

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Brandy Carroll

Court of Appeals No. S-09-012

Appellee/Cross-Appellant

Trial Court No. 08-CV-0006

v.

State of Ohio, et cetera [Ohio Department
of Commerce, Division of Financial
Institutions]

Appellant/Cross-Appellee

and

Sherry M. Johnson d.b.a. Elite
Home Mortgage

Court of Appeals No. S-09-013

Trial Court No. 08-CV-0048

Appellee/Cross-Appellant

v.

State of Ohio, et cetera [Ohio Department
of Commerce, Division of Financial
Institutions]

DECISION AND JUDGMENT

Appellant/Cross-Appellee

Decided: December 31, 2009

* * * * *

Joseph F. Albrechta, John A. Coble and Brad Culbert, for appellees/
cross-appellants.

Richard Cordray, Attorney General of Ohio, and Theodore L. Klecker,
Assistant Attorney General, for appellant/cross-appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant/cross-appellee, Ohio Department of Commerce, Division of Financial Institutions, appeals from a judgment of the Sandusky County Court of Common Pleas, vacating appellant/cross-appellee's order denying appellee/cross-appellant, Brandy Carroll's application for renewal of her loan officer license and revoking appellee/cross-appellant, Sherry M. Johnson's Ohio Mortgage Broker Certificate of Registration. For the reasons that follow, we reverse.

{¶ 2} Appellees/cross-appellants were formerly employed as loan officers by Roberta Littleman of Fireland's Mortgage, Inc. In December 2000, both appellees/cross-appellants left the company because of what they considered to be Littleman's questionable business practices. Appellees/cross-appellants turned some of Fireland's files over to appellant/cross-appellee for investigation. Ultimately, the files were sent to the Federal Bureau of Investigation resulting in criminal charges against Littleman as well as appellees/cross-appellants. Specifically, Carroll pled guilty to making a false statement on a federal loan application, a felony. She was sentenced to two years probation. Johnson pled guilty to wire fraud, also a felony.

{¶ 3} On May 3, 2005, appellant/cross-appellee notified Carroll that her application for renewal of her loan officer license was being denied. At this time, Carroll was working as a loan officer for Elite Home Mortgage, a company started by Johnson. Carroll requested an administrative hearing which was held on July 17, 2006. Following the hearing, an administrative hearing officer recommended that her license renewal application be denied. On December 24, 2007, appellant/cross-appellee adopted the hearing officer's recommendation. On January 4, 2008, Carroll appealed the decision to the Sandusky County Court of Common Pleas. On March 4, 2009, the court reversed appellant/cross-appellee's decision denying Carroll's loan officer application and ordered appellant/cross-appellee to renew Carroll's license. Appellant/cross-appellee filed a timely appeal to this court.

{¶ 4} On January 30, 2006, appellant/cross-appellee notified Johnson that her broker certificate of registration was being permanently revoked. She requested an administrative hearing which was held on April 25, 2006.

{¶ 5} After the hearing, an administrative hearing officer recommended revocation of Johnson's certificate. On December 31, 2007, appellant/cross-appellee adopted the hearing officer's recommendation. On January 11, 2008, Johnson appealed the decision to the Sandusky County Court of Common Pleas. On March 4, 2009, the court reversed appellant/cross-appellee's decision revoking Johnson's certificate and ordered appellant/cross-appellee to renew her certificate. Appellant/cross-appellee filed a timely appeal to this court.

{¶ 6} Finding that both appeals involved common questions of law and fact, this court ordered appellant/cross-appellee's appeals to be consolidated. Appellant/cross-appellee sets forth the following assignments of error:

{¶ 7} "I. The lower court erred as a matter of law when it substituted its own judgment for that of the administrative agency.

{¶ 8} "II. The lower court abused its discretion in finding the order of the division of financial institutions is not supported by reliable probative and substantial evidence."

{¶ 9} Appellees/cross-appellants set forth the following assignment of error:

{¶ 10} "The trial court erred as a matter of law when it denied appellees' motions for judgment base upon the appellant's failure to certify a complete record of administrative proceedings to the court pursuant to R.C. 119.12."

{¶ 11} Appellant/cross-appellee's two assignments of error will be considered together. Pursuant to R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record to determine whether the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111, see, also, *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280. Generally, an appellate court determines whether the trial court abused its discretion in review of the agency order. *Lorain City Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 260-261.

{¶ 12} A reviewing court must give deference to an administrative agency's interpretation of its own rules and regulations where such interpretation is consistent with the statutory law and the plain language of the rules. *State ex rel. Celebrezze v. Natl. Lime & Stone Co.* (1994), 68 Ohio St.3d 377, 382; *Metal Products Co. v. Walker* (1972), 29 Ohio St.2d 173, 181; *Cuyahoga Cty. Bd. of Commrs. v. Ford* (1987), 35 Ohio App.3d 88, 92. Where the evidence supports an administrative agency's decision, the common pleas court may not substitute its judgment for that of the agency. R.C. 119.12.

{¶ 13} In Carroll's case, the administrative hearing officer cited the version of R.C. 1322.041 that was in effect at the time of appellant's hearing. R.C. 1322.041 requires appellant/cross-appellee to issue a license to an applicant if the applicant meets the required conditions. In recommending that her renewal application be denied, the hearing officer focused on the condition set out in R.C. 1322.041(A)(5) which states:

{¶ 14} "The applicant's financial responsibility, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of sections 1322.01 to 1322.12 of the Revised Code."

{¶ 15} The hearing officer stated:

{¶ 16} "While [Carroll's] cooperation with law enforcement and assistance in the prosecution of Ms. Littleman reflect favorably on her character, they do not outweigh the serious concerns raised by her recent guilty plea to a criminal offense involving false statements on a loan application and the underlying events. Additionally, [Carroll] will

be on federal probation until April 2008. * * * Mortgage loan officers have access to confidential personal and financial information and play a critical role in the financing process for a home, the most valuable asset owned by most individuals. It is extremely important to protect the integrity of the loan process and proceed with caution when concerns regarding a licensee exist."

{¶ 17} As for Johnson, the hearing officer reached a similar conclusion finding that her plea to a criminal offense involving fraud based upon submission of false documents to a lender while operating as a loan officer in the mortgage lending industry alone provides sufficient evidence in support of revoking her mortgage broker certificate of registration.

{¶ 18} In reversing appellant/cross-appellee's orders, the trial court noted that both appellees/cross-appellants had pled to the federal charges eight years ago during a time when neither had much experience in the mortgage business. Since then, they have performed their jobs in accordance with the law. The court noted that at the administrative hearing, both appellees/cross-appellants presented witnesses who testified to their good moral character and reputation for honesty. In particular, the federal prosecutor who prosecuted appellees/cross-appellants in 2005, as well as the federal judge who accepted their pleas, wrote letters to appellant/cross-appellee recommending that appellant/cross-appellee renew Carroll's loan officer's license and reinstate Johnson's broker certificate. The federal judge cited both appellees/cross-appellants' "minimal participation in [the Littleman] debacle" and he praised both appellees/cross-appellants

for their cooperation in the criminal investigation. The federal judge opined that had a lesser misdemeanor charge been available to the government for both appellees/cross-appellants, the cases would have been resolved in that fashion.

{¶ 19} Reviewing appellant/cross-appellee's orders denying appellees/cross-appellants' license renewal and broker certificate, the trial court concluded that both orders were "contrary to the evidence, * * * patently unfair, unduly harsh, and contrary to civilized notions of fair play and substantial justice."

{¶ 20} The trial court in this case is simply wrong in asserting that the hearing officer's decisions were contrary to the evidence. It is undisputed that appellees/cross-appellants are convicted felons. In interpreting R.C. 1322.041(A)(5), the hearing officer found appellees/cross-appellants' convictions to be acceptable impediments towards the renewal and reinstatement of their respective license and certificate. The record shows that the hearing officer reviewed and considered the significant mitigating factors surrounding appellees/cross-appellants, yet, the hearing officer could not get past the fact that appellees/cross-appellants had been convicted of crimes involving mortgage fraud, convictions pursued and obtained by one of their current supporters. It was not the state of Ohio who was responsible for creating this situation, but it was the federal authorities who now express support and sympathy who chose to pursue criminal charges against appellees/cross-appellants. But we now, at the state level, have no choice but to follow Ohio law.

{¶ 21} In reversing the appellant/cross-appellee's orders, the trial court substituted its judgment for that of the hearing officer's. Accordingly, appellant/cross-appellee's two assignments of error are found well-taken.

{¶ 22} On cross-appeal, appellees/cross-appellants contend that the trial court erred in denying their motion for judgment. On November 14, 2008, appellees/cross-appellants filed a motion asking the court to grant them judgment based on the fact that appellant/cross-appellee had failed to certify a complete record to the court pursuant to R.C. 119.12 which states in pertinent part:

{¶ 23} "Within thirty days after receipt of a notice of appeal from an order in any case in which a hearing is required by sections 119.01 to 119.13 of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed, upon motion, shall cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed thirty days, when it is shown that the agency has made substantial effort to comply. The record shall be prepared and transcribed, and the expense of it shall be taxed as a part of the costs on the appeal. The appellant shall provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record."

{¶ 24} "Under R.C. 119.12, if an administrative agency, in an appeal to common pleas court, fails to file any record whatsoever within the thirty-day period, the common pleas court must, on motion, enter a finding in favor of the party adversely affected. If, on the other hand, the administrative record is timely filed but not complete because parts of it are missing, then the appellant must show that he or she was prejudiced by the omission." *Jenneman v. Ohio State Bd. of Chiropractic Examiners* (1985), 21 Ohio App.3d 225, paragraph one of the syllabus.

{¶ 25} The original orders denying appellees/cross-appellants their license renewal and broker certificate were remanded by the trial court for not being properly certified pursuant to R.C. 119.12. Following remand, appellees/cross-appellants' records were properly certified and filed with the court. Appellees/cross-appellants contend that their records were incomplete because the certified records failed to contain documents reflecting the proceedings that took place in the trial court prior to remand. Appellees/cross-appellants' argument is without merit as any proceedings that occurred in the trial court prior to remand did not contribute to appellant/cross-appellee's orders denying appellees/cross-appellants their license renewal and broker certificate. As such, appellees/cross-appellants can demonstrate no prejudice. Appellees/cross-appellants' cross-assignment of error is found not well-taken.

{¶ 26} On consideration whereof, we find that substantial justice was not done the party complaining and the judgment of the Sandusky County Court of Common Pleas is

reversed, and the matter is remanded to the trial court for further proceedings. Pursuant to App.R. 24, appellees/cross-appellants are ordered to pay the costs of this appeal.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____

JUDGE

Arlene Singer, J. _____

JUDGE

Thomas J. Osowik, J. _____
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.