

No. 1-16-1189

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

1770 WEST GREENLEAF CORPORATION,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	
)	
LICENSE APPEAL COMMISSION OF THE CITY)	
OF CHICAGO; DENNIS M. FLEMING, Chairman of)	
the License Appeal Commission of the City of)	
Chicago; DONALD O'CONNELL and STEPHEN)	Nos. 14 CH 14270 and
SCHNORF, Commissioners of the License Appeal)	14 CH 14510 (cons.)
Commission of the City of Chicago; RAHM)	
EMANUEL, Mayor of the City of Chicago and Liquor)	
Control Commissioner; GREGORY J. STEADMAN,)	
Local Liquor Control Commissioner; and MARIA)	
GUERA CAPACEK, Department of Business Affairs)	
and Consumer Protection,)	Honorable
)	Franklin Ulyses Valderrama,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the order of the circuit court, which affirmed an order of the License Appeal Commission of the City of Chicago, which affirmed the finding of the

Local Liquor Control Commission of the City of Chicago (LLCC) that the plaintiff failed to adequately implement and maintain its late hour exterior safety plan and reversed the LLCC's finding that the plaintiff failed to post a copy of the plan in a conspicuous location next to its liquor license certificate.

¶ 2 The plaintiff, 1770 West Greenleaf Corporation (Greenleaf), appeals from orders of the circuit court of Cook County, affirming a final administrative decision of the License Appeal Commission of the City of Chicago (LAC), which affirmed in part and reversed in part an order of the Local Liquor Control Commission (LLCC), which suspended Greenleaf's retail liquor license for the premises at 1770 West Greenleaf for violations of Chicago municipal ordinances and the LLCC's rules and regulations. For the reasons which follow, we affirm.

¶ 3 The City of Chicago (City) issued a license to Greenleaf for the late hour sale of liquor at Gallagher's Tavern (Gallagher's), a bar it owned and operated at 1770 West Greenleaf. On August 15, 2012, the City brought disciplinary proceedings against Greenleaf, alleging that: (1) between February 2011 and April 2012, Greenleaf failed to adequately implement and maintain its late hour exterior safety plan by failing to regularly attend Chicago Alternative Policing Strategy (CAPS) meetings, in violation of section 4-60-130(f) of the Chicago Municipal Code (Code) (Chicago Municipal Code § 4-60-130(f) (amended July 28, 2010)); and (2) Greenleaf failed to post its exterior safety plan "in a conspicuous location, directly next to the liquor license certificate" in violation of Rule 10 of the LLCC's Rules and Regulations for Late Hour Liquor License (eff. March 1, 2008), as promulgated under section 4-60-205 of the Code (Chicago Municipal Code § 4-60-205 (amended November 19, 2008)).

¶ 4 On December 11, 2012, and January 29, 2013, a hearing was conducted before a deputy hearing commissioner (hearing officer) appointed by the City's Department of Business Affairs and Consumer Protection. At the hearing, the City presented the testimony of Sergeants Joseph Giambrone and Robert Kane, and Greenleaf called its owner, Leticia Estrada.

¶ 5 Sgt. Giambrone testified that he conducted a license inspection at Gallagher's at approximately 10:15 p.m. on April 10, 2012. According to Sgt. Giambrone, Estrada showed him an "unapproved" copy of a late hour exterior safety plan. Sgt. Giambrone did not know where Estrada retrieved the plan from, but stated that it was not posted on the wall where the bar's licenses were located.

¶ 6 Sgt. Kane testified that he managed CAPS meetings for the district encompassing Gallagher's since approximately January 2012. The meetings are held in the cafeteria of the Chicago Math and Science Academy and, for the duration of each meeting, sign-in sheets are left on a table near the cafeteria door. Sgt. Kane stated that he reminds attendees to sign in if their business safety plans require their attendance. Afterwards, according to Sgt. Kane, the sheets are collected by himself or one of his two subordinate officers and he maintains the sheets in the regular course of business for the Chicago Police Department (CPD). Sgt. Kane further testified that he attended the April 2012 meeting, made an announcement regarding the importance of signing in, and personally collected that meeting's sign-in sheet. However, he did not attend any meetings in 2011, did not know whether officers made announcements regarding the sign-in sheets at those meetings, and could not say for certain whether the sheets were made available at those meetings.

¶ 7 The City produced sign-in sheets from CAPS meetings for the district encompassing Gallagher's from February, March, May, June, August, and November 2011, and January, February, March, April, and July 2012. Estrada's name only appeared on the sign-in sheet from July 2012. Greenleaf argued that the sign-in sheets constituted hearsay but, over its objection, the hearing officer entered the exhibits into evidence under the business records exception. The City also introduced a copy of Gallagher's late hour exterior safety plan which states, in relevant

part, that in order to "employ adequately trained security personnel" per the LLCC's rules and regulations, "[t]he manager will attend local CAPS meetings at least once a month." Additionally, for purposes of aggravation, the City produced an order of disposition from the Department of Business Affairs and Consumer Protection, which stated that Greenleaf was subject to a warning and three disciplinary sanctions between 1990 and 2011.

¶ 8 Estrada testified that two officers entered Gallagher's at approximately 8:30 p.m. on April 10, 2012, and asked to view the bar's "safety plan." Estrada stated that she retrieved the plan from "the wall where the licenses are posted" and showed it to the officers, who wrote her a citation because, according to the officers, the plan was "not approved." Estrada further testified that she attended every CAPS meeting between February 2011 and April 2012, except for meetings in May and June 2011, when she was out of the country, and that no one attended those meetings in her place. Estrada stated that she "didn't read" the provision in Gallagher's late hour safety plan that required her to attend CAPS meetings and that "nobody told [her]" that she was required to attend every month. Estrada testified that she did not consistently sign in at meetings she attended because officers did not announce that it was required; now, however, she always signs in because she received a paper explaining the requirement and officers "[r]ecently" began making announcements.

¶ 9 Following the hearing, the hearing officer issued written findings of fact and recommendations. According to the hearing officer, both Sgts. Giambrone and Kane were "credible and believable." The hearing officer determined that Greenleaf failed to post its exterior safety plan "in a conspicuous place directly next to its liquor license certificate." Additionally, the hearing officer found that Greenleaf did not "regularly attend" CAPS meetings and, therefore, "failed to adequately implement and maintain its late[] hour [e]xterior [s]afety

plan." Based upon these circumstances, and Greenleaf's "prior record," the hearing officer recommended "a 14 day suspension."

¶ 10 After considering the hearing officer's written findings of fact and recommendations, the City's local liquor control commissioner sustained both charges against Greenleaf and issued an order suspending its retail liquor license and closing the premises at 1770 West Greenleaf for 14 days.

¶ 11 Greenleaf filed a timely administrative appeal before the LAC. In its decision, the LAC affirmed the hearing officer's finding that the claimant failed to implement its late hour exterior safety plan but reversed the hearing officer's determination that Greenleaf failed to post a copy of the plan, reasoning that the LLCC's rules and regulations required the plan to be posted after 1 a.m. but that Sgt. Giambrone conducted his inspection at 10:15 p.m. The LAC observed that the LLCC's order did not specify whether the 14-day suspension was concurrent on each charge against Greenleaf; however, because Greenleaf had previously been disciplined for license violations, the LAC determined that a 14-day suspension for failing to implement its late hour exterior safety plan was not unreasonable. Both Greenleaf and the City filed petitions for rehearing, which the LAC denied.

¶ 12 Thereafter, Greenleaf and the City both filed timely complaints for administrative review in the circuit court, which consolidated the cases, affirmed the LAC's final administrative decision, and denied Greenleaf's motion to reconsider. Greenleaf appeals.

¶ 13 For its first assignment of error, Greenleaf contends that the hearing officer abused his discretion with respect to certain evidentiary rulings. Specifically, Greenleaf contends that the hearing officer erred by (1) admitting the CAPS sign-in sheets into evidence as business records

where Sgt. Kane was not qualified to authenticate those exhibits, and (2) allowing the City to pose leading questions during its direct examination of Sgt. Giambroni.

¶ 14 Rule 10(b) of the Rules of Procedure for Contested Hearings before the Department of Business Affairs and LLCC (eff. Nov. 1, 2014), as promulgated under sections 2-25, 4-4, and 4-60 of the Chicago Municipal Code (Code) (Chicago Municipal Code § 2-25, 4-4 (amended Nov. 19, 2008), 4-60 (amended July 28, 2010)), provides that "[t]he rules of evidence *** as applied in civil cases in the circuit courts of the State of Illinois shall be followed." This court will not reverse an evidentiary ruling of the LLCC unless it "abused its discretion and the ruling demonstrably prejudiced the objecting party." *Addison Group, Inc. v. Daley*, 382 Ill. App. 3d 1036, 1039 (2008). "An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would take the same view." *Aguilar-Santos v. Briner*, 2017 IL App (1st) 153593, ¶ 61 (citing *People v. Illgen*, 145 Ill. 2d 353, 364 (1991)).

¶ 15 Illinois Supreme Court Rule 236 (Ill. S. Ct. R. 236 (eff. Aug. 1, 1992)) sets forth the business records exception to the hearsay rule. In order to admit business records into evidence pursuant to Rule 236, the party tendering the records must demonstrate that they were made in the regular course of business, at or near the time of the event or occurrence. *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400, 414 (2005). The witness who provides foundation testimony is not required to "be familiar with the records before litigation arose or have personally made the entries." *US National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 29. Rather, "[t]he custodian or any other person familiar with the business and its mode of operation may provide testimony establishing the foundational requirements of a business record." *JPMorgan Chase Bank, N.A. v. East-West Logistics, LLC*, 2014 IL App (1st) 121111, ¶ 95.

¶ 16 In this case, Greenleaf submits that Sgt. Kane did not "did not produce the [sign-in] sheets at the meetings, did not retrieve them from the meetings, *** does not know if they were presented at the meetings *** [and] was not present at any of the meetings." These claims, however, misstate the evidence of record. Sgt. Kane testified that he managed CAPS meetings for the district encompassing Gallagher's since approximately January 2012, knew where the sign-in sheets were located during the meetings, collected the sheets himself or left the task to a subordinate officer, and maintained the sheets in CPD's regular course of business. Additionally, he stated that he attended the April 2012 meeting and personally collected the sign-in sheet from that date. The hearing officer found Sgt. Kane to be "credible and believable." Based on this testimony, the hearing officer could properly find that Sgt. Kane was familiar with CPD's "mode of operation" as to the sign-in sheets and, therefore, could authenticate those exhibits. See *id.*

¶ 17 Notably, although Sgt. Kane did not attend every CAPS meeting for which the City introduced a sign-in sheet, "circumstances concerning the making of the [business] record, such as lack of personal knowledge," affect "the weight of the evidence and not its admissibility." *PennyMac Corp. v. Colley*, 2015 IL App (3d) 140964, ¶ 17; see also *People v. Lewis*, 52 Ill. App. 3d 477, 484 (1977) (motel ledger was properly admitted into evidence where the foundation witness lacked personal knowledge of its contents but testified regarding procedures used by the motel in keeping the ledger in its regular course of business). Thus, we cannot say that the hearing officer erred in finding that Sgt. Kane was qualified to authenticate the sign-in sheets under the business records exception, and no abuse of discretion occurred.

¶ 18 Next, Greenleaf contends that the hearing officer's finding that it did not regularly attend CAPS meetings was against the manifest weight of the evidence.

¶ 19 Pursuant to section 7-11 of the Local Liquor Control Act of 1934 (235 ILCS 5/7-11 (West 2014)), decisions of the LAC upholding determinations made by the LLCC are subject to judicial review in accordance with the provisions of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)). This court reviews the administrative agency's decision and the not the decision of the circuit court. *Vino Fino Liquors, Inc. v. License Appeal Comm'n of City of Chicago*, 394 Ill. App. 3d 516, 523 (2009). On review, an agency's findings of fact are held to be *prima facie* true and correct, and must be affirmed unless they are against the manifest weight of the evidence. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386-87 (2010). A factual finding "is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). If the record contains evidence supporting the agency's decision, that decision should be affirmed. *Id.*

¶ 20 Section 4-60-130(f)(1) of the Code (Chicago Municipal Code § 4-60-130(f)(1) (amended July 28, 2010)), provides that persons seeking a late hour liquor license must submit an exterior safety plan to the Department of Business Affairs and Consumer Protection. The plan must provide evidence of "the employment of adequately trained security personnel in accordance with rules prescribed by the commissioner." Chicago Municipal Code § 4-60-130(f)(3)(iii) (amended July 28, 2010)). In turn, Rule 9(e) of the LLCC's Rules and Regulations for Late Hour Liquor License (eff. March 1, 2008), as promulgated under section 4-60-130(f) of the Code, requires that "[t]he licensee or at least one person authorized by the licensee to provide security at the licensed establishment" must attend "each [CAPS] meeting" in the local police district and maintain written records identifying the date and time of each meeting and the name of the person who attended. Failure to implement or maintain an adequate exterior safety plan "is

grounds for suspension or revocation of the late-hour privilege *** or for suspension or revocation of the license for the premises." Chicago Municipal Code § 4-60-130(f)(3) (amended July 28, 2010)).

¶ 21 Turning to the present case, Greenleaf claims that the hearing officer's finding was against the manifest weight of the evidence because Sgt. Kane lacked personal knowledge of whether Estrada attended CAPS meetings, and that the absence of her name from the sign-in sheets does not support an inference that she was not present. We disagree. It well-established that "[t]he mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings." *Abrahamson*, 153 Ill. 2d at 88. The evidence of record includes sign-in sheets for 10 meetings held between February 2011 and April 2012, none of which bear Estrada's name. Sgt. Kane testified that he attended the April 2012 meeting, made an announcement regarding the importance of signing in, and personally collected the sign-in sheet from that meeting. Moreover, Estrada admitted that she did not attend CAPS meetings in May and June 2011, and that no one attended those meetings in her absence. In view of this record, we find that the manifest weight of the evidence supports the hearing officer's determination that Greenleaf did not regularly attend CAPS meetings.

¶ 22 For its final assignment of error, Greenleaf argues that the hearing officer erred in allowing the City to pose leading questions to Sgt. Giambroni regarding the location of the late hour exterior safety plan at Gallagher's. Greenleaf, however, prevailed before the LAC on the charge concerning the display of the safety plan and, therefore, "cannot complain of error which does not prejudicially affect it." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d

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382, 386 (1983); *International Harvester Credit Corp. v. Helland*, 130 Ill. App. 3d 836, 840 (1985). Consequently, this argument is improper and need not be further considered.

¶ 23 Based upon the foregoing, we affirm the judgment of the circuit court which affirmed the judgment of the LAC.

¶ 24 Affirmed.