

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000880-MR

HERBERT A. RYLES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER CRITTENDEN, JUDGE
ACTION NO. 98-CI-00632

COMMONWEALTH OF KENTUCKY, DEPARTMENT
OF ALCOHOLIC BEVERAGE CONTROL,
RICHARD N. JOHNSTONE, Commissioner;
RICHARD N. JOHNSTONE, Chairman;
STEPHEN G. HORNER, Malt Beverage
Administrator; and HAROLD ROBINSON,
Distilled Spirits Administrator

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: GUDGEL, Chief Judge; EMBERTON AND TACKETT, JUDGES.

EMBERTON, JUDGE: Herbert Ryles appeals from a judgment of the Franklin Circuit Court upholding the revocation of his retail alcoholic beverage licenses by the Alcoholic Beverage Control Board. Finding no error in the trial court's conclusion that substantial evidence supported the action of the Board, we are compelled to affirm.

In May 1997, the Alcoholic Beverage Control Board cited Mr. Ryles directing him to show cause why his licenses for the

retail sale of beer and drink liquor should not be revoked pursuant to Kentucky Revised Statutes (KRS) 243.500(4), based upon his having received two misdemeanor convictions directly attributable to the use of alcohol. Prior to a hearing, Mr. Ryles reached an agreement with counsel for the department in settlement of the charges which was approved by the Board on July 9, 1997. Under the agreement, Mr. Ryles confirmed that within the past two consecutive years he had received misdemeanor convictions attributable to the use of intoxicating liquors. He also agreed to the following specific terms:

2. By July 21, 1997, a new application for a retail drink liquor license for the existing location shall be filed. The existing licensee shall not be a partner, director, principal, officer, manager or otherwise have any control over the applicant. If the applicant is a corporation, the existing licensee may be a stockholder if he owns less than fifty percent (50%) of the business.

3. If the new application is approved, the existing licensee shall not be a clerk, servant, agent or employee of the new license. If the application is denied, this matter will be rescheduled for further hearing.

Thus, the department gave Mr. Ryles an opportunity to save his investment by allowing him to transfer his quota license to a new applicant. Unfortunately, after appellant failed to comply with the terms of the agreement in a timely fashion, the Board issued a second citation in November 1997, directing Mr. Ryles to appear at a hearing to show cause why his licenses should not be revoked for failure to comply with the agreed order, as well as for the previously cited violation of KRS 243.500(4).

At a hearing conducted on February 3, 1998, the Board heard testimony from Mr. Ryles and from Robert Raisor, an investigator for the department. Although we have not been provided a transcript of their testimony, the substance of the evidence they offered is contained in the following findings of fact:

4. Investigator Raisor testified that he spoke with Mr. Ryles on August 8, 1997, as to why he had not filed a new application with the Alcoholic Beverage Control licensing section. Mr. Ryles said he was waiting on paperwork to be mailed to him from the ABC. Investigator Raisor testified that he told Mr. Ryles to go to the ABC's offices and talk to someone in the licensing section.

5. Mr. Ryles was present in person at the hearing and presented testimony on his behalf. Mr. Ryles was not represented by counsel. Mr. Ryles testified that in July 1997, he spoke with Investigator Raisor and Gordon Goad, counsel with the Alcoholic Beverage Control and it was his impression that the paperwork to transfer the license would be mailed to him. Mr. Ryles testified that Investigator Raisor visited his premises and called him several times trying to help him get the paperwork completed. Mr. Ryles testified that Mr. Raisor came to his business in early August and gave him an application and explained that it was the form he needed to fill out. Mr. Ryles testified that he took the application home, completed it and mailed it back to the Alcoholic Beverage Control.

Apparently, Mr. Ryles' attempt to transfer the license to his wife was deficient in several respects because in October 1997, they received a letter detailing problems with their application. Although Mr. Ryles alleged that they worked diligently to correct the problems, no further action was taken

until they filed the corrected application on February 3, 1998, the day of the hearing.

In this appeal, Mr. Ryles seeks relief from the revocation of his licenses alleging that there was insufficient evidence to support the agency's decision. He cites the testimony that he and his wife attempted to comply with the terms of the agreed order to the best of their ability and continued throughout these proceedings to diligently attempt to meet the agency's demands. Mr. Ryles complains of the complicated nature of the agency's requirements to excuse the delay in meeting the regulation requirements. We are convinced, however, that the record of these proceedings paints a very different picture.

Rather than depicting an "ordinary citizen" honestly attempting good-faith cooperation in an attempt to comply with the agreed order, the record shows the department going the extra mile to encourage Mr. Ryles' compliance. It was the agency's investigator who contacted Mr. Ryles for an explanation of his failure to timely comply and who even brought the appropriate form to Mr. Ryles, encouraging him to seek help from the department. After the deficient application was finally filed and the department outlined the steps necessary for acceptance, Mr. Ryles waited almost three months before re-filing. Based upon these factors, we can hardly say that the Board's decision was in any way arbitrary or capricious.

As noted by the trial court, the Board's order contains findings sufficient to prove a violation of KRS 234.490 (for failure to abide by the agreed order) and of KRS 234.500 (for

having two misdemeanor convictions involving the use of intoxicants), either of which was sufficient for revocation. We also concur in the trial court's conclusion that complexity of the licensing process does not excuse Mr. Ryles' failure to comply with the agreed order, especially in view of the fact that he had recently completed the initial licensing process and that many of the deficiencies dealt with corporate actions exclusively within the control of the principals of the corporation.

In sum, the circuit court properly observed the scope of review set out in Kentucky State Racing Commission v. Fuller.¹ Where an administrator agency is the trier of fact, it is well-settled that its findings are conclusive if supported by substantial evidence.²

Because we have no doubt that the undisputed facts of this case support the findings of the Board, we affirm the judgment of the Franklin Circuit Court upholding the Board's decision to revoke Mr. Ryles' licenses.

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald Duff
Frankfort, Kentucky

BRIEF FOR APPELLEES:

Rebecca W. Goodman
Frankfort, Kentucky

¹ Ky., 481 S.W.2d 298 (1972).

² Id. at 308.