2016 IL App (1st) 143683-U

FOURTH DIVISION
June 30, 2016

No. 1-14-3683

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAHM EMANUEL, Mayor of the City of Chicago, GREGORY STEADMAN, Local Liquor Control Commissioner, MARIA GUERRA LAPACEK, Commissioner of the Department of Business Affairs and Consumer Protection, and THE LOCAL LIQUOR CONTROL COMMISSION OF THE CITY OF CHICAGO, Plaintiffs-Appellees/ Cross-Appellants, v. 1000 LIQUORS, INC. and JOHN PLEWA, President, Defendants-Appellants , and LICENSE APPEAL COMMISSION OF THE CITY OF CHICAGO, DENNIS M. FLEMING, Chairman of the License Appeal Commission of the City of Chicago, IRVING KOPPEL and STEPHEN SCHNORF, Members of the License Appeal Commission of the City	)	Appeal from the Circuit Court of Cook County. No. 08 CH 30854

of Chicago,	)	The Honorables
	)	Judge Rodolfo Garcia &
Defendants-Appellants/	(	Richard J. Billik,
Cross-Appellees.	)	Judges Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: LLCC's finding that 1000 Liquors violated a city ordinance was not against the manifest weight of the evidence where the record contained evidence that 1000 Liquors' agents and/or employees were aware of a battery that took place on its premises and failed to promptly report it to the police. The LLCC did not abuse its discretion in not admitting portions of an employee's testimony about the licensee's business practices where the employee did not have personal knowledge because he was not employed by the tavern in any capacity on the date in question thereby making his testimony irrelevant and where the witness was not present at the tavern in any capacity on the date in question. The LLCC's imposition of a 14-day suspension of 1000 Liquor's licenses was not unreasonable or arbitrary where the record contained evidence that, other than the current ordinance violation, 1000 Liquors had three other violations, one of which resulted in a 10-day suspension. The LLCC waived its right to appeal to reinstate the 21-day suspension where after remand the LLCC sought an order approving a lesser sanction of a 14-day suspension in which it stated that the 14-day suspension "was supported by the record and should be affirmed."

¶ 2 In the early morning hours of December 29, 2005, a customer of the licensee, 1000 Liquors, Inc. (1000 Liquors), was struck twice in the head by another customer. 1000 Liquors was issued a citation for failing to notify the police about the battery. Following an administrative hearing on the matter presented in the citation, the City Local Liquor Control Commission (LLCC) and the City's Department of Business Affairs and Licensing (DBAL) (hereinafter collectively, LLCC) found that 1000 Liquors violated a Chicago ordinance by failing to notify the Chicago Police Department (CPD) promptly of illegal activity on its premises and ordered a 21-day suspension of 1000 Liquors' licenses. 1000 Liquors sought review of the decision and suspension, and the License Appeal Commission (LAC) upheld the finding of a

violation, but ruled that the 21-day suspension was inappropriate. The LLCC filed a complaint in the circuit court of Cook County for administrative review and the circuit court affirmed the finding that the licensee failed to report the battery, however it remanded the matter back to the LLCC with directions to "impos[e] a lesser penalty than a 21-day suspension." On remand, the LLCC affirmed the finding that a city ordinance violation had occurred, stated its belief that its original 21-day suspension was appropriate, but reduced its sanction to a 14-day suspension "in deference to the Circuit Court's order of remand." The LAC affirmed, and, upon motion by the LLCC, the circuit court entered a final order affirming the 14-day suspension. 1000 Liquors now appeals the LLCC's finding that it violated a city ordinance as well as the LLCC's imposition of a 14-day suspension of its licenses as a punishment. The LLCC filed a cross appeal seeking review of the LLCC's order imposing a 14-day suspension and the circuit court's order directing the LLCC to impose a suspension that was less than 21-days arguing that the 21-day suspension should be reinstated.

¶ 3 Background

¶ 4 On April 21, 2006, the LLCC charged 1000 Liquors with violating section 4-60-141 of Chicago's Liquor Dealer's Ordinance, which provides, in pertinent part, that: "[i]t is the affirmative duty of a licensee to report promptly to the police department all illegal activity reported to or observed by the licensee on or within sight of the licensed premises." Municipal Code of Chicago, Ill. § 4-60-141(b). The charge specified that "on or about December 29, 2005, [1000 Liquors] failed to notify the police in regard to a battery committed upon Rocco Rinaldi, a patron on the licensed premises."

¶ 5 An evidentiary hearing was held regarding the charges, and the following evidence was presented at that hearing. Rinaldi testified that on December 29, 2005, he went with four friends

to Big City Tap, which is a tavern located at 1000-12 West Belmont Avenue in Chicago. 1000 Liquors owns Big City Tap. Rinaldi and his group had been at a nearby bar from about 11:00 p.m. on December 28, 2005 until about 1:45 a.m. on December 29, 2005. They then headed to Big City Tap, and arrived "[b]etween 1:45 and 2:15" a.m. When they arrived, there were two employees at the door and at least two servers and two bartenders were also working. The tavern employees asked Rinaldi and his friends for their IDs at the door upon entering; their IDs were placed under a "camera device."

¶ 6 The tavern was "sparsely populated"; Rinaldi and his friends sat at one of several tables that were unoccupied. One of Rinaldi's friends went to the bar to order a round of drinks, whereupon a man who Rinaldi did not know sat down next to Rinaldi in the seat of the friend who had gone to the bar. Rinaldi said "hi" to the man, and the man did not respond. Rinaldi then told the man that he was sitting in his friend's seat, and asked whether he would be "kind enough to leave" when his friend returned. The man then "mumbled or murmured" something, "not making much sense."

¶ 7 When Rinaldi's friend returned from the bar with drinks, the man did not leave. Rinaldi's friend said "no big deal," and swung a chair around the other end of the table and distributed the drinks. At that point, the man reached across the table and grabbed a beer out of the hand of one of the women in their party. The man almost took a sip out of the beer when Rinaldi grabbed the beer and said, "you really should leave."

¶ 8 The man then got up, took his coat off and threw it to the floor, and "challenged [Rinaldi] to fight him." Rinaldi remained seated and turned to his right to rejoin his friends, ignoring the man. At that point, which was 10 to 15 minutes after Rinaldi and his friends had arrived at the tavern, the man "swatted" Rinaldi in the left ear with "either an open hand or a slightly closed

hand." Within a few more seconds, the man struck Rinaldi again, but this time he punched Rinaldi with his "fist." Tavern employees "grabbed hold of [the man] and took him out the front door." After the second hit, Rinaldi stated that the tavern employees reacted "quick enough to the point where [he] was not hit with a third." Rinaldi assumed that the reason the tavern employees grabbed the man and took him out of the tavern is because they had seen the man strike him since Rinaldi never screamed out in pain when he was hit and because the tavern was sparsely populated that night.

¶ 9 A server then came to their table and apologized on behalf of the tavern, and asked whether they wanted anything to drink. The server mentioned that the man had also bothered a few other patrons that night. Rinaldi later noticed that the man who had struck him tried to re-enter the tavern, but the tavern's door staff did not permit him to do so.

¶ 10 After the server apologized, Rinaldi had a conversation with one of the tavern employees who had escorted the man out. During the conversation, Rinaldi told the employee that he had been struck. Rinaldi also asked the employee whether there was a manger on duty with whom he could speak with. Rinaldi had seen the tavern's employees scan IDs, and explained to the employee that he thought that if he looked at the records of the ID scans, he might be able to recognize the person who attacked him. The employee responded that no manager was on duty, and that he would have to call in the morning. The employee also told Rinaldi that the tavern "do[es] not retain the videotapes or pictures of the IDs for greater than 48 hours."

¶ 11 Rinaldi noticed that the music in the tavern was muffled in one of his ears. He told one of his friends that he was not feeling too well and needed to go get some fresh air. Rinaldi testified that he left the tavern about 15 minutes after the man struck him. When he left, there were no police officers inside or outside of the tavern.

¶ 12 On his way home, Rinaldi started to lose hearing in his left ear, so he went to Children's Memorial Hospital, which was near his home. When Rinaldi described to hospital personnel how he had been injured, they told him they needed to call the police and make a report. A hospital employee called the police, and police officers came to the hospital, asked Rinaldi questions, and prepared a report. Rinaldi testified that the police report was incorrect where it stated that the man had struck him in the right ear because he had been struck in the left ear. After examination, the doctors determined that Rinaldi had a broken eardrum; he regained hearing "within about a month." Although insurance covered some of his medical expenses, his out-of-pocket expense was $500.

¶ 13 Rinaldi wanted to pursue "the individual who attacked" him, so, upon arrival to his home from the hospital, he telephoned Big City Tap to provide information about what happened to him after he left the tavern. Rinaldi testified that the tavern employee with whom he spoke with on the telephone was aware of the incident from earlier. Rinaldi "followed up with multiple phone calls" to the tavern, "and [he] even stopped in twice." Every time he telephoned, he asked to speak with a manager, but no manager ever spoke with him. When he went to the tavern in person, he was told there was no manager on duty. Eventually, he was told that the tavern's "final verdict" was that he "was not authorized to review" records of the ID scans.

¶ 14 Laura Dunaj, an employee of the City of Chicago's Office of Emergency Management and Communications (OEMC), testified that OEMC retains records of police, fire and emergency medical services, and that she searched OEMC's records for those types of services on December 29, 2005 within five ranges of addresses, including and surrounding the tavern. She stated that aside from the telephone call from Children's Memorial Hospital to the police, her search of those addresses disclosed no record of any telephone call reporting a battery at

approximately 2:00 a.m. on December 29, 2005, and no record that any person notified a police officer in person of a battery at 1000-1012 West Belmont between 2:00 a.m. and 3:00 a.m. on that date. She also stated that if anyone had reported a battery to a police officer in person, the system would show the report, because when such a report is made to a police officer, the officer relays the information to a dispatcher, who includes it in the system.

¶ 15 On cross-examination, Dunaj was shown OEMC documents and testified that police officers were assigned to three separate "details" between Belmont and Sheffield Avenues at three different times on the date in question: the first started at 1:53 a.m. and lasted until 2:19 a.m., the second started at 2:29 a.m. and lasted until 2:37 a.m., and the third started at 3:14 a.m. and lasted until 4:03 a.m. The documents did not specify the purpose of any of those "details" or whether the officers assigned to them were the same officers who were ordinarily assigned to that area. Another document that was shown to Dunaj indicated that there was an "outdoor roll call" at 1000 West Belmont for a 10-minute period between 2:19 a.m. and 2:29 a.m. Dunaj testified that at least three police officers participated in that roll call.

¶ 16 The City tendered, and the hearing officer admitted into evidence, three exhibits setting forth previous orders of disposition against 1000 Liquors: one on August 30, 1994 when it was fined $500 for gambling on the premises; one on June 13, 1996 when it was fined $1,000 for selling alcohol to a minor; and one in February 1999, when it was closed for a ten-day period for a second offense of selling alcohol to a minor.

¶ 17 1000 Liquors called Gary Gaski to testify. Gaski stated that he is the "security consultant" at Big City Tap, and that in that capacity, he works two days per week and supervises the half-dozen employees on the security staff. Gaski acknowledged that he was not employed by 1000 Liquors on December 29, 2005, and he was not at the tavern on that date at all. He

stated that he had been a Chicago police officer for 29 years. For seven of those 29 years, Gaski's duties were those of "foot patrolman" for an area that included 1000 West Belmont, and that during each of his 8 ½ hour shifts throughout those seven years, he entered Big City Tap's premises "at least half a dozen times" "to make sure everything [wa]s alright."

¶ 18 Gaski was asked to give his view on the meanings of three terms—"outdoor roll call," "detail," and "foot patrolman." The hearing officer ruled that Gaski's view of these terms was not probative, but allowed him to describe their meanings in an offer of proof. Gaski described an "outdoor roll call" as "a calling of police officers under the supervision of a sergeant or lieutenant." He further described it as a "show of force," "held on the street to be highly visible to the public to reassure them that there is police presence there." A "detail" is where a watch commander assigns officers "to a specific area to address a specific problem…for a limited time." A "foot patrolman" is an officer, "walking on foot," who is "highly visible" and "make[s] numerous premises checks on businesses that are open."

¶ 19 Gaski stated that one of the functions performed by the security staff at Big City Tap is ensuring that all patrons are of legal age. This entails requiring patrons, upon entering the tavern, to produce documentation to verify who they are and their age. Employees use a scanner to copy the documents, and the scanned information is stored for "a length of time." There are also 28 video cameras throughout the tavern, some that record and some that are just watched. The hearing officer ruled that Gaski would not be permitted to testify that those cameras were present at the tavern on December 29, 2005, before Gaski was employed by 1000 Liquors. However, the hearing officer allowed an offer of proof wherein Gaski stated that he knew the cameras were present on the date in question "from looking at invoices and documentation relating to their installation and continued operation."

¶ 20 Gaski testified that CPD Order DSO 04-09 provides that when the police department received a report of criminal activity at an establishment that has a liquor license, a supervisor is dispatched to the establishment to determine whether the license is current, gather pertinent information concerning the incident, and assess the degree to which the establishment cooperates with the police. Gaski stated that when a citizen provides a police officer with *bona fide* information that criminal activity has occurred, the officer must always notify OEMC of the incident; however, the officer does have discretion in whether he notifies the OEMC before or after he investigates the incident. Gaski added that he encourages the security staff at Big City Tap to notify a police officer directly, rather than call 911, when an incident occurs because they "get faster service" that way.

¶ 21 John Plewa, the co-owner of 1000 Liquors, testified that he was on the premises of Big City Tap on the date and time in question, either in the tavern itself, his office, or his apartment above the tavern. Plewa stated that when a criminal incident at the tavern is reported to the police, it is always reported to him as well. On December 29, 2005, no one reported any incident to him. In December 2005, security personnel were required to keep records "if there was an incident."

¶ 22 Plewa stated that he did not become aware of the incident until sometime after April 2006 when he received a notice regarding the hearing in this matter. After receiving the notice, Plewa testified that he spoke with Brendan Lee, who had been a doorman at the tavern at the time of the incident, and Brendan told Plewa that he recalled a "disturbance" at the tavern on December 29, 2005.

¶ 23 Eric Federer testified that he was a doorman and bouncer at the tavern on the date and time in question. He stated that at some point that night, "he saw kind of a commotion over on

the dance floor." When he approached to learn what was going on, he saw one man standing up, a group of four or five people sitting down around a table, and a man's jacket on the floor. Federer testified that he did not see the man who was standing hit anyone, but nonetheless decided that he "needed to leave." Federer asked the man to leave, and he picked up his jacket and was escorted out. The man tried to reenter the tavern about 10 to 15 minutes later, but was denied admittance.

¶ 24 After the man was escorted out of the tavern, Federer went back to the table where the commotion had occurred, and the patrons there told him that everything was fine. No one in that party told him that someone at the table had been struck.

¶ 25 A few minutes later, Federer saw a man from that party speaking with Brendan, the other doorman working that night. The man spoke with Brendan for about five minutes and then left the tavern with Brendan. The rest of the party left about 10 to 15 minutes later.

¶ 26 Federer testified that "[i]t's pretty typical for cops to be on the corner" outside the tavern. Federer stated that when Brendan and the man walked out of the tavern, several police officers were on the corner and several of them were officers who "frequented" the tavern. Federer stated that he could see police officers and three police vehicles from inside the tavern and when Brendan exited the tavern, he saw Brendan speak with the officers who "frequented" the tavern. Federer did not see the man whom Brendan accompanied out of the tavern speak with the police.

¶ 27 Federer testified that later that night, Brendan told him that the man whom he left the tavern with earlier informed him that he had been struck by another patron, and that he talked to the police about it and they told Brendan not to worry about it because no one involved in the incident was still at the tavern. Federer testified that when the incident occurred, Plewa had gone to his apartment at about midnight, and Federer did not recall seeing him again that night.

¶ 28 Federer testified that if the police come to the bar and fill out a report, Plewa is notified and the tavern makes a written report. If the police are notified but "they don't make it sound like any further steps need to be taken, then, no, I don't bother [Plewa]."

¶ 29 Federer testified that Brendan died during the summer between the incident and the administrative hearing.

¶ 30 On February 27, 2007, the LLCC issued its decision, which found that 1000 Liquors "failed to notify the police in regard to a battery committed upon Rocco Rinaldi, a patron on the licensed premise, in violation of Title 4, Chapter 60, Sec. 141, Municipal Code of Chicago" and, as a result of violating that ordinance, imposed a 21-day closing as a sanction. Regarding the violation of a city ordinance, the hearing commissioner made the following comments in its written "findings of fact":

> "I find the testimony of Rocko [*sic*] Rinaldi to be credible, reliable, and, on most accounts, uncontradicted. Mr. Rinaldi testified that he was struck by a patron at Big City Tavern which led to needing medical attention for a broken eardrum. *** Mr. Rinaldi testified that he made repeated attempts to contact a manger, to no avail. Mr. Rinaldi testified that he did not see any police outside the premises as he left the establishment. In contradiction, Mr. Richard Federer testified that there were two to three police squad cars parked outside the premises when Mr. Rinaldi left. I find the testimony of Laura Dunaj to be credible, reliable and uncontradicted. Ms. Dunaj testified that there were no 911 calls from Big City Tavern, a cell phone, or by personal contact with a

> police officer. Ms. Dunaj testified that assuming an officer who was notified of a battery in person contacted dispatch with the report, an event query would be generated. Ms. Dunaj testified that the only report of a battery recorded by CADS is the report from Children's Memorial Hospital."

¶ 31 With respect to Gaski's testimony, the Commissioner found that testimony not to be reliable because "he was not employed at Big City Tavern on December 29, 2005, nor was he on the premises." He further found that Gaski's testimony regarding general police procedures and security measures that have been in place at Big City Tavern since 2006 were not relevant to the matters in this case. The Commissioner went on to make these additional "findings of fact":

> "I find the testimony of John Plewa to be credible, reliable and uncontradicted. Mr. Plewa testified that if an incident is reported to the [CPD], it is always reported to him as well, sometimes before the police are contacted, sometimes simultaneously, or perhaps, afterwards. However, in this matter, Mr. Federer testified that the police were notified by Brandan of the incident, yet Mr. Plewa never indicates that he was notified of such a report. *** Less weight is given to Mr. Federer's testimony that Mr. Rinaldi left the premises with Brendan and Mr. Rinaldi did not accompany Brendan to the police squad cars which he purports were parked out front of the establishment. If Brendan walked out with intentions of reporting the matter to the police, it seems implausible that he would not request Mr. Rinaldi's presence or

> that Mr. Rinaldi, who seemed interested in investigating further, would not accompany him to the squad cars."

The Commissioner went on to find that 1000 Liquors had the following history: "a 3/2/94 charge of gambling, which resulted in a voluntary fine of $500.00 fine; a 5/24/96 charge of sale to minor, which resulted in a voluntary fine of $1000.00 fine; and, 12/12/98 charge of sale to minor, which resulted in a 10-day closing." In sum, the Commissioner concluding that "in light of the present violations and the Licensee's prior disciplinary history including a $500.00 fine, a $1000.00 fine, and a 10-day closing, I find that a 21-day closing, is an appropriate penalty."

¶ 32 On March 16, 2007, 1000 Liquors filed an appeal to the License Appeal Commission (LAC). Following oral arguments, on January 11, 2008, the LAC upheld the LLCC's finding that 1000 Liquors had failed to report the battery to the police, but concluded by a two-to-one vote that the 21-day suspension was inappropriate because it was "too severe." 1000 Liquors filed a petition for rehearing of the LAC's decision, and each LAC member reaffirmed their January 11, 2008 positions and denied the rehearing.

¶ 33 On August 21, 2008, the LLCC filed a complaint for administrative review in the circuit court of Cook County seeking reversal of the LAC's decision and reinstatement of its 21-day suspension. On December 8, 2009, the circuit court issued a decision which found that "the LLCC's determination that the City met its burden of proving the [ordinance] violation charged is not against the manifest weight of the evidence." With respect to the sanction, the court found that "the 21-day suspension issued by the LLCC is not supported by the record," but that "a reasonable sanction …can still be imposed that is appropriate based on the administrative record." For that reason, the court reversed the LAC's decision and remanded the matter to the LLCC with directions to impose "a lesser than 21-day suspension."

¶ 34 On remand, the LLCC entered an order on July 18, 2011, which "reaffirm[ed] its view that [the] twenty-one day suspension of licenses originally imposed [on 1000 Liquors] is not unreasonable, arbitrary or unrelated to liquor control," but that "in deference to the Circuit Court's order of remand," it would reduce the sanction to a 14-day suspension.

¶ 35 1000 Liquors filed an appeal of the LLCC's July 18, 2011 decision to the LAC. While that matter was pending, the LLCC filed a motion in the circuit court to have judgment entered on the 14-day sanction after remand. On January 11, 2012, the circuit court issued an order affirming the LLCC's ruling on remand. 1000 Liquors then filed a timely motion to reconsider the court's January 11, 2012 order, which was denied on May 22, 2012.

¶ 36 1000 Liquors filed a notice of appeal to this court on June 18, 2012. On June 27, the LLCC filed a notice of cross appeal. At the time, the LAC had not decided 1000 Liquor's appeal on the LLCC's finding that 1000 Liquors was in violation, but that a 21-day suspension was inappropriate. This raised an issue of whether a final judgment had been entered below, and, as a result, whether this court lacked jurisdiction over the appeal and cross appeal, and on July 22, 2013, this court entered an agreed order remanding the case to the circuit court with directions to vacate its judgment and remand the case to the LAC. The circuit court then remanded the case to the LAC and, on April 3, 2014, the LAC affirmed the 14-day suspension. On October 30, 2014, the circuit court affirmed the 14-day suspension as well.

¶ 37 On December 1, 2014, 1000 Liquors filed a notice of appeal to this court to review the finding that it violated a city ordinance and the order imposing the 14-day suspension. On December 10, 2014, the LLCC filed a notice of cross appeal to obtain this court's review of the circuit court's ruling directing the LLCC to order a lesser sanction than a 21-day suspension. For the reasons that follow, we affirm the LLCC's finding that 1000 Liquors violated a city ordinance

and affirm its imposition of a 14-day suspension of its licenses. In doing so, we deny the LLCC's request in its cross appeal to reinstate the 21-day suspension.

¶ 38 Analysis

¶ 39 "Upon administrative review, the function of both the trial court and the appellate court is limited to determining whether the findings and conclusions of the administrative agency are against the manifest weight of the evidence." *Hamwi v. Zollar,* 299 Ill. App. 3d 1088, 1092 (1998). An appellate court will reverse the decision of the administrative agency only if the decision was against the manifest weight of the evidence or if the agency's findings did not support the imposed sanction. *Boom Town Saloon, Inc. v. City of Chicago*, 384 Ill. App. 3d 27, 32 (2008). "In order to make a determination that an agency's decision was against the manifest weight of the evidence, a court must conclude that all reasonable and unbiased persons, acting within the limits prescribed by law and drawing all inferences in support of the finding, would agree that the finding is erroneous and that the opposite conclusion is clearly evident." *Haynes v. Police Board*, 293 Ill. App. 3d 508, 511 (1997); *Leong v. Village of Schaumburg*, 194 Ill. App. 3d 60 (1990) (A factual finding is against the manifest weight of the evidence only if an opposite conclusion is clearly evident from the record). "Because the weight of the evidence and the credibility of witnesses are uniquely within the province of the administrative agency, there need only be some competent evidence in the record to support its findings." (Internal quotation marks omitted.) *Haynes,* 293 Ill. App. 3d at 512; *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992) (If any evidence supports the agency's decision, that decision should be affirmed). "[I]t is not a court's function to reweigh the evidence or make an independent determination of the facts." *Board of Education v. Van Kast,* 253 Ill. App. 3d 295, 304 (1993). If there is any evidence in the record that fairly supports the

agency's decision, then the decision is not against the manifest weight and the decision must be affirmed on appeal. *Boom Town Saloon, Inc.*, 384 Ill. App. 3d at 32. As such, an appellate court may not reverse simply because it would have ruled differently in the first instance or because the opposite conclusion is also reasonable. *Id.*; *Abrahamson*, 153 Ill. 2d at 88 (The mere fact that the opposite conclusion is reasonable, or that a reviewing court would have ruled differently, does not render an agency's decision as against the manifest weight of the evidence). In reviewing the record, "circumstantial evidence is sufficient to support the LLCC's decision." *Connor v. City of Chicago*, 354 Ill. App. 3d 381, 384 (2004).

¶ 40 Violation of Ordinance

¶ 41 1000 Liquors first argues that the LLCC's finding that it violated section 4-60-141(b) of the Chicago Municipal Code by failing to promptly report criminal activity, a battery, to the police was against the manifest weight of the evidence. Section 4-60-141 of Chicago Municipal Code states:

> "(a) No licensee shall permit or allow any illegal activity on the licensed premises.
>
> (b) It is the affirmative duty of a licensee to report promptly to the police department all illegal activity reported to or observed by the licensee on or within sight of the licensed premises; to answer fully and truthfully all questions of an identified police officer who inquires or investigates concerning persons or events in or around the licensed business; to cooperate with the police in any such inquiry or investigation, including the giving of oral or written statements to the police at reasonable

> times and locations in the course of investigations; and to sign a complaint against any person whom the licensee observes in any illegal conduct or activity on or within sight of the licensed premises.
>
> (c) For purposes of this section, "licensee" includes an employee or agent of a licensee." Ill. § 4-60-141 (2005).

¶ 42 1000 Liquors first argues that the LLCC erred in finding that it violated the above ordinance because it failed to make a specific finding that 1000 Liquors or any of its employees and/or agents were aware of the battery that took place in the tavern on the date in question. However, where the LLCC clearly found that 1000 Liquors violated section 4-60-141(b) of the Municipal Code, which requires a finding that a licensee promptly report to the police "all illegal activity reported to or observed by the licensee on or within sight of the licensed premises," we find such a finding of fact is implied by the LLCC's ruling. *People v. Prince*, 288 Ill. App. 3d 265, 279 (1997) ("A circuit court is presumed to know the law and apply it properly"); *Jones v. Board of Education of City of Chicago*, 2013 IL App (1st) 122437, ¶ 22 ("everyone is presumed to know the law").

¶ 43 More importantly, though, we find that the LLCC's findings of fact establish that 1000 Liquors or its employees and/or agents were aware of the battery that took place on the date in question. *Abrahamson*, 153 Ill. 2d at 88 (If any evidence supports the agency's decision, that decision should be affirmed). In reviewing the record, "circumstantial evidence is sufficient to support the LLCC's decision." *Connor*, 354 Ill. App. 3d at 384. The LLCC clearly indicated in its findings of fact that Rinaldi made numerous attempts to contact a manger about the incident, to no avail, and the man who hit Rinaldi was escorted out of the tavern immediately after the

battery occurred. That man tried to regain access to the tavern later, and was denied access. The LLCC further stated in its findings of fact that Federer testified that Brendan told him that he had discussed the battery with the police outside the tavern that night. Although the LLCC ultimately chose not to credit Federer's testimony with respect to Brendan reporting the battery to the police officers outside the tavern that night, this testimony shows that Federer and Brendan, both employees of 1000 Liquors, discussed the battery on the date in question. *Haynes,* 293 Ill. App. 3d at 512 (the weight of the evidence and the credibility of witnesses are uniquely within the province of the administrative agency). Further, the record contains Rinaldi's testimony that he did report the battery to an employee and/or agent of the tavern on the date of the incident, and the LLCC indicated that it found Rinaldi's testimony to be reliable and credible. As such, we cannot say that the LLCC's finding, which implied that 1000 Liquors was aware of the battery that occurred on its premises on the date in question, was such that "all reasonable and unbiased persons, acting within the limits prescribed by law and drawing all inferences in support of the finding, would agree that the finding is erroneous and that the opposite conclusion is clearly evident." *Haynes,* 293 Ill. App. 3d at 511.

¶ 44 Having found that the LLCC's finding that 1000 Liquors had notice of the battery, we must next determine whether the LLCC's finding that the battery was not promptly reported to the police was against the manifest weight of the evidence, and we find that it was not. As pointed out by the LLCC in its findings of fact, Ms. Dunaj, who the LLCC found to be credible, did not find any reports regarding the battery at Big City Tavern other than the report that was made by the hospital. Further, Plewa testified that if a report had been made to the police, he would have been made aware of that report, and he did not learn about the battery that occurred on December 29, 2005 until he received a notice about the administrative proceedings several

months later. Although 1000 Liquors argues that Brendan, now deceased, reported the battery to the police officers who were outside the tavern, the LLCC gave this evidence, which came from Federer, less weight where Rinaldi testified that he did not see any police officers upon leaving the tavern, where Brendan did not bring Rinaldi with him when he allegedly went to speak with the police officers, and where there was evidence from Dunaj that had Brendan verbally reported the battery to the police officers outside the tavern a report still should have been created, and there was none. "Only the Commissioner as the trier of fact is authorized to assess credibility, weigh and reconcile conflicting evidence and make a determination as to which witnesses are worthy of belief." *Spiros Lounge, Inc. v. State of Illinois Liquor Control Comm'n*, 98 Ill. App. 3d 280, 284 (1981); *Van Kast*, 253 Ill. App. 3d at 304 ("[I]t is not a court's function to reweigh the evidence or make an independent determination of the facts."). As such, we also cannot say that the LLCC's finding that 1000 Liquors failed to promptly report the battery that occurred on its premises was such that "all reasonable and unbiased persons, acting within the limits prescribed by law and drawing all inferences in support of the finding, would agree that the finding is erroneous and that the opposite conclusion is clearly evident." *Haynes*, 293 Ill. App. 3d at 511.

¶ 45 We note that the LLCC indicated in its findings of fact that some of the evidence it heard was conflicting. In viewing conflicting testimony, the LLCC's ultimate determination was presumptively based on its assessment of witness credibility. The LLCC saw and heard the witnesses testify, and its finding that 1000 Liquors failed to promptly report a battery that it was aware of cannot be said to be contrary to the manifest weight of the evidence simply because the LLCC may have chosen to believe the testimony of one witness over another. See *Spiros Lounge, Inc.*, 98 Ill. App. 3d at 284. In sum, we, like the circuit court and the LAC, affirm the

LLCC's finding that 1000 Liquors violated section 4-60-141(b) of the Municipal Code when it failed to promptly report the battery of Rinaldi that took place on its premises on December 29, 2005.

¶ 46 Offers of Proof

¶ 47 Having found that the LLCC's finding that 1000 Liquors violated a city ordinance was not against the manifest weight of the evidence, we next address 1000 Liquors' argument that the LLCC erred in failing to consider competent and relevant opinion testimony from Gaski relating to security issues at the tavern and CPD procedures. Gaski had been a Chicago police officer for 29 years, 7 of which he served as a patrolman in the location where 1000 Liquors' tavern is located, and he currently works two days a week for 1000 Liquors as a security consultant. Notably, Gaski was not present in any capacity on the date of the incident and he did not become a security consultant for the tavern until after the incident at issue here occurred.

¶ 48 An administrative agency's "decision regarding the admission of evidence is discretionary and should be reviewed as such." *Wilson v. Department of Professional Regulation*, 344 Ill. App. 3d 897, 909 (2003). Such decisions will not be disturbed on review absent an abuse of discretion. *MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 149 (2007). An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Favia v. Ford Motor Co.*, 381 Ill. App. 3d 809, 815 (2008).

¶ 49 1000 Liquors first argues that the LLCC failed to consider Gaski's testimony, which was given during an offer of proof, about certain police terms that were referenced during Dunaj's testimony, but that she was unable to define, including: "detail," "foot patrolman," and "outdoor roll call." 1000 Liquors argues that this testimony was "critical in this matter" because upon "the

manner in which the police responded—or failed to respond—is probative on whether criminal activity took place." However, and as is apparent from the LLCC's findings of fact, the LLCC did consider this evidence and found that "Gaski's knowledge of police procedures is not particularly relevant to the matter at hand." As such, we find no error where it is clear from the record that the LLCC did consider this testimony, and merely declined to give it weight. *Spiros Lounge, Inc.*, 98 Ill. App. 3d at 284 ("Only the Commissioner as the trier of fact is authorized to assess credibility, weigh and reconcile conflicting evidence and make a determination as to which witnesses are worthy of belief.").

¶ 50 With respect to another offer of proof that the LLCC allowed—Gaski's testimony that there were 28 cameras present at the tavern on the date of the incident—we find that the LLCC considered this evidence as well. In its findings of fact, the LLCC stated that "the security procedures and policies in place under [Gaski's] direction as Security Consultant, a position he began in February 2006," was "not particularly relevant to the matter at hand." Again, we find no error where it is clear that the LLCC did consider this testimony, and merely declined to give it weight. *Id.* ("Only the Commissioner as the trier of fact is authorized to assess credibility, weigh and reconcile conflicting evidence and make a determination as to which witnesses are worthy of belief.").

¶ 51 Even if we assume *arguendo* that the LLCC did not consider the evidence offered in both offers of proof when ruling (despite the fact that the LLCC's findings explicitly discuss the facts that were elicited in the offers of proof), we would still find that the LLCC did not abuse its discretion by not considering that evidence. "Evidence which is not relevant is not admissible." Ill. R. Evid. 402 (eff. Jan. 1, 2011). " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Again, Gaski was not present in any capacity on the date of the incident and he did not become a security consultant to the tavern until months after the incident occurred. For those reasons, excluding Gaski's testimony regarding police and security procedures allegedly in place on the date of the incident would not have been an abuse of discretion where such evidence would not be relevant or, at a minimum, would have little probative value to the issues presented in this case.

¶ 52 Last, 1000 Liquors argues that the LLCC erred in not allowing Gaski to testify about the CPD security code that designates the priority of an incident being reported. However, because Dunaj had already offered testimony concerning the level of priority that was reported on the police report made by the hospital in this case, which would make Gaski's testimony redundant, we cannot say that no reasonable person would have taken the same view and excluded Gaski's testimony like the LLCC did here. *Favia*, 381 Ill. App. 3d at 815 (An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.).

¶ 53 We acknowledge that that 1000 Liquors suggests that Gaski's testimony regarding police procedures should have been admitted as expert testimony, which "is admissible when it will assist the trier of fact in understanding the evidence in determining a fact at issue." However, given that Gaski was not present on the date of the incident and was not serving as a security consultant to the tavern until months after the incident, and given the LLCC's similar finding that Gaski's testimony regarding police procedures was "not particularly relevant to the matter at hand," we cannot say that the testimony Gaski gave in offers of proof or that the LLCC declined to hear would have "assist[ed] the trier of fact in understanding the evidence in determining a

fact at issue." Accordingly, we find that the LLCC did not abuse its discretion when it allowed an offer of proof as to Gaski's testimony about certain police terms that Dunaj was unable to define and testimony regarding the security cameras in the tavern on the date of the incident, and further did not abuse its discretion in refusing to admit additional testimony from Gaski about police department codes demonstrating the priority of incidents reported. *Favia*, 381 Ill. App. 3d at 815 (An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.).

¶ 54 14-Day Suspension

¶ 55 1000 Liquors argues that the LLCC's 14-day suspension as a sanction for violating a city ordinance was improper where it was too harsh, where the violation of notification was technical or stemmed from a *de minimus* incident, and where there were mitigating factors present. Section 4-4-280 of the Municipal Code, in relevant part, states: "The mayor shall have the power to fine a licensee, and to suspend or revoke any license issued under the provisions of this Code for good and sufficient cause or if he determines that the licensee shall have violated any of the provisions of this Code or any of the statutes of the state." Ill. § 4-4-280(a) (2005). The Liquor Control Act of 1934 further provides that:

> "Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses, other than licenses to manufacturers, importing distributors, distributors, foreign importers, non-resident dealers, non-beverage users, brokers, railroads, airplanes and boats. 1. To grant and or suspend for not more than thirty days or revoke for cause all local

licenses issued to persons for premises within his jurisdiction[.]"

235 ILCS 5/4-4 (West 2004).

¶ 56 "It is well established that the violation of any statute, ordinance, or regulation related fairly to the control of liquor, upon liquor-licensed premises, generally constitutes cause for revocation of a license." *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966 (1996); see *Hanson v. Illinois Liquor Control Comm'n*, 201 Ill. App. 3d 974, 983 (1990). "A reviewing court, however, may overturn sanctions imposed by an agency which have been determined to be overly harsh in view of mitigating circumstances. [Citation.] The issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute." *Jacquelyn's Lounge, Inc.*, 277 Ill. App. 3d at 966. The standard of review regarding sanctions imposed by the LLCC is to determine whether the agency acted unreasonably or arbitrarily or selected a type of discipline unrelated to the control of liquor. *Daley v. El Flanboyan Corp.*, 321 Ill. App. 3d 68, 77 (2001).

¶ 57 First, in arguing that the 14-day suspension was unduly harsh, 1000 Liquors argues that: (1) it has been owned and operated in the same location for 29 years and a closure would threaten the jobs of 30 people; (2) this was 1000 Liquors first violation of its kind; (3) 1000 Liquors was equitably estopped from adequately defending its case where it did not receive notice of the battery until months after it occurred; and (4) the purpose of the ordinance that 1000 Liquors allegedly violated is not served by a 14-day suspension where 1000 Liquors did not receive notice of the battery until months later.

¶ 58 With respect to the third and fourth arguments based on estoppel and serving the purpose of the ordinance, we have already found that there was sufficient evidence to find that 1000 Liquors and its employees and/or agents learned of the battery that occurred on its premises on the date the incident occurred. As such, we find both of these arguments to be unpersuasive. Further, although 1000 Liquors has been in business for 29 years, it had previously been sanctioned three times for violating city ordinances, with the last of the three prior violations resulting in a 10-day suspension of its licenses. This case marks the fourth time 1000 Liquors has violated a city ordinance, this time by failing to promptly report criminal activity that occurred on its premises. As such, we cannot say that a 14-day suspension was "unduly harsh" such that the LLCC's imposition of such a sanction was unreasonable or arbitrary. See *Daley v. El Flanboyan Corp.*, 321 Ill. App. 3d at 77.

¶ 59 1000 Liquors also argues that the LLCC erred in imposing a 14-day sanction where its violation was *de minimus* because Federer testified that Brendan did report the battery to the police officers outside the bar on the night in question and, according to 1000 Liquors, the LLCC should have been skeptical of Rinaldi's testimony. The LLCC already discredited Federer's testimony that Brendan orally reported the battery to the police and already found Rinaldi's testimony to be "reliable and credible." As such, both arguments fail because they require this court to reweigh the evidence and the credibility of the witnesses. *Spiros Lounge, Inc.*, 98 Ill. App. 3d at 284 ("Only the Commissioner as the trier of fact is authorized to assess credibility, weigh and reconcile conflicting evidence and make a determination as to which witnesses are worthy of belief"); *Van Kast*, 253 Ill. App. 3d at 304 ("[I]t is not a court's function to reweigh the evidence or make an independent determination of the facts.").

¶ 60 1000 Liquors further argues that the ordinance violation was "inadvertent" based on "Plewa['s] stellar history with the police and his uncontradicted testimony must be accepted as true." However, although Plewa testified that he was never made aware of the battery until months after it occurred, this does not relieve 1000 Liquors of its duty to promptly report that crime to the police. Again, section 4-60-141 of Municipal Code states:

> "(a) No licensee shall permit or allow any illegal activity on the licensed premises.
>
> (b) It is the affirmative duty of a licensee to report promptly to the police department all illegal activity reported to or observed by the licensee on or within sight of the licensed premises; to answer fully and truthfully all questions of an identified police officer who inquires or investigates concerning persons or events in or around the licensed business; to cooperate with the police in any such inquiry or investigation, including the giving of oral or written statements to the police at reasonable times and locations in the course of investigations; and to sign a complaint against any person whom the licensee observes in any illegal conduct or activity on or within sight of the licensed premises.
>
> (c) *For purposes of this section, "licensee" includes an employee or agent of a licensee*." (Emphasis added.) Ill. § 4-60-141 (2005).

The Municipal Code clearly states that the criminal activity must be reported by the licensee, which includes "an employee or agent of the licensee." Thus, the duty to report extends beyond the owner of the licensee, in this case Plewa. Regardless, the LLCC found, and we have affirmed, that 1000 Liquors had knowledge of the battery on the date it occurred and failed to report it. As such, any argument that the violation was "inadvertent" is not supported by the record.

¶ 61 Last, 1000 Liquors argues that its prior sanctions should have been given minimal weight where they occurred a number of years ago. However, we find that given that the prior sanctions consisted of a $500 fine, a $1,000 fine and a 10-day suspension, in that order, the imposition of a progressive sanction of a 14-day suspension was not unreasonable or arbitrary or unrelated to the control of liquor. See *El Flanboyan Corp.*, 321 Ill. App. 3d at 77; *Addison Group, Inc. v. Daley*, 382 Ill. App. 3d 1036, 1042 (2008) (sanction "justified by the history of progressive discipline for a series of violations"). As such, we affirm the LLCC's 14-day suspension. See *El Flanboyan Corp.*, 321 Ill. App. 3d at 77 (The LLCC's sanction will be reversed only where agency acted unreasonably or arbitrarily or selected a type of discipline unrelated to the control of liquor).

¶ 62 Cross Appeal

¶ 63 Having found that the 14-day suspension was not unreasonable or arbitrary or unrelated to the control of liquor, we must now address the LLCC's argument on cross appeal that the original 21-day suspension should be reinstated.

¶ 64 A brief review of the procedural history of this case is warranted here. On February 27, 2007, the LLCC issued its original decision, which found that 1000 Liquors violated a city ordinance and, as a result of that violation, imposed a 21-day closing as a sanction. 1000 Liquors

sought review of that decision and sanction with the LAC, and on January 11, 2008, the LAC upheld the LLCC's finding that 1000 Liquors had failed to promptly report the battery to the police, but concluded by a two-to-one vote that the 21-day suspension was inappropriate because it was "too severe." Because the LAC only has the power to reverse or affirm an LLCC decision, effectively leaving 1000 Liquors without a punishment, the LLCC filed a complaint for administrative review in the circuit court of Cook County on August 21, 2008 seeking reversal of the LAC's decision and reinstatement of its 21-day suspension. On December 8, 2009, the circuit court issued a decision which found that "the LLCC's determination that the City met its burden of proving the [ordinance] violation charged is not against the manifest weight of the evidence." With respect to the sanction, however, the court found that "the 21-day suspension issued by the LLCC is not supported by the record," but that "a reasonable sanction …can still be imposed that is appropriate based on the administrative record." For that reason, the court reversed the LAC's decision and remanded the matter to the LLCC with directions to impose "a lesser than 21-day suspension."

¶ 65 On remand, the LLCC entered a second decision in the matter on July 18, 2011, which "reaffirm[ed] its view that [the] twenty-one day suspension of licenses originally imposed [on 1000 Liquors] is not unreasonable, arbitrary or unrelated to liquor control," but that "in deference to the Circuit Court's order of remand," it would reduce the sanction to a 14-day suspension. Following the LLCC's second decision, the LLCC filed in the circuit court a "Motion for Final Ruling and Presentation of LLCC order" relating to the order in which the LLCC imposed the 14-day suspension. In arguing that for a final ruling in the circuit court, the LLCC acknowledge the 14-day suspension imposed in the LLCC's second decision and stated that "[t]he LLCC order on Remand is supported by the record and imposes a penalty that should be affirmed." It did not

make any argument that the 21-day suspension should be reinstated and the 14-day suspension voided.

¶ 66 In this cross appeal, the LLCC argues that the circuit court, in directing the LLCC to impose a punishment of lesser than a 21-day suspension, applied the wrong standard in reviewing the 21-day suspension. Further, the LLCC points out that in the LLCC's second ruling wherein it reduced the punishment from a 21-day suspension to a 14-day suspension, the LLCC reaffirmed its position that a 21-day suspension was appropriate, but reduced the punishment to a 14-day suspension in light of the circuit court's remand order.

¶ 67 1000 Liquors in turn argues that this court either lacks jurisdiction to hear the LLCC's cross appeal where it did not appeal to the LAC or, in the alternative, the argument in the cross appeal to reinstate the 21-day suspension should be deemed to have been waived where the LLCC previously filed a motion in the circuit court for a final ruling and presentation of the LLCC order on remand, which included argument that the 14-day suspension should be affirmed.

¶ 68 With respect to 1000 Liquor's jurisdictional argument, our courts have already held that the LLCC may "not appeal its own order to the LAC." *Daley v. License Appeal Comm'n of City of Chicago*, 311 Ill. App. 3d 194, 199 (1999). As such, there is no requirement that the LLCC had to appeal to the LAC before seeking review of the LLCC's second decision wherein it imposed a 14-day sanction.

¶ 69 However, with respect to 1000 Liquor's second argument, we note that in the motion to enter a final judgment, the LLCC stated: "[t]he LLCC order on Remand is supported by the record and imposes a penalty that should be affirmed." Further, in response to 1000 Liquors' response objecting to the LLCC's motion to enter a final judgment, the LLCC again argued:

"The LLCC's lesser sanction of a mere 14 day suspension was not arbitrary, unreasonable, or unrelated to purposes of the Act; therefore it must be affirmed." As such, not only did the LLCC not challenge the 14-day suspension in the circuit court, but it asked the circuit court to affirm that ruling and argued that the ruling is supported by the record. It is well-established that a party is estopped from taking a position on appeal that is inconsistent with the position that it took before the trial court. See, *e.g., In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007); *Grobe v. Hollywood Casino-Aurora, Inc.*, 325 Ill. App. 3d 710, 719 (2001) ("The doctrine of judicial estoppel provides that, when a party assumes a certain position in a legal proceeding, that party is estopped from assuming a contrary position in a subsequent legal proceeding.").

¶ 70 Therefore, we find that the LLCC waived its request for reinstating the 21-day suspension and voiding the 14-day suspension. Following remand and the imposition of a 14-day sanction, the LLCC never argued that a 21-day suspension was appropriate in the circuit court. "It is well settled that issues not raised in the trial court are generally waived on appeal." *Central Illinois Public Service Co. v. Allianz Underwriters Insurance Co.*, 244 Ill. App. 3d 709, 720 (1993). The reasoning underlying this general precept is that the appellate court should not consider different theories or new questions on appeal, if proof might have been offered to refute or overcome them had they been presented below. *Id.* As such, we find the LLCC waived its argument to void the 14-day suspension and reinstate the 21-day suspension.

¶ 71 The LLCC argues that it filed a motion for entry of judgment so that it could have a final order from which it could appeal. However, we believe this argument is not supported by the facts of this case. The record in this case indicates the final judgment was entered on October 30, 2014. 1000 Liquors filed its appeal on December 1, 2014, which was the last day to file a notice of appeal from the trial court's order. Because December 1, 2014 was the last day to

appeal, and the LLCC did not appeal on or before December 1, 2014 and did not contest the judgment until it filed a cross-appeal on December 10, 2014, we believe the record negates the LLCC's argument that its representations to the trial court were made only for the purpose of securing a final order for purposes of appeal. There was obviously no intent to appeal.

¶ 72 The LLCC also argues that "asking the circuit court to reinstate the 21-day suspension would have been pointless," we disagree. Even if the LLCC believed review in the circuit court would have "been pointless," it could have preserved disposition in the record for appeal purposes without arguing that the 14-day suspension was supported by the record and should be affirmed, especially if it did intend on challenging the 14-day suspension. As such, we conclude that the LLCC waived its objections to the 14-day suspension and, therefore, the cross-appeal is dismissed.

¶ 73 Conclusion

¶ 74 For the reasons above, we affirm the LLCC's finding that 1000 Liquors violated a city ordinance and affirm its imposition of a 14-day suspension of its licenses as a result of that violation. In doing so, we find the LLCC waived its objections to the 14-day suspension and, accordingly, dismiss the cross appeal.

¶ 75 Affirmed; cross-appeal dismissed.