and/or alcohol in its provisions: prohibition against carrying a firearm under certain circumstances where alcohol is served on certain premises (430 ILCS 66/65(a)(9, 11) and prohibitions against carrying a firearm while under the influence of alcohol (430 ILCS 66/70(d)). Likewise, the Liquor Control Act Sec. 5/10-1(c-5) specifically references provisions of Firearm Concealed Carry Act. It has also been found in *Sip & Save (supra)* that a revocation could be based on an unregistered firearm (when registration was required) found on the licensee's premises, and similarly in *Roach (supra)*. Case law set forth by Licensee in *Napa v. License Appeal Comm'n*, 50 Ill.App.3d 329 (1st Dist. 1977) and *Lopez v. Illinois Liquor Comm'n*, 120 Ill.App.3d 756 (2nd Dist. 1983) both cite as authority *Weinstein v. Daley*, 85 Ill.App.2d 470 (1st Dist. 1967). In *Weinstein*, the court took exception to plaintiff's assertion that local liquor control commissioner acted outside its authority when it revoked a liquor license for licensee's illegal sale of a controlled substance by one of the pharmacist-licensees on the premises of its joint pharmacy and liquor store – the licensee contended it was not shown that the sale violated a specific provision with the Liquor Control Act, ordinance or applicable rule. The court noted the “contention suffers from its inability to reconcile the wide grant of power available to the Commissioner to revoke ‘for cause.’” *Id.* at 364. “Courts have approved local liquor ordinances in home-rule municipalities that were either more restrictive than State statutes on the same subject matter or that placed additional requirements on licensees not found in State statutes.” (*Sip & Save, supra* at 1015)⁴

⁴ Of note, the Bureau of Alcohol, Tobacco and Firearms recognizes a relationship in targeting criminal activity involving those products at the federal level.

As to the applicability of MCC 4-4-280 to revocations, the Appellate Court has found that it covers liquor licenses. *Id.* Regulation of smoking indoors is universally accepted as a matter of public health and safety. The State and City have statutes and ordinances generally prohibiting smoking in public indoor spaces and places of employment, as cited within the charges at issue. It is related to the operation of premises licensed to sell liquor to the public and to places of employment in the City and State. From a review of the record it appears that as an owner of a license for 35 years, the Licensee should have been familiar with prohibitions against smoking in the store, and likewise it is logical to draw the inference that because no violation notices were issued for failure to post signs prohibiting smoking, an employee behind the counter was smoking with complete disregard for those signs. As the court in *Byrne* points out, a licensee is responsible for the conduct of agents or employees on the premises, *Supra* at 606.

Licensee also argues that the LLCC did not proceed in a manner provided by law in that it erred in taking prior dispositions for violations into consideration in aggravation that were (a) too remote in time, (b) involved voluntary fines in lieu of hearing, and (c) are unrelated to the ones in in this case. Contrary to Licensee's assertions, it is clear that prior dispositions are not time barred and are admissible to show aggravating or mitigating circumstances. For this proposition City correctly cites to MCC 4-4-280 and *Addison Group, Inc. v. Daley*, 382 Ill.App.3d 1013 (1st Dist. 2008). Further the Appellate court has found that "prudent persons would see voluntary payment of a fine for a violation as evidence that the payer committed the violation charged." *Id.* at 1041.

Having fully considered Arguments on Appeal summarized above, and based upon the law and a review of the record, the License Appeal Commission finds that the local liquor control commissioner has proceeded in the manner provided by law.

Findings Supporting the Order

The Liquor License Commissioner revoked Licensee's license based upon review and sustaining of the findings of the Hearing Commissioner for the charges at issue. The Hearing Commissioner found violations of State law and/or municipal ordinance as cited within each charge. As provided by municipal code and state law a liquor license control commissioner may revoke a license for violation of state law or municipal ordinance.

Having fully considered Arguments on Appeal summarized above, and based upon the law and a review of the record, the License Appeal Commission finds that the Order of Revocation is supported by the Findings.

Evidence Supporting the Findings

In its Case Law, Licensee cites *Boom Town Saloon v. City of Chicago*, 384 Ill.App.3d 27, (1st Dist. 2008) as standing for the proposition that "substantial evidence" is defined as "more than a mere scintilla" and as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 33.

The "findings of the local commissioner are presumed to be prima facie true and correct and may only be disturbed where they are against the manifest weight of the evidence and an opposite conclusion is clearly evident" (*Byrne* at 605). The facts in the record as summarized above in the Review of Record of Proceedings are uncontroverted. A firearm was found in an open safe in an open office accessible only to employees on the Licensee's premises; it was there for days prior to its discovery by the officers as testified to by witness Sweis and as acknowledged by the store manager to the Officer; and no employee present at that time nor the Licensee/owner presented a Firearms Owner Identification card or an exception to the FOID Card Act. The facts in the record are also uncontroverted that an individual who identified

himself as an employee in the store on the licensed premises was smoking where he stood behind the counter that was accessible only to employees.

Having fully considered Arguments on Appeal summarized above, and based upon the law and a review of the record, the License Appeal Commission finds that findings of the local commission are prima facie true and correct, are not against the manifest weight of the evidence, and that an opposite conclusion is not clearly evident. Therefore, the License Appeal Commission finds that the findings of the local liquor control commissioner are supported by substantial evidence in light of the whole record.

Unreasonable, Arbitrary and Capricious as a Basis to Reverse Order of Revocation

As discussed above, the scope of review for the License Appeal Commission is defined by law to be limited to whether (1) the local liquor control commissioner proceeded in a manner provide by law; (2) the order is supported by the findings; and (3) the findings are supported by substantial evidence in the light of the whole record. It is not within the scope of review for the License Appeal Commission to review the severity of the discipline.

CONCLUSION

Having fully considered Arguments on Appeal summarized above, based upon the law and a review of the record, and the reasons stated herein, the License Appeal Commission finds that the local liquor control commissioner proceeded in a manner provided by law; the Order of Revocation is supported by the findings; and the findings are supported by substantial evidence in the light of the whole record.

IT IS THEREFORE DECIDED AND ORDERED that the JUNE 15TH 2020 Order of Revocation of the liquor license issued to Fine Fair Food & Liquor, Inc., Ghazy Salman (President) for the premises located at 3357-3359 W 16th St., City of Chicago, County of Cook, State of Illinois is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: January 22, 2021



Laura Parry
Chair



Thomas W. Gibbons
Member



Cynthia A. Berg
Member