

LICENSE APPEAL COMMISSION CITY OF CHICAGO

ERIE & FRANKLIN CORP., )  
JONATHAN BLAIR VALZ, PRESIDENT )  
Licensee/Fine and Suspension )  
For the premises located at )  
316-318 W. Erie )  
Chicago, Illinois 60654 )

Case No. 21 LA 02  
20-LR-0011

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, with opinion, and  
Commissioner BERG CONCURRING, with opinion

An of Order of Fine and Suspension 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 July 21st, 2021, ordering a fine of \$1,000 and suspending for 15 days the City of Chicago Retail Liquor License and all other City of Chicago licenses issued to Erie & Franklin Corp., Jonathan Blair Valz (President) for the premises located at 316-318 W. Erie St., City of Chicago, County of Cook, State of Illinois (“Licensee” d/b/a “Clutch”) upon the Local Liquor Control Commissioner sustaining the Findings made by the Hearing Commissioner after a public hearing on the charge set forth below. For the reasons stated herein, the Order of Fine and Suspension 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 Fine and Suspension 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”).

## **BASIS FOR FINE AND SUSPENSION**

The Local Liquor Commissioner sustained recommendations of fine and suspension made by the Hearing Commissioner on one violation and entered an Order on July 15, 2021, fining the establishment \$1,000 and suspending the City of Chicago Retail Liquor License and all other City licenses heretofore issued to Licensee for 15 days. In summary, the Hearing Commissioner, found that Licensee violated the Municipal Code of Chicago 14B-10-1004 when it allowed the number of persons in the licensed establishment to exceed the occupancy limits of 249 on the first floor on or about February 15<sup>th</sup>, 2021, per testimony of the firefighter who clicked 400 patrons and estimated a total crowd of 600-plus. Additionally, it was found that evidence of a prior violation issued to the same corporation, but different owner, was admissible to show aggravation/mitigation.

The Hearing Commissioner found all witnesses credible. There were 245 tickets sold to the private event that took place at the licensed premises on the night of February 14<sup>th</sup> through

early morning February 15<sup>th</sup>, 2021. Occupancy on the first level was capped at 249, and a second occupancy limit for the mezzanine was 87.

### **REVIEW OF RECORD OF PROCEEDINGS**

Notice of hearing was given and the matter was heard by the Hearing Commissioner on March 29<sup>th</sup> and April 5<sup>th</sup>, 2021. A Motion in Limine was filed by Licensee seeking to exclude use of prior history of discipline in aggravation (City's Group Exhibit 3) where prior discipline was issued to a previous owner of the corporation in 2008 for sale of alcohol to a minor. Ultimately, the Motion was denied, and the prior history was admitted for aggravation, the Hearing Commissioner finding that it was mitigating as to the aggravation because it was entered against a prior owner. Exhibit 1 (hearing notice) was admitted prior to testimony

#### Summary of Testimony of City Witness Batistella (firefighter) (T. 16-42)

City witness firefighter Batistella arrived on the premises at approximately 9:00 p.m. on February 14<sup>th</sup>, 2021, and testified that he was told by the staff person at the door that the premises was 50 under capacity. There is no testimony as to whether he was told that it was 50 under total capacity for both the first floor and mezzanine or the first floor solely. The witness referenced 249 as maximum occupancy allowed on the first floor and a separate occupancy maximum for the mezzanine level. He testified that he counted people in his head as he moved through the crowd on the first floor and stopped counting when he reached 249 people, although he had not completed counting everyone on the first floor. He testified that at that point they were several people over occupancy and that he told them they should move some of the people to the mezzanine level and from then on only allow one person in when one person left the

premises. He left after they stopped letting people in. He explained that being over occupancy maximums posed a threat to the safety of people's lives in case of an emergency egress.

The witness returned to the premises a second time around 12:15 a.m. on February 15<sup>th</sup>, 2021, and spoke with the same door person a second time. The door person again said the count was 50 under capacity. He testified that compared to the first visit, on this second visit he saw "the crowd spilling out the door, there was no room to move on the floor, and all the upper part of the floor was overcrowded and completely full" (T. 35). On his second count he reached 249 before he got through counting not even one-quarter of the first floor. He testified he could not get up to the mezzanine to do a count because security could not get him through the crowd to get up there and that he told management they had to remove 250 people or the premises would be closed. He noted that people were being walked out the back of the premises, but they were still letting people in the front. He called for a second City team to inspect (a/k/a "Team B" or "B Team").

Summary of Testimony of City Witness Robert Steffens (firefighter) (T. 43-72)

The witness testified in his capacity as a firefighter who inspected the Licensee's premises after his arrival on/about 12:30-to-1:00 a.m. on February 15<sup>th</sup>, 2021, where he saw a "large" crowd outside the premises, estimated at a hundred people, and a "large" crowd inside the premises with a "large" group of people blocking the entrance (T. 51). He testified that exceeding occupancy levels is "absolutely" a threat to public safety (T. 48) because overcrowding obstructs exits "and people can die" (T. 49).

The witness testified that the door person showed him the door person's "clicker" and it read "300," showing the number of people the door person counted. As the witness went inside,

he said he could tell immediately that it was a serious situation and it was overcrowded. Using a golf clicker, the witness went through the premises counting people until he could no longer move through the crowd, stopping at 400. The crowd blocked his access to the back of first floor and the stairs to the mezzanine to conduct a count there. He estimated the remainder of the crowd on the first floor to be approximately an additional 200 people. He testified that it is possible some people could have been counted twice. He said there were some areas of the floor where he could move and others where he couldn't and that he had difficulty getting to the deejay booth. Eventually after fighting through the crowd to get to the rear of the premises, by the kitchen, he made it up to the mezzanine, but there were only five or six people there. The firefighter saw 249 as the occupancy limit on the first-floor occupancy placard and he later came to find out the mezzanine had an occupancy placard with an 87-person limit. He took some photos from first floor ground level by raising the camera above his head and some from the elevated deejay booth looking down onto the first-floor crowd. He testified it took about 45 minutes to an hour to remove everyone from the premises after he ordered it to be shut down. He ordered it shut down because he saw the overcrowding as a threat to public safety.

City's Group Exhibit 2 (photos of premises) was admitted.

Summary of Testimony of Licensee Witness Cody Allen (general manager) (T. 72-106)

Witness Allen testified as to his role as General Manager for Licensee at the premises and that he was there the night of February 14<sup>th</sup>-February 15<sup>th</sup>, 2021. He described how the event that night was a ticketed event, how it was promoted, and how tickets were sold on an internet platform. He said the total number of tickets sold per the platform was 245. He testified that because it was generally a busy weekend in the city and because they were hosting a musical

event, security was “beefed up” and the staff was “enlarged” (T. 82). He arrived on premise around 7:00 p.m. and was there for the first inspection by firefighter and City witness Batistella. It was his understanding from staff that they were under capacity when the first inspection occurred, but he did not personally do a head count. After the firefighter spoke with a staff member who no longer is with the Licensee, witness Allen directed 25-to-30 patrons to the mezzanine level. He testified that when the entertainment arrived around 1:00 a.m. the patrons on the mezzanine level tried to make their way down to the first floor. He recalled that about five minutes after the talent arrived, a second City inspection team of at least 20-30 people came in. He testified that although he never did a head count himself, the count log he checked through the course of the evening did not exceed the numbers on occupancy placards.

Summary of Testimony of Licensee Witness James Harris (security) (T. 107-135)

Witness Harris identified himself as a Department of Justice Investigator who also provides security consulting and services to establishments including Licensee. He has no license specific to security work. He testified that he arrived at the premises around 4:00 p.m. on February 14<sup>th</sup>, 2021, and was present during the inspections at issue. He testified that he has been trained on how to count people, specifically he has done so in prison settings. He described how he was trained and how he performs head counts and disagreed with the methods employed by the firefighters during their inspections of the Licensee on February 14<sup>th</sup>-15<sup>th</sup>, 2021. He testified as to the importance of having an accurate count, and disputed being as far over capacity as the City counted and estimated, that, in essence, it seemed an exaggeration. He said if it had been 20 over capacity “I would give you that” (T. 130). He disagreed that the premises was overcapacity on the first inspection and said that the firefighter did not say they were

overcapacity, but rather “he had a problem with the way the patrons were congregated” (T. 114), told them to move some of the patrons upstairs, and so they complied. He testified that none of the security staff informed him they were near capacity. He also noted that he advised Licensee to have overhead garage doors as a means of emergency egress, although he was not aware that such doors were not a means of egress per the building code. He stationed two or three security guards at the overhead doors that evening in case of emergency and those doors would have been used if a mass of people needed to leave. The witness did not personally conduct a count of people at any time during the evening.

Summary of Testimony of Licensee Witness Rico Taylor (Licensee ownership) (T. 135-154)

Witness Taylor is an owner of Licensee corporation and flew in from out of state, arriving at the premises approximately 9:30-9:45 p.m. on February 14<sup>th</sup>, 2021. He noted that he was delayed getting into the venue because he was not recognized as an owner by the person at the door and he did not have a ticket for entry, which was the only way he said a person was allowed in. After he finally went inside, he consulted management, discussed occupancy, received an overview of the night and “how it would look if it’s overextended” (T. 139). He was informed an inspector was there earlier and he testified they expected the inspectors would be back later. He estimated that at that time they were “still well under 239” – around 213-217 on the first level and about 55 on the mezzanine based on what he was told by his management and security teams. He testified that they shut doors completely before the second inspection. When the performance started people started to rush the area around the performance to take photos, basically leaving the west side of the floor empty and at about the same time the team for the second inspection arrived. He said Licensee complied when told to turn off the music and turn

up the lights. He said he observed one of the people from the City, a woman, questioning another inspection team member by asking him how he got to 239. The witness did not surrender the occupancy certificate. He did not personally take tickets or conduct a count of people on the premises.

Licensee Exhibits A (ticket sales screenshots), B (Clutch Instagram gallery screenshot), and C (photo of closure notice) were admitted.

Closing Arguments  
City (T. 165-167)

City argued the witnesses it presented both testified credibly that they each personally counted people that numbered in the hundreds over capacity on the Licensee's premises on the night beginning February 14<sup>th</sup> and extending through the hours after midnight on February 15<sup>th</sup>, 2021, and therefore Licensee exceeded maximum occupancy. It noted that none of the Licensee's witnesses personally counted the number of people on the premises, but rather they relied on information passed on to them by other staff. City argued that prior discipline history should be considered in sanctions entered against Licensee even if it was during prior ownership.

Licensee (T. 167-178)

Licensee argues that suspension was not appropriate in this case and that City did not meet its burden in proving a violation of exceeding the occupancy limit. It argued that the Liquor Control Act did not contemplate exceeding a building code occupancy limit as being a violation of a statute, ordinance, law, rule or regulation fairly related to the control of liquor because it was not cited as an example in caselaw, specifically referencing *Leong v. Village of Schaumburg*, 550 N.E.2d 1073, 194 Ill.App.3d 60 (1<sup>st</sup> Dist. 1990) and *Nappi v. License Appeal Com'n of the City of Chicago*, 365 N.E.2d 612, 50 Ill.App.3d 329 (1<sup>st</sup> Dist. 1977). It argued that



the City chose not to specifically reference or incorporate the building code in its regulation of liquor licenses and posits that the failure to do so bolsters Licensee's argument that an occupancy limit violation is not fairly related to the control of liquor.

Licensee argued that ticket sales of 231 accurately shows the occupancy, and that management and security kept a close watch on occupancy counts that night. It argued witness Harris testified the City didn't use a preferred method of counting and that the photographs do not support the City's counts. It argued that it was crowded only on the one side of the building where the entertainment was.

#### City Rebuttal (T. 178-185)

City argued that maintenance of a reasonably safe environment is fairly related to the control of liquor as demonstrated in *Wilde-Hammer, Inc. v. Connor*, 576 N.E.2d 444, 216 Ill.App.3d 660 (3<sup>rd</sup> Dist. 1991) and that occupancy limits fall under maintaining a reasonably safe environment. As to the accuracy of counts, City again pointed out that ticket sales do not accurately reflect occupancy and none of the Licensee witnesses were personally taking tickets or doing counts. It also argued that the firefighters' years of counting within the context of these types of inspections outweigh Licensee witness Harris' experience in counting.

### **ARGUMENTS ON APPEAL**

#### Licensee Argument and Rebuttal on Appeal

In summary, Licensee argues the Order of Fine and Suspension should be reversed on the bases that follow: (1) It disputes the accuracy of the City's count made the night of February 14<sup>th</sup>-15<sup>th</sup>, 2021 that served as the basis for the conclusion that the Licensee allowed occupancy to exceed the limits of 249 on the first floor. It argues that photos in evidence do not show two-

and-a-half times the capacity as claimed by City's clicker count of 400-plus during a partial head count and estimated total head count of approximately 600. It argues that there were better ways for the City to have conducted the count and that ticket sales totaled 245 for a venue with a first-floor occupancy capacity of 249 and a mezzanine capacity of 87. It questions what weight should be given to the City's count, positing there were better ways to count and that the staff at the door that evening were said to have kept counts that were under capacity. It argues that when the entertainment for the event began occupants moved towards the stage and made it look crowded, and that City's count and estimate were exaggerated according to Licensee management. (LA T. 4-17, 21, 40). (2) Licensee also argues that the Hearing Commissioner erred by admitting evidence of a prior violation from when the Licensee was owned by someone else, was from 2008, and was for sale of alcohol to a minor which is different from an occupancy violation. It argues it should not have been admitted at all, even though eventually it was found to be mitigating. (LA T. 17-19). (3) Licensee also argues that an over-capacity occupancy violation is a building code violation and is not fairly related to control of alcohol; that it should be treated as a building code violation with a fine and not subject Licensee to discipline against its liquor license (LA T. 19-20).

Licensee cites *Addison Group, Inc. v. Daley*, 889 N.E.2d 701, 382 Ill.App.3d 1013 (1<sup>st</sup> Dist. 2008) as standing for the proposition that a corporate owner should not use a sale to avoid consequences of past misconduct, especially where evidence shows an intent to do so, and that there is no evidence in this case that shows the sale of Licensee to its current owners was done to avoid a consequence (LA T. 18-19). Licensee argues that *Eddie Z's, Inc. v. Daley, et al* (No. 01 CH 01231) should control in this case to bar evidence of a violation during the prior corporate ownership (full text of opinion was not provided, but case research indicates the Circuit Court

decision was affirmed without opinion on appeal (*Eddie Z's, Inc. v. Daley*, 883 N.E.2d 1147, 353 Ill.App.3d 1156 (1<sup>st</sup> Dist. 2004)). Licensee also referenced *Mathie v. License Appeal Commission* (phonetic) (citation unknown, opinion not provided) as standing for the proposition that statutory violations are only sufficient to support revocation of a liquor license if they are reasonably related to the control of liquor (LA T. 19). Licensee agrees maintenance of a reasonably safe environment is fairly related to the control of liquor *Wilde-Hammer, Inc. v. Connor*, 576 N.E.2d 444, 216 Ill.App.3d 660 (3<sup>rd</sup> Dist. 1991) but makes the factual distinction that *Wilde-Hammer* involved a revocation based on physical violence against a patron versus a building code violation for exceeding occupancy limits (LA T. 19-20).

Licensee agrees that “occupancy” includes all bodies on the premises (i.e., patrons as well as staff, entertainment, security, and other invitees) (LA T. 25).

#### City Argument on Appeal

City iterated the applicable standard of review above. As to whether LLCC proceeded in a manner provided by law, City argues that MCC 4-4-280 gives it authority to fine, suspend or revoke a 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 and provided sufficient notice to licensee of a public hearing regarding the matter (LA T. 27). There was no dispute as to notice and hearing. Addressing Licensee’s argument that the over-occupancy charge under the building code was not fairly related to the control of liquor, City argues the Liquor Control Act gives local liquor control commissioners broad discretionary power to discipline licensees which is to be exercised reasonably, citing *Askew v. Daley*, 379 N.E.2d 75, 62 Ill.App.3d 370 (1<sup>st</sup> Dist. 1978). City notes that *Askew* involved revocation of a liquor license for a violation of a weights and measures

ordinance related to the sale of meats on the premises. It argues that being over occupancy limits impacts the maintenance of a reasonably safe environment which is fairly related to the control of liquor as discussed in the *Wildehammer* case (LA T. 27-30). City further cited examples of instances where the courts found conduct not fairly related to the control of liquor relating to purely personal disputes, or personal conduct of employees that occurred away from the premises (referencing the *Mathie* case and *Lopez v. State Liquor Control Com'n*, 458 N.E.2d 599, 120 Ill.App.3d 756 (2d Dist. 1983)). City argues that unlike those cases, here the conduct of allowing over capacity to occur was a violation on the premises that occurred during the operation of the licensed business (LA T. 30).

City argues that the Order of Fine and Suspension was supported by the findings. It noted that the Hearing Commissioner found the firefighters' testimony credible and that the testimony proved that Licensee allowed occupancy "to nearly triple" the maximum occupancy allowed by the building code and that to do so was a threat to public safety (LA T. 31). City also argues that the discipline in this case, unlike some of the other cases cited, was not revocation; it was a \$1,000 fine and 15 days suspension which is half of the maximum suspension that could have been levied (LA T. 31) and that the discipline was measured and appropriate (LA T. 32). City also iterates that the "appropriateness" of the penalty is not up for review, but rather whether the findings support the order. It argues that a reviewing body cannot reverse a local liquor control commission discipline just because it would have ordered some other sort of discipline. In support, City references *Leong v. Village of Schaumburg*, 550 N.E.2d 1073, 194 Ill.App.3d 60 (1<sup>st</sup> Dist. 1990). (LA T. 31-32).

As to Licensee's argument that the prior discipline from a former owner of the Licensee should not have been admitted in aggravation, City cites to the *Addison* case supporting the

proposition that prior discipline of a corporate licensee under previous ownership is admissible and that the fact it happened under a previous owner would go to mitigation of the aggravation (LA T. 32).

City then addresses whether the findings were supported by the evidence. It argues that the reviewing body is not to make findings of fact independent of the record or reweigh the evidence and can only reverse a decision to discipline when the findings are against the manifest weight of the evidence. It further states that a finding is against the manifest weight of the evidence if the opposite conclusion is evident from the facts of the record. City cites *Margaret's Restaurant & Lounge, Inc., v. Daley*, 377 N.E.2d 155, 60 Ill.App.3d 521 (1<sup>st</sup> Dist. 1978) as standing for that proposition. City notes that the record showed the only witnesses who did a count of the people present were the firefighters that testified in the City's case – that no one else testified as to personally taking tickets or counting people – and that the counts done by both firefighters exceeded the occupancy limit. City notes the second firefighter's count stopped at 400, and it was estimated that 200 more people were present that were not counted. It argues that any criticism of the methods of counting used by the City was a mere difference of opinion. It argues that there was nothing in the record that could lead to an opposite conclusion. (LA T. 33-35). City clarified its position that the presence of overhead garage doors not allowed by the building code as a possible emergency egress does not change the City's position as to the case or the discipline. (LA T. 37-38). City clarified that total capacity for the building was 336, but there are capacity limits for each of the first floor and the mezzanine, and that even one body over the capacity limit on one of those levels is a violation of the occupancy for that level and would subject the Licensee to discipline. (LA T. 36, 38-40).

## ANALYSIS

### Standard of Review for Appeals of Fine and Suspensions

In considering an appeal of an Order of Fine and Suspension 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. (235 ILCS 5/7-9)

### Proceeding in the Manner Provided by the Law

There is no issue as to timely notice, public hearing, a record maintained, or evidence reduced to writing.

Licensee's contention that the Hearing Commissioner should not have allowed evidence of prior discipline sustained by the Licensee under prior ownership is not supported by caselaw. It relies upon the *Eddie Z's* case which was affirmed without opinion by the Illinois Appellate Court in 2004 and for which Licensee never provided the underlying text of the circuit court opinion. In any event, the controlling caselaw is the 2008 case cited by City in which the Court specifically states: "Evidence of a corporate licensee's violation remains admissible after a new owner purchases the licensee." (*Addison*, 889 N.E.2d at 702). The Hearing Commissioner in this case properly admitted the evidence in aggravation and found mitigation to the aggravation in that the discipline was issued to the Licensee under prior ownership. LLCC proceeded in a manner provided by law in admitting the evidence of prior discipline.

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 Support the Order

Licensee argues that even if it was proven that Licensee violated the occupancy limit, the violation is not fairly related to liquor control. The Local Liquor Control Commissioner ordered a fine and suspension of Licensee's license based upon review and sustaining of the findings of the Hearing Commissioner for the charge at issue. The Hearing Commissioner found a violation of a municipal ordinance governing occupancy limits. As provided by municipal code and state law a liquor license control commissioner may fine and/or suspend a license for violation of a municipal ordinance.

The Liquor Control Act gives authority to local liquor control commissioners to fine and/or suspend 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). The Liquor Control Act favors liberal construction of its provisions: "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).

Liquor Control Act states 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) and 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)).

In *Weinstein v. Daley*, 85 Ill.App.2d 470 (1<sup>st</sup> Dist. 1967), 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. In *Sip & Save Liquors, Inc. v. Daley*, 657 N.E.2d 1, 275 Ill.App.3d 1009 (1<sup>st</sup> Dist. 1995) the court stated: “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.” (*Id.* 5).

City and Licensee agree that maintenance of a reasonably safe environment is fairly related to the control of liquor. The *Wilde-Hammer* case referenced statutory violations that are related to the safety and security of those who visit liquor establishments as being fairly related to the control of liquor (576 N.E.2d at 448-449). Licensee’s factual distinction from *Wilde-Hammer* is not persuasive. As City noted, a violation of weights and measures regulation in the



sale of meat on a premises with a liquor license was found to be fairly related to the control of liquor (*Askew v. Daley*, 379 N.E.2d 75). Neither party cited a case that specifically dealt with suspension of a liquor license for a violation of occupancy limits, however, it is clear from those who testified in their capacity as firefighters in this case that exceeding occupancy limits endangers lives and that overcrowding is a public safety issue. There was no testimony or evidence presented to the contrary. Regulating occupancy levels and requiring premises not to exceed the maximum occupancy capacity qualifies as maintenance of a reasonably safe environment and such maintenance is fairly related to the control of liquor.

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 Fine and Suspension is supported by the Findings.

#### Findings are Supporteded by Substantial Evidence in the Light of the Whole Record

“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.” *Boom Town Saloon v. City of Chicago*, 892 N.E.2d 1112, 1118 (1<sup>st</sup> Dist. 2008).

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 v. Stern*, 431 N.E.2d 1073, 1076 (1<sup>st</sup> Dist. 1981) referencing *Easy Life Club, Inc. v. License Appeal Commission* 310 N.E.2d 705 (1<sup>st</sup> Dist. 1974)). The facts in the record are summarized above in the Review of Record of Proceedings. Two firefighters testified that they each personally counted people on the first level of the premises during the second inspection and both of their counts found the number of occupants in excess of the 249-occupancy limit. One firefighter stopped counting at 400 and estimated there were

another 200 people there that he had not yet counted. While there was some evidence as to ticket sales equaling 245, ticket sales is not the same as counting people on the premises. Firefighter Batistella testified that the person at the door told Batistella the premises was 50 under capacity both the first and the second times Batistella went there to inspect that night. There was no testimony from the door person how he counted, who he counted, and which occupancy limit he was referring to when he said they were 50 under. Firefighter Steffans noted staff at the door showed him a clicker with 300 clicks. Licensee offered witness testimony that no one informed management they were near capacity and that when capacity logs were checked they were under capacity. None of the Licensee's witnesses conducted a head count. None offered a count log. No one who kept capacity logs testified. Ticket sales screenshots were offered showing 245 tickets sold. The only witnesses who testified as to counting people that night were the two firefighters who each testified they each conducted a partial head count during the second inspection, and each of those partial headcounts showed Licensee exceeded the occupancy capacity on the first floor. "Occupancy" includes all bodies on the premises (eg., staff, management, security, entertainment) and not just ticket-holding patrons. There was no testimony as to how many more non-ticket holders were present that night, but there was testimony as to security and staff being "beefed up" and "enlarged," ownership and management were present as were entertainers. There's also no evidence that the members of the inspection team were included in the firefighter counts.

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 liquor control commissioner are prima facie true and correct, are not against the manifest weight of the evidence, and that an opposite conclusion is not clearly evident. 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.

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 Fine and Suspension 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 JULY 21<sup>ST</sup> 2021 Order of Fine and Suspension of the liquor license issued to Erie & Franklin Corp., Jonathan Blair Valz (President) for the premises located at 316-318 W. Erie St., City of Chicago, County of Cook, State of Illinois is AFFIRMED.

Commissioner GIBBONS, CONCURRING:

After reviewing the records and attending the most recent hearing, I concur with Chair Parry that the City of Chicago was correct with their fine and suspension rulings.

Commissioner BERG, CONCURRING:

I concur with Chair Parry in this *Erie v. Franklin* case and affirm with the City.

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:       OCTOBER 21, 2021

Handwritten signatures of three individuals: Laura Parry, Thomas W. Gibbons, and Cynthia Berg.

Laura Parry  
Chair

Thomas Gibbons  
Commissioner

Cynthia Berg  
Commissioner