

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS

FILED

APR 06 2021

Lake County Liquor Control Commission and )  
Commissioner Sandy Hart, )  
Plaintiffs, )

v. )

20MR586

*Ann Carangit Weinstein*  
CIRCUIT CLERK

Illinois State Liquor Control Commission and )  
Glogovsky Real Estate LLC – Series 12610 )  
Rockland Road d/b/a Scooters 12610 Rockland )  
Road, Lake Bluff Illinois 60044, )  
Defendants. )

**ORDER**

This case is before the Court for ruling on an appeal taken by plaintiffs Lake County Liquor Control Commission and Commissioner Sandy Hart (collectively “County Commission”) from defendant Illinois State Liquor Control Commission’s (“State Commission”) Final Order of July 23, 2020. The County Commission filed a Complaint for Administrative Review following the State Commission’s reversal of the County Commission’s denial of a liquor license to defendant Glogovsky Real Estate LLC – Series 12610 Rockland Road d/b/a Scooters 12610 Rockland Road, Lake Bluff Illinois 60044 (“Scooters”) and ordering Commissioner Hart to grant a liquor license to Scooters. The Court has considered the County Commission’s complaint, the parties’ briefs, the administrative record and the parties’ arguments and, for the reasons that follow, reverses the State Commission’s Final Order and affirms the County Commission’s denial of a liquor license to Scooters.

**CASE HISTORY**

In May 2018, Scooters applied for a liquor license.<sup>1</sup> An initial hearing was held on May 21, 2018.<sup>2</sup> Present at this hearing were Liquor Commissioner Aaron Lawler, Board Attorney Bernard Wysocki, Board Secretary Heidie Hernandez, Liquor Investigator Francis Foy, the

---

<sup>1</sup> The 298-page Administrative Record does not contain a copy of the liquor license application

<sup>2</sup> Administrative Record (Admin. R.) pp.61 – 90.

Applicant Geoffrey Glogovsky and Mr. Glogovsky's attorney Howard Teegen. Mr. Glogovsky was placed under oath and questioned by Mr. Wysocki. Mr. Glogovsky testified that he is the owner of Scooters Restaurant because Glogovsky Real Estate LLC owns Scooters and Mr. Glogovsky is the sole officer, director, and stockholder of Glogovsky Real Estate LLC with no one else having a financial interest in Scooters.<sup>3</sup> Mr. Glogovsky then testified about his planned renovations and business plan. Mr. Glogovsky was also asked about three prior violations involving sales of liquor to minors at a Shell station owned by Mr. Glogovsky that is adjacent to the property where Scooters is located. Mr. Glogovsky explained that it was a cashier at the Shell station who did not card the purchaser and who sold the liquor to the minor. Mr. Glogovsky was not able to explain how these alcohol sales to minors happened given the procedures he had in place relating to liquor sales.<sup>4</sup> Mr. Glogovsky was also asked about a 2010 Class B misdemeanor telephone harassment charge. Mr. Glogovsky testified about the incident and the disposition of that charge.<sup>5</sup> After Mr. Glogovsky made his presentation and answered some questions, the hearing was continued because Mr. Glogovsky had not submitted all the required information.

The continued hearing occurred on June 24, 2019. Present at this hearing were new Liquor Commissioner Sandy Hart, Board Members Mike Danforth, Steve Carlson, and Linda Petersen, Assistant State's Attorneys Karen Fox and Daniel Brown, Liquor Investigator Kyle Brasewicz, Board Secretary Lillian Cooper-Taggart, Architect Chris Kalischefski, and Owner Mr. Glogovsky. Mr. Glogovsky appeared at and participated in this hearing without his attorney being present. Several witnesses testified relating to issues that occurred at the Bluff Shell Station owned by Mr. Glogovsky which is next door to Scooters.<sup>6</sup> The testimony and evidence related to:

1. A noise complaint that came from speakers located at the Shell station with the noise traveling more than 100 feet from the station's property line. The inspector attempted to informally resolve the issue and spoke with Mr. Glogovsky who assured him that the devices causing the noise would be turned down but Mr. Glogovsky failed to take corrective action to abate the noise so a citation was issued resulting in a fine and the abatement of the noise.<sup>7</sup>

---

<sup>3</sup> Admin. R. pp.65 - 66.

<sup>4</sup> Admin R. pp. 51 - 53, 80 - 81.

<sup>5</sup>Admin. R. pp. 83 - 84.

<sup>6</sup> Admin. R. p. 112.

<sup>7</sup> Admin. R. pp. 113 - 115.

2. Three liquor control violations occurring in 2013, 2016, and 2018 for selling liquor to people under 21 years of age at the Shell station owned by Mr. Glogovsky. Mr. Glogovsky, as the liquor license holder, pled guilty to the 2013 and 2016 violations and the Commission found Mr. Glogovsky, the liquor license holder, guilty of the 2018 violation.<sup>8</sup> When asked about these three violations Mr. Glogovsky stated that the violations were by three different employees; and that despite requiring his employees to take the required county training program regarding selling alcohol and having equipment for the last 20 years at the Shell station that requires the inputting of a date of birth from the purchaser's ID the violations still occurred. Mr. Glogovsky then went on to explain that one of the violations occurred because the employee typed in a fictitious date. That employee was subsequently fired.<sup>9</sup>

3. Mr. Glogovsky was again asked about the 2010 telephone harassment charge. Mr. Glogovsky again testified about this incident and described what happened.<sup>10</sup>

4. The County Commission also considered comments from the public both in person and by written submission. An email from Melissa Doucette, who lives across the street from Scooters, was read into the record in which Ms. Doucette objected to the issuance of a liquor license for Scooters because a parking lot used by Scooters has been used for loitering and she feared sales of liquor would encourage additional inappropriate behavior. Kathleen O'Hara, Mayor of Lake Bluff, stated that she was the principal at Lake Bluff Middle School and later the coordinator for student services at Lake Forest High School and that the Shell station had a reputation among the "kids" that the Shell station was an easy place for underage kids to get alcohol.

5. Mr. Kalishefski, Mr. Glogovsky's architect, and Mr. Glogovsky testified about the plans Mr. Glogovsky had for the operation and improvement of the Scooters' location. The improvements involved a total demolition of the current structure, a new business plan relating to the type of dining that would be offered, and an investment in the property of 2.2 or 2.3 million dollars.<sup>11</sup>

Following the hearing the Liquor Commissioner issued her ruling in a one-page Order Of Liquor Commissioner that denied the application for a liquor license.<sup>12</sup> Glogovsky Real Estate filed a timely Notice of Appeal before the State Commission.

In its appeal, Glogovsky Real Estate claims that the County Commission: a) violated its due process rights because it was not given notice of the County Commission's concerns relating to

---

<sup>8</sup> Admin. R. pp. 115 – 120, 135.

<sup>9</sup> Admin. R. pp. 129 – 132.

<sup>10</sup> Admin. R. pp. 142 – 143.

<sup>11</sup> Admin. R. pp. 125 – 129, 148.

<sup>12</sup> Admin. R. p. 8.

the matters discussed at the hearing; b) was arbitrary and capricious in issuing the Order; c) did not proceed in the manner provided by law; and d) made findings that are not supported by substantial evidence.<sup>13</sup> Glogovsky also claims that the County Commission considered irrelevant evidence and hearsay in arriving at its decision.

The State Commission held a hearing on January 14, 2020 and issued its Final Order on July 23, 2020.<sup>14</sup> In its Final Order the State Commission stated that it considered the following factors: a) Whether the local liquor control commissioner proceeded in the manner provided by law; b) Whether the order is supported by the findings; and c) Whether the findings are supported by substantial evidence in the light of the whole record.<sup>15</sup> The State Commission then found that: a) the local liquor commission proceeded in the manner provided by law; b) the order is supported by the findings; and c) the findings are not supported by substantial evidence in light of the whole record.<sup>16</sup> In reaching its decision that the County Commission's findings are not supported by substantial evidence the State Commission stated:

The Local Liquor Commissioner of Lake County, Illinois primarily relied on violations which occurred at a nearby businesses commonly owned by Glogovsky. The hearing relied upon the three violations of the Sale of Alcohol to Minors from 2013, 2016, and 2018. Although, these violations may have in of themselves been grounds to deny the application, the decision failed to take into account mitigating factors presented. These factors include the fact that the business model which received the violations (gas station) was not the same type of business model applying for a license (restaurant) and the efforts that Mr. Glogovsky had taken to ensure compliance by the restaurant. These efforts included mandatory BASSET training prior to employment, the hiring of a dedicated manager to manage the restaurant, the use of technology to ensure compliance, and substantial investment in the property which would lead to strict adherence to local and state laws.<sup>17</sup>

The State Commission reversed the County Commission's denial of a liquor license and ordered the County Commissioner to issue Scooters an AB liquor license. The County Commission filed a timely appeal to the Circuit Court.

---

<sup>13</sup> Admin. R. pp. 4 – 6.

<sup>14</sup> Admin. R. p.226.

<sup>15</sup> Admin. R. p. 223.

<sup>16</sup> Admin. R. pp. 224 - 225

<sup>17</sup> Admin. R. pp. 225-226.

## DISCUSSION

Review of the State and County Commissions' decisions are governed by well-established principles of law. The applicable standard of review of an agency's decision that is governed by the Administrative Review Law, determines the deference the Court is to give to the agency's decision; and that is dependent upon whether the question presented is one of fact, one of law, or a mixed question of law and fact. *AFM Messenger Services, Inc. v Department of Employment Sec.*, 198 Ill.2d 380, 390, 763 N.E.2d 272, 279 (2001); *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App.3d 1071, 1078, 938 N.E.2d 1168, 1175 (2d Dist. 2010). Findings of fact will be upheld unless contrary to the manifest weight of the evidence, questions of law are reviewed *de novo*, and decisions on mixed questions of fact and law are upheld unless clearly erroneous. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App.3d at 1078, 938 N.E.2d at 1175. The clearly erroneous standard is somewhat deferential to the agency and the decision should only be reversed when the court has a definite and firm conviction that a mistake has been made. *AFM Messenger Services, Inc. v Department of Employment Sec.*, 198 Ill.2d at 395, 763 N.E.2d at 282; *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App.3d at 1078, 938 N.E.2d at 1175. In determining whether the State Commission's decision is clearly erroneous, the Court must first determine what standard of review and deference the State Commission should have given to the County Commission's decision. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App.3d at 1080, 938 N.E.2d at 1176; *Kessel v. Illinois Liquor Control Comm'n*, 56 Ill. App.3d 485, 490, 371 N.E.2d 1210, 1214 (1<sup>st</sup> Dist. 1978). In reviewing the County Commission's order, the State Commission is to determine whether the County Commission abused its discretion; and such determination is made by applying the three factors set-out in §7-9 of the Liquor Control Act to the evidence in the certified Record. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App.3d at 1081, 938 N.E.2d at 1177; *Kessel v. Illinois Liquor Control Comm'n*, 56 Ill. App.3d at 489, 371 N.E.2d at 1213; 235 ILCS 5/7-9 (West 2020). Section 7-9 requires the State Commission to consider: 1. whether the County Commission proceeded in a manner provided by law; 2. whether the County Commission's order is supported by the findings; and 3. whether the County Commission's findings are supported by substantial evidence considering the whole record. *Id.* The State Commission cannot substitute its judgment for that of the County Commission. *Koehler v. Illinois*

*Liquor Control Comm'n*, 405 Ill. App.3d at 1083, 938 N.E.2d at 1179. The County Commission's findings and determinations are *prima facie* true and correct, and neither the State Commission nor this Court is to reweigh the evidence to make independent determinations of fact as only the County Commission as the trier of fact has the authority to weigh the evidence, assess the witnesses' credibility and to determine which witnesses to believe. *Kessell v. Illinois Liquor Control Comm'n*, 56 Ill. App.3d at 491, 371 N.E.2d at 1214; *Dugan's Bistro v. Daley*, 56 Ill. App.3d 463, 470, 371 N.E.2d 1116, 1122 (1<sup>st</sup> Dist. 1977). The Court agrees with the parties that this appeal involves a mixed question of fact and law and that the clearly erroneous standard applies.

The State Commission found that: a) the County Commission proceeded in the manner provided by law; b) the County Commission's order is supported by the findings; and c) the County Commission's findings are not supported by substantial evidence in light of the whole record because it failed to take into account mitigating factors presented at the hearing. The State Commission's last finding, however, is not supported by the Record and ignores the County Commission's clear statement in its Order that states:

**"The Commissioner, upon consideration of all testimony and evidence presented, ruled that no license would be granted. The Commissioner cited the three prior violations where minors were served at the Applicant's neighboring gas station, and the nuisance violation. She indicated that greater care is owed to patrons who will be served on the premises at the proposed Scooters. She also factored in the Applicant's and his witness's testimony, the Applicant's assertions regarding his investment in the property and information provided to the Commission at the hearing that was on the record."**  
(emphasis added)

The Commissioner clearly states that the Applicant's (Mr. Glogovsky) mitigating evidence was considered. The State Commission's Final Order is not clear as to what else the State Commission believed the County Commissioner's order was required to say to reflect that she considered the mitigating factors presented by Mr. Glogovsky. While the State Commission strategically avoids characterizing what it did to reach its conclusion, its attorneys from the Office of the Attorney General make it clear in their brief how the State Commission reached its decision. The Attorney General clearly states that: "The State Commission found that the Lake County Commission's "findings are not supported by substantial evidence in the light of the whole record" because it failed to **adequately** considered the mitigation evidence presented by Scooters." (emphasis

added)<sup>18</sup> The Attorney General's argument accurately characterizes that the State Commission reweighed the evidence and found that the mitigating factors outweighed the substantial evidence that supported the County Commission's findings. The State Commission, therefore, acted contrary to established law since only the County Commission has the authority to weigh the evidence, assess the witnesses' credibility and determine which witnesses to believe. *Kessell v. Illinois Liquor Control Comm'n*, 56 Ill. App. 3d at 491, 371 N.E.2d at 1214; *Dugan's Bistro v. Daley*, 56 Ill. App.3d at 470, 371 N.E.2d at 1122.

While the County Commission did not directly comment on Mr. Glogovsky's credibility, the Record would clearly support a finding by the County Commission that Mr. Glogovsky's testimony was not credible due to the inconsistent and evasive testimony provided at the hearings. At both hearings Mr. Glogovsky was asked about a misdemeanor telephone harassment charge and the following colloquy occurred at the first hearing:

A. I remember that incident where my girlfriend and her husband were fighting and calling me and I told the guy to jump in the lake, don't call me anymore I'm not involved in your arrangement. And that's what it was honestly. It wasn't anything. It wasn't even a harassment. It was just - - I think it was something other than that.

Q. So did you have to go to court?

A. No. No, it was dropped.

Q. Because it indicates here that - -

A. It was dropped as whatever - - Bernie, you'd have to read that. I don't know what they changed it to, but it was just like it was ridiculous.

Q. Well, the charge was telephone harassment. It was a Class B misdemeanor. And it was on March 25<sup>th</sup> of 2010.

A. Uh - hum.

Q. So did you go to court or didn't you go to court for that?

A. It wasn't a formal court. I met with the police chief and I don't know there was a - - How do I explain it? I didn't - - It wasn't a public court, Bernie.<sup>19</sup>

At the second hearing the following colloquy occurred regarding the telephone harassment

---

<sup>18</sup> Illinois State Liquor Control Commission's Response In Support Of The Administrative Decision, p.2.

<sup>19</sup>Admin. R. pp. 83 - 84.

charge:

Mr. Brown: I just have one. There was a criminal background check that was completed as part of this and I know that at previous incarnations of the Board you did - - you did speak about it, but that criminal background check indicated that there was a 2010 telephone harassment and that charge was reduced. Could you explain to the Board the nature of that reduction and the nature of that charge?

Mr. Glogovsky: The charge had nothing to do with me. Some friend, an individual used my phone and was arguing with his wife. It was on my phone. So what do you want me to say? And I was never charged. So - -

...

I don't know what to tell you. I'm sorry I lent my phone to somebody.

...

You know, in a nasty divorce, you know, it wasn't my divorce, what can I tell you? The guy used my phone and they tracked me to it and sucked me into it.<sup>20</sup>

Mr. Glogovsky's explanations are clearly inconsistent in that in one version it is his girlfriend's husband who is calling him and he somehow gets charged with telephone harassment; and in the other version Mr. Glogovsky allows his friend to use his telephone and his friend argues with his wife and Mr. Glogovsky is somehow charged with telephone harassment. Mr. Glogovsky denies being charged but it appears that Board Attorney Wysocki in the first hearing and Assistant State's Attorney Brown in the second hearing had evidence of Mr. Glogovsky being charged. While it is not the charge of telephone harassment or the disposition that necessarily negatively impacts Mr. Glogovsky's credibility, the County Commission had sufficient evidence in the Record to find that Mr. Glogovsky was not credible based on these inconsistent explanations of what happened; and thus, had a basis to not believe Mr. Glogovsky or discount his evidence or testimony regarding the mitigating evidence he presented.<sup>21</sup>

Mr. Glogovsky also raised two other issues in his appeal to the State Commission which the State Commission does not address in its ruling. The additional issues raised by Mr. Glogovsky are: a) that the hearing violated his due process rights because he was not given notice

---

<sup>20</sup> Admin. R. pp. 142 – 143.

<sup>21</sup> Neither Mr. Glogovsky nor his attorney in the first hearing, nor Mr. Glogovsky in the second hearing objected to the questioning regarding this subject matter.



of the County Commission's concerns relating to the matters discussed at the hearing; and b) the County Commission considered irrelevant evidence and hearsay in arriving at its decision. These additional objections raised in Mr. Glogovsky's appeal to the State Commission and this Court however, were forfeited because he failed to raise these objections before the County Commission. See *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 536, 662 N.E.2d 1248, 1253 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and cannot be raised for the first time on appeal."); *Sinclair v. Berlin*, 325 Ill. App.3d 458, 467, 758 N.E.442, 450 (1<sup>st</sup> Dist. 2001) ("To preserve an [evidentiary] issue for appellate review, a party must make a timely objection.") Had Mr. Glogovsky preserved these objections they would still be without merit. Due process requires notice and an opportunity to be heard. *Chamberlain v. Civil Serv. Comm'n of Village of Gurnee*, 2014 IL App.(2d) 121251, ¶146, 18 N.E.3d 50, 66. In an administrative proceeding, due process requires "the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence". *Id.* Cross-examination and the prohibition against the use of hearsay is not always required by due process in an administrative hearing. *Id.* When the record has sufficient competent evidence to support an administrative decision, the improper admission of hearsay testimony is not prejudicial error. *Chamberlain v. Civil Serv. Comm'n of Village of Gurnee*, 2014 IL App. (2d) 121251, ¶147, 18 N.E.3d at 67. In determining whether the consideration of hearsay evidence deprived plaintiff of a meaningful hearing, the court must consider: (1) the significance of the private property interest; (2) the risk of erroneous deprivation of that interest under the procedures used; and (3) the practical burdens of providing more or substitute process. *Id.*

Mr. Glogovsky was given notice of the hearing and the County's ordinance relating to alcohol regulations provides the liquor license Applicant with notice of what matters are relevant to such an application.<sup>22</sup> Moreover, the matters discussed at the second hearing were also discussed at the first hearing that Mr. Glogovsky attended with his attorney and therefore Mr. Glogovsky knew these matters were to be considered by the County Commissioner in deciding whether a liquor license would be granted to Scooters. Mr. Glogovsky was given ample opportunity to present any evidence and witnesses he believed he needed in support of his

---

<sup>22</sup> See Lake County Illinois Code of Ordinances, Title XI, Ch. 111.038(I) and (L).

application; and there is no evidence in the Record that Mr. Glogovsky or his attorney would have been deprived of an opportunity to cross-examine any witness had it been requested.

Mr. Glogovsky's objection now to the County Commission's consideration of irrelevant and hearsay evidence is also unpersuasive. The evidence considered by the County Commission was not irrelevant. Lake County Illinois Code of Ordinances, Title XI, Ch. 111.038(A), (I), and (L) make Mr. Glogovsky's character and background relevant to the liquor license application. Therefore, the testimony relating to the noise violations, sale of alcohol to minors and telephone harassment charges were relevant to the County Commissioner's decision of whether Scooters should be granted a liquor license. Mr. Glogovsky does not specifically identify the claimed hearsay evidence to which he now objects; and even if the Court assumes that the hearsay objection is to the email from Ms. Doucette the consideration of this evidence even if improper is harmless as there is sufficient other evidence in the Record to meet the substantial evidence standard to support the denial of the liquor license application. Moreover, application of the *Chamberlain* factors does not show that Mr. Glogovsky was deprived of a meaningful hearing.

#### **CONCLUSION**

For these reasons, the State Commission's decision is clearly erroneous and it erred in reversing the County Commission's denial of a liquor license to Scooters and ordering the County Commission to issue Scooters an AB liquor license as the County Commission's findings are supported by substantial evidence considering the whole Record.

#### **IT IS HEREBY ORDERED THAT:**

1. The Final Order issued by defendant Illinois State Liquor Control Commission reversing the Lake County Liquor Control Commission's and Commissioner Sandy Hart's order denying the request for a liquor license by Glogovsky Real Estate LLC – Series 12610 Rockland Road d/b/a Scooters 12610 Rockland Road, Lake Bluff Illinois 60044 is reversed.

2. The Final Order issued by defendant Illinois State Liquor Control Commission ordering the Lake County Liquor Control Commission and Commissioner Sandy Hart to issue a Class AB liquor license to Glogovsky Real Estate LLC – Series 12610 Rockland Road d/b/a Scooters 12610 Rockland Road, Lake Bluff Illinois 60044 is reversed.

3. The Order of Liquor Commissioner entered by Sandy Hart, Liquor Control Commissioner of Lake County, Illinois denying a liquor license to Glogovsky Real Estate LLC – Series 12610 Rockland Road d/b/a Scooters 12610 Rockland Road, Lake Bluff Illinois 60044 is reinstated and affirmed.

FILED  
APR 27 2021  
CLERK OF COURT  
LAKE COUNTY ILLINOIS

4. The April 27, 2021 ruling date is stricken.

Enter this 6<sup>th</sup> day of April 2021.

ENTER:

  
\_\_\_\_\_  
Judge