

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

In the Matter of:)	
)	No. 19 CA 04
Smokin Hot Smokehouse, Inc.)	
State License No. 1A-0097490)	
Premises located at:)	
13489 South Cicero Avenue)	
Crestwood, IL 60418)	

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the Commission”) upon the Appeal of Smokin Hot Smokehouse, Inc., State License No., 1A-0097490, Appellant, this Commission having heard argument, and being otherwise fully informed does hereby state the following:

History of Case/Statement of Facts

Appellant is the holder of Retailer liquor license in the State of Illinois, license number 1A-0097400. Appellant also holds a Village of Crestwood Class “A” Retail Liquor License, No. 3572. Appellant is located at 13489 South Cicero Avenue, Crestwood, Illinois.

On or about July 27, 2018, Appellant was served with a Notice of Charges and Hearing by the Local Liquor Commissioner for the Village of Crestwood, Illinois, Crestwood Case Number 18-01. On August 1, 2018, a hearing was held before the Honorable Louis Presta, Local Liquor Commissioner. On August 1, 2018, an order was entered by the Local Liquor Commissioner for the Village of Crestwood, immediately suspending Appellant pending a final written order. On August 10, 2018, based on the evidence presented at the hearing, Appellant’s Village of Crestwood, Class “A” Retail Liquor License, No. 3572, was revoked and Appellant was fined \$750.00. On August 9, 2018, Appellant filed an Appeal with the Commission regarding the decision in Crestwood Case Number 18-01.

On or about August 16, 2018, Appellant was served with a Notice of Charges and Hearing by the Local Liquor Commissioner for the Village of Crestwood, Illinois, Crestwood Case Number 18-02. On August 24, 2018, a hearing was held before the Honorable Louis Presta, Local Liquor Commissioner. On August 24, 2018, based on the evidence presented at the

hearing, Appellant's Village of Crestwood, Class "A" Retail Liquor License, No. 3572, was revoked and Appellant was fined \$750.00. On August 27, 2018, Appellant filed an Appeal with the Commission regarding the decision in Crestwood Case Number 18-02.

The Village of Crestwood adopted an ordinance which requires all appeals from decisions of the Local Liquor Commissioner be limited in review by the Illinois Liquor Control Commission to the official record of proceedings of the Local Liquor Commissioner. Crestwood Ord. Section 112.45. On September 11, 2018, the Local Liquor Commissioner for the Village of Crestwood, Appellee, filed a motion to dismiss both appeals. On September 12, 2018, Appellee's counsel filed a motion to withdraw as counsel. These matters were scheduled for hearing before the Commission on October 17, 2018. Appellee did not appear at the October 17, 2018, hearing. A continuance order was issued continuing the matter to be heard on November 13, 2018. Appellee was notified by certified mail of the date of the hearing. Additionally, Appellee was notified of the hearing by Commission staff as well as its attorney. On November 13, 2018, Appellee failed to appear in person or through new counsel. On November 13, 2018, the Commission granted Appellee's attorney motion to withdraw as counsel.

In the interest of economy, the Commission is consolidating these appeals.

Appellee Motion to Dismiss

On September 11, 2018, Appellee filed its Motion to Dismiss. Appellee presents several arguments as to why these appeals should be dismissed.

First, Appellee argued that pursuant to the Illinois Liquor Control Act (hereinafter "the Act"), 235 ILCS 5/7-9, and the Administrative Code, the Appellant licensee was required to pay for the costs of the transcript and failed to make those payments. Specifically, the act states: "a certified official record of the proceedings taken and prepared by a certified court reporter or certified shorthand reporter shall be filed by the local liquor control commissioner within 5 days after notice of the filing of such appeal, if the appellant licensee pays for the cost of the transcript." Additionally, the Administrative Rules state as follows: In all cases where an appeal is to be heard upon the record, a certified official record of the proceedings taken and prepared by a certified court reporter, along with all exhibits, shall be filed by the local liquor control commissioner within 5 days after notice of the filing of the appeal, if the appellant licensee pays for the transcript and five additional copies. The failure to file the certified official record of the

proceedings before the local liquor control commissioner, without sufficient written explanation, shall result in the appeal not being docketed for hearing, as originally scheduled, or as continued by the Commission.” 11 Ill. Admin. Code 100.350. As such Appellee argued that the appeals should be dismissed as the transcripts had not been paid for by Appellant.

Next, Appellee argues that Appellant did not appeal the August 10, 2018, revocation order and therefore the Commission would be barred from reviewing the August 24, 2018, order as Appellant had failed to appeal the separate August 10, 2018, order. Appellee argues that Section 6-2(a)(7) prohibits the issuance of a license to Appellant as Appellant’s license was revoked on August 10, 2018, and that revocation was not appealed.

Appellant did not file a response to the motion.

Discussion

In reviewing propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record. 235 ILCS 5/7-9.

Additionally, the only evidence which may be considered in the review, shall be the evidence found in the certified official record of the proceedings of the local liquor control commissioner. Id.

The Act provides that “the appeal shall be limited to a review of the official record of the proceedings of such local liquor control commissioner if the county board, city council or board of trustees, as the case may be, has adopted a resolution requiring that such review be on the record.” Id. Furthermore, if the appeal must be reviewed on the record, “a certified official record of the proceedings taken and prepared by a certified court reporter or certified shorthand reporter shall be filed by the local liquor control commissioner within 5 days after notice of the filing of such appeal, if the appellant licensee pays for the cost of the transcript.” Id. Additionally, “the failure to file the certified official record of the proceedings before the local liquor control commissioner, without sufficient written explanation, shall result in the appeal not

being docketed for hearing, as originally scheduled, or as continued by the Commission.” 11 Ill. Admin. Code 100.350.

On November 13, 2018, argument was heard on Appellee’s Motion to Dismiss. Appellant did not appear at the hearing nor file any written response. Appellant has failed to pay for the transcript and preparation of the official record of proceedings as required by the Act. As such, no such record has been provided for review by the Commission. Accordingly, Appellant has failed to perfect its appeal and failed to appear before the Commission.

As Appellant has failed to perfect its appeal, it is unnecessary for the Commission to examine Appellee’s second argument.

IT IS HEREBY ORDERED:

1. For the reasons stated herein, this matter is dismissed.
2. The orders entered by the Local Liquor Commissioner for the Village of Crestwood in Crestwood Case Numbers 18-01 and 18-02 are affirmed.

THIS IS A FINAL ORDER

Pursuant to 235 ILCS Sec. 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such a Petition is a jurisdictional prerequisite to the Administrative Review.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on January 14, 2019.

ILLINOIS LIQUOR CONTROL COMMISSION

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Constance Beard, Chair



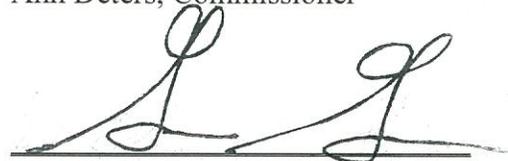
Donald G. O'Connell, Commissioner



Ann Deters, Commissioner



Thomas Gibbons, Commissioner



Gerald Gorman, Commissioner



Cynthia Cronin Cahill, Commissioner



Patricia Pulido Sanchez, Commissioner

ATTEST:



Abraham Zisook, ILCC Attorney

STATE OF ILLINOIS)
COUNTY OF COOK) 19 CA 04

UNDER PENALTY OF PERJURY, as provided by law, Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be deposited in the United States mailbox located at 100 West Randolph Street, Chicago, Illinois 60601, by both regular mail and certified mail, return receipt requested in envelopes with proper postage affixed and addressed to the parties at the addresses listed above, prior to 5:00 p.m. on the following date: January 14, 2019.

Louis Presta



Affiant
Abraham Zisook

Louis Presta
Local Liquor Commissioner for the Village for Crestwood
13840 S. Cicero
Crestwood, IL 60418

Ms. Irene F. Bahr
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