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2013 IL App (3d) 110607-U

Order filed March 29, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

WISAM 1, Inc., d/b/a SHERIDAN LIQUORS,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellant,)	
)	
v.)	
)	
ILLINOIS LIQUOR CONTROL)	
COMMISSION; STEPHEN B. SCHNORF,)	
as Acting Chairman of the Illinois Liquor)	
Control Commission; SAM ESTEBAN,)	
DONALD G. O'CONNELL, JAMES)	Appeal No. 3-11-0607
PANDOLFI, MICHAEL F. McMAHON,)	Circuit No. 11-MR-5
AMY KURSON, and CHARLES SCHOLZ,)	
as Commissioners of the Illinois Liquor)	
Control Commission; JAMES ARDIS, as)	
Mayor of the City of Peoria and Local Liquor)	
Control Commissioner; W. ERIC TURNER,)	
as Deputy Local Liquor Control)	
Commissioner; the LOCAL LIQUOR)	
CONTROL COMMISSION OF THE CITY)	
OF PEORIA; and the CITY OF PEORIA, a)	
Municipal Corporation,)	Honorable
)	Michael E. Brandt,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The revocation of a licensee's liquor license was upheld because the licensee did not show prejudice from any lack of due process, and the liquor commission's conclusion that the licensee violated section 3-28 of the ordinances of the City of Peoria was not against the manifest weight of the evidence.

¶ 2 The appellant, WISAM1, Inc., d/b/a Sheridan Liquors, through its president, appealed the revocation of its liquor license by the Local Liquor Control Commissioner, which was affirmed by the Illinois Liquor Control Commission and the circuit court.

¶ 3 FACTS

¶ 4 The appellant held a liquor license issued by the City of Peoria. A notice of hearing was issued to the appellant, to determine whether the appellant violated any laws of the State of Illinois or ordinances of the City of Peoria relating to the operation of the retail liquor establishment. Specifically, the hearing notice alleged a violation of section 3-28 of the ordinances of the City of Peoria, which states:

¶ 5 "No licensee or any officer, associate, member, representative, agent or employee of such licensee shall engage in any activity or conduct or suffer or permit any other person to engage in any activity or conduct in or about the licensed premises which is prohibited by any ordinance of the city or law of the state or the United States." City of Peoria Ordinance, sec. 3-28 (Adopted April 20, 1993).

¶ 6 The appellant's president attended the hearing. At the hearing, the City's attorney entered into evidence a stipulation by the appellant, the federal indictment of Mohamed "Mike" Nimer Asad, and transcripts from Mohamed's federal criminal trial. The stipulation provided that, at all

times as indicated in the notice against the appellant, Mohamed was acting as a manager or employee or agent of the appellant, Mohamed was found guilty by a jury of the charges in the federal indictment, Mohamed's federal offenses related to the financial and business operations of the appellant, and, as part of the appellant's business, Mohamed and other employees cashed checks for its customers. The indictment charged that the appellant primarily sold liquor and other products, but it also cashed checks as part of its business. The indictment further alleged that the appellant, to provide cash for the check cashing business, structured the withdrawal of large amounts of cash from its bank account in increments less than \$10,000. The appellant only objected to the admission of the federal transcripts.

¶ 7 After opening statements, the City's attorney moved for a directed finding. The deputy local liquor control commissioner made the directed finding, stating that there was a clear violation of section 3-28 of the ordinances of the City of Peoria. After the directed finding, the appellant was allowed to present some evidence to make a record for appeal. As part of that offer of proof, the appellant submitted insurance policies, which purportedly showed insurance coverage limited to \$10,000 cash on hand. The commissioner then proceeded directly to the penalty phase. During the penalty phase, the appellant's president testified that he attempted to limit the bank transactions to less than \$10,000 so as to keep less than that amount on the premises for insurance and safety purposes. At the conclusion of the hearing, the commissioner indicated that he would review all of the testimony, exhibits, and evidence, and render a decision.

¶ 8 Thereafter, in a written order, the Local Liquor Control Commission (LLCC) ordered the revocation of the appellant's liquor license. The LLCC based its decision upon the stipulation, which established that Mohamed was the manager, or employee, or agent of the appellant, and

established that Mohamed had been found guilty by a jury of the offenses charged in the federal indictment, which all related to the financial and business operations of the appellant. The LLCC found that the federal criminal trial transcripts established that the appellant's premises was intricate and central to the motive, means, and manner in which the federal criminal offenses were committed.

¶ 9 On appeal to the Illinois Liquor Control Commission (ILCC), the appellant's counsel again argued that the appellant sought to keep less than \$10,000 cash on the premises for insurance purposes, directing the attention of the ILCC to the insurance policies in the offer of proof. However, the ILCC affirmed the decision of the LLCC. The ILCC found that the appellant was provided with due process. Also, the ILCC concluded that the LLCC's finding of a violation of section 3-28 of the ordinance of the City of Peoria was supported by substantial evidence. The ILCC noted that the stipulation proved all of the elements of a violation of the ordinance: an agent or employee of the appellant had committed a violation of federal law, and the criminal offense occurred in or about the licensed premises. The ILCC found that the federal transcripts supported the finding that the criminal behavior occurred in or about the licensed premises, and the transcripts were properly admitted to pinpoint the location of the illegal acts committed by Mohamed. The appellant sought review in the circuit court, which also affirmed the revocation. The appellant appealed to this court.

¶ 10 ANALYSIS

¶ 11 The appellant argues that it was denied due process of law and a meaningful opportunity to be heard when the LLCC admitted the federal transcripts as substantive evidence and then granted the City's motion for a directed finding. Alternatively, the appellant argues that the

federal transcripts contained inadmissible hearsay, and, absent the transcripts, the evidence was insufficient to uphold the revocation. The ILCC and the City argue that the appellant was provided a full and fair opportunity to present defenses and witnesses. Assuming that the appellant was afforded due process, they argue that the finding that the appellant violated section 3-28 of the ordinances of the City of Peoria was not against the manifest weight of the evidence. They contend that the stipulations were sufficient competent evidence to support the revocation. They also argue that the federal transcripts were properly admitted either on the grounds that they were not hearsay, or an admissible exception to the hearsay rule. Finally, the ILCC and the City argue that, even if the transcript was improperly admitted, the appellant can show no prejudice.

¶ 12 This case is before us on administrative review, pursuant to the Administrative Review Law, 735 ILCS 5/3-101 et seq. (West 2008). Thus, we review the decision of the state liquor control commission, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497 (2006). Our review is limited to the evidence presented to the administrative agency. *Kouzoukas v. Retirement Board of the Policemen's Annuity*, 234 Ill. 2d 446 (2009). The standard of review depends upon whether the question is one of fact, one of law, or a mixed question of fact and law. *Kouzoukas*, 234 Ill. 2d at 463. Factual findings are subject to a manifest weight of the evidence standard, legal questions are reviewed *de novo*, and mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.*

¶ 13 At a hearing to determine whether to revoke a liquor licence, the licensee is entitled to the basic rights of procedural due process. *Boom Town Saloon, Inc. v. City of Chicago*, 384 Ill. App. 3d 27 (2008). Whether a party was denied due process is a question of law that is reviewed *de novo*. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814 (2009). In

administrative proceedings, due process is a flexible concept and only requires such process as the situation demands. *Sudzus*, 393 Ill. App. 3d at 824. Generally, a fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence. *Id.* However, a claim of a due process violation will be sustained only upon a showing of prejudice. *Sudzus*, 393 Ill. App. 3d at 825.

¶ 14 Clearly, the appellant was not given the opportunity to present its defense in the normal manner, or to cross-examine witnesses, and that is frowned upon by this court. However, the appellant cannot show prejudice caused by any lack of due process. The appellant received notice of the proceedings, and, not only attended the hearing, but entered into the stipulation that the ILCC found was sufficient evidence to support the revocation. In addition, whether or not the testimony contained in the federal transcripts amounted to inadmissible hearsay, the admission of the transcripts was not prejudicial error, and did not constitute a due process violation, because there was sufficient additional competent evidence to support the revocation. See *Morris v. Department of Professional Regulation*, 356 Ill. App. 3d 83 (2005).

¶ 15 The ILCC had before it the evidence that was presented to the LLCC, including the offer of proof made by the appellant and the evidence offered during the penalty phase. That included the testimony of the appellant's president that it cashed checks in the store, but attempted to keep less than \$10,000 cash on hand for insurance purposes. Thus, whether the bank transactions were structured for insurance purposes or to violate the federal reporting laws, the evidence is clear that the transactions related to the check cashing activity of the appellant, took place on the premises.

¶ 16 In addition, the offer of proof included testimony that the appellant's president instructed

its employees to make deposits in amounts less than \$10,000.00. Those conversations took place in the store at times when the employees were reporting to work at the business premises. This testimony was heard and considered by the ILCC. In making its decision, the ILCC was not obligated to accept the rationale offered by the plaintiff for its admission that the plaintiff's president instructed employees, while at work on the premises, to keep all bank deposit transactions in amounts less than \$10,000.00. The ILCC apparently chose to believe the City of Peoria's allegation that the plaintiff's admitted conduct on the premises was for the unlawful purpose that was set forth in the stipulation.

¶ 17 Considering all of the evidence in the administrative proceeding, the ILCC's conclusion that the appellant violated section 3-28 of the ordinances of the City of Peoria by structuring the financial transactions that were in violation of federal law on the premises was not against the manifest weight of the evidence.

¶ 18 **CONCLUSION**

¶ 19 The judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.

¶ 21 JUSTICE McDADE, dissenting.

¶ 22 In affirming the denial of appellant's liquor license, the majority rejects appellant's claim that it was denied due process when the Local Liquor Control Commission (LLCC) admitted the federal transcripts as substantive evidence. The majority never reaches the precise question of whether the commission erred in admitting the federal transcripts, finding instead that any error that might have occurred was harmless. Its reasoning is two-fold: (1) appellant "entered into the stipulation that the Illinois Liquor Control Commission found was sufficient evidence to support

the revocation," *supra*, ¶14 and (2) "the admission of the transcripts was not prejudicial error *** because there was sufficient additional competent evidence to support the revocation."

Supra, ¶14 I disagree with both of these findings.

¶ 23 The first finding is faulty due to the majority's apparent misreading of the federal indictment or of section 3-28 of the ordinances of the City of Peoria. The city moved to revoke appellant's liquor license on the basis that it violated section 3-28 by structuring the financial transactions that were in violation of federal law on its premises. Section 3-28 bars appellant from engaging in any prohibited activity or conduct "*in or about* the licensed premises." The majority is correct that appellant entered into the stipulation admitting the federal indictment. The majority, however, ignores the fact that the indictment contained no allegation that appellant's employees engaged in the charged conspiracy "*in or about* the licensed premises."¹ Instead, all the activity and conduct alleged in the indictment and on which the city relied to support the revocation occurred at unidentified places and times (the conspiracy) or at National City Bank facilities (the overt acts). Thus, the indictment was devoid of any probative value as to the precise issue of whether appellant engaged in any prohibited activity or conduct "*in or about* the licensed premises." The ILCC's contrary finding was against the manifest weight of the evidence and therefore cannot be relied upon here on appeal.

¶ 24 As to the second finding, the majority fails to articulate what "additional competent

¹The indictment does assert that Sheridan Liquors ran an unlicensed check-cashing operation but because the defendants in the federal prosecution were neither charged with nor convicted of that activity, that allegation was not tested. Nor, inexplicably, did the city proceed on that basis in seeking revocation.

evidence" supported the revocation. As discussed above, the stipulation does not support revocation. The only remaining evidence presented by the City– and the only other evidence available to the local commissioner at the time he rendered his decision – consisted of the federal transcripts. The majority does not determine whether they were properly admitted and, therefore, cannot affirmatively advance them as the competent additional evidence on which it relies. Significantly, the City moved for a directed verdict based solely on the stipulation and the transcripts. The City's motion was granted.

¶ 25 Only then was appellant allowed to present some evidence, solely by way of an offer of proof, to make a record for appeal. None of that evidence, however, establishes that appellant engaged in the prohibited activity or conduct "*in or about* the licensed premises." As part of its offer of proof, appellant called its president, Adnan Asad, to testify. It does not appear from the record that Adnan Asad was charged in the alleged federal criminal conspiracy and the indictment/conviction are silent as to him. He testified that he directed his employees to maintain less than \$10,000 on the liquor store premises because of coverage limitations in his insurance policies. Contrary to the finding of the circuit court, corroborating insurance documents were submitted as part of the offer of proof and were included in the record throughout this litigation. To the extent the testimony of Adnan Asad, as part of an offer of proof, is competent evidence, as the majority suggests, *supra*, ¶¶15-16 , it is the only evidence of what was said on the premises of Sheridan Liquors. That testimony, together with the corroborating documents, cuts against revocation on the grounds asserted by the city and validated by the local and State liquor commissions. Thus, the majority's conclusion that there was "additional competent evidence" supporting revocation itself is unsupported.

¶ 26 Because the stipulation does not support revocation and the record is devoid of any additional evidence supporting revocation, I believe we must analyze the precise question of whether the LLCC erred in admitting the federal transcripts. At the revocation hearing, appellant objected to the admission of the transcripts on due process grounds. Specifically, appellant argued that the transcripts should not be admitted as former testimony because it had had no opportunity to cross-examine Mohamed "Mike" Nimer Asad (Mike).

¶ 27 "It is well settled that the testimony of a witness at a prior hearing is admissible in evidence at trial where the witness is unavailable and when ample opportunity to cross-examine existed at the prior hearing." *People v. Sutherland*, 223 Ill. 2d 187, 273 (2006) quoting *People v. Rice*, 166 Ill. 2d 35, 39 (1995). While it appears that Mike may have been incarcerated at the time of the revocation hearing, there was no determinate showing that Mike was unavailable to testify at the hearing. More importantly, however, appellant was not a party to the federal proceedings and did not have the opportunity to cross-examine Mike at the federal trial. Thus, I believe the LLCC's decision admitting the federal transcripts at the revocation hearing constitutes an abuse of discretion.²

¶ 28 While I acknowledge that the revocation hearing was an administrative proceeding and not a criminal proceeding, I note that "an administrative proceeding is governed by the fundamental principles and requirements of due process of law." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 92 (1992). "A fair hearing before an

² An administrative agency's decision regarding the conduct of its hearing and the admission of evidence is governed by an abuse of discretion standard. *Matos v. Cook County Sheriff's Merit Board*, 401 Ill. App. 3d 536, 541 (2010).

administrative agency includes the opportunity to be heard, *the right to cross-examine adverse witnesses*, and impartiality in ruling upon the evidence." (Emphasis added.) *Abrahamson*, 153 Ill. 2d at 95.

¶ 29 As discussed above, the stipulation does not support revocation. Only the federal transcripts arguably support revocation. Thus, their improper admission resulted in significant prejudice and was an abuse of discretion.

¶ 30 I would reverse the revocation of appellant's liquor license because of a fundamental denial of due process and because the evidence properly presented by the city was insufficient to support the decision of either the LLCC or the ILCC. Accordingly, I dissent.