

[Cite as *Ossie, Inc. v. Ohio Liquor Control Comm.*, 2003-Ohio-2729.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Ossie, Inc.,	:	
Appellant-Appellant,	:	
v.	:	No. 02AP-1209 (C.P.C. No. 02CVF-05-6034)
Ohio State Liquor Control Commission,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

O P I N I O N

Rendered on May 29, 2003

Scott W. Spencer Co., L.P.A., and Scott W. Spencer, for appellant.

Jim Petro, Attorney General, and *Amy Diane Hathaway*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Appellant, Ossie, Inc., appeals from a judgment of the Franklin County Court of Common Pleas affirming the order of appellee, Ohio Liquor Control Commission (“commission”), that affirmed an order of the Superintendent of the Ohio Division of Liquor Control (“division”) denying appellant’s 1999-2000 renewal application for a C-1 liquor permit. Because the common pleas court did not abuse its discretion in finding the commission’s decision to be supported by reliable, probative, and substantial evidence and to be in accordance with law, we affirm.

{¶2} Appellant operates a Shell gas station with a convenience store on Lee Road in Cleveland and holds a C-1 liquor permit allowing appellant to sell beer in the store for off-premise consumption. The permit business is located in Cleveland's first ward and fourth police district. By resolution adopted July 14, 1999, the Cleveland City Council ("city") objected to the 1999-2000 renewal of appellant's liquor permit, alleging appellant was "unfit to continue to engage in the liquor permit business in that he has operated his liquor permit business in a manner that demonstrates a disregard for the laws, regulations or local ordinances." By the same resolution, the city also directed the clerk of council to file copies of the resolution, along with a hearing request, with the division.

{¶3} As a result of a hearing held February 8, 2000 before the division, the Superintendent issued an order finding that "[t]he first ward councilman has received numerous complaints concerning the operation of this business. These complaints include drug activity, loitering by large crowds of people, and the public consumption of alcoholic beverages. Public telephones are located on the outside of the building and are utilized by individuals to conduct drug transactions. The loiterers also consume alcoholic beverages and intimidate residents and customers of area businesses.

{¶4} "In 1999, the Cleveland Police Department made twenty-one arrests for state drug law violations at the permit premises. Additionally, there were incidents involving firearms, felonious assaults, and robberies. A representative of the Cleveland Police Department described the permit business as one of the most problematic liquor establishments in the fourth police district. The permit holder appears to be uncooperative in assisting the police in preventing the problems described above." (Sept. 1, 2000 Division Order.) Evidence was also presented to the division regarding two violations by appellant for illegal sales to minors in 1999 and 2000. *Id.*

{¶5} In an order mailed September 1, 2000, the Superintendent of the division denied and rejected renewal of appellant's liquor permit upon the following grounds:

{¶6} "1. The place for which the permit is sought is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace, or good

order would result from the renewal of the permit and operation thereunder by the applicant. R.C. §4303.292(A)(2)(c).

{¶7} “2. The applicant has operated its liquor permit business in a manner that demonstrates a disregard for the laws, regulations, or local ordinances of this state. R.C. §4303.292(A)(1)(b).

{¶8} “* * *

{¶9} “3. The Division also denies and rejects the 1999-2000 renewal application for good cause. R.C. §§4303.271(A), 4301.10(A)(2), and O.A.C. §4301:1-1-12(B).” (Sept. 1, 2000 Order.)

{¶10} Appellant appealed the division’s denial of the renewal application to the commission. The matter initially was set for hearing on October 16, 2000, and, after continuances, finally was set for hearing on April 30, 2002. On April 29, 2002, the city faxed documents to the commission stating the city was withdrawing its objection to the 1999-2000 renewal of appellant’s liquor permit because appellant entered into an agreement to operate the permit premises in a lawful manner. The documents also indicated appellant was withdrawing his appeal, and a hearing before the commission would be moot. Although the city’s assistant director of law approved the documents, the record does not reflect other designated city officials signed the documents.

{¶11} Appellant did not appear at the commission hearing, presented no arguments, and submitted no evidence for admission. Counsel for the division submitted evidence, including the city’s faxed documents, and advised the commission that the division was not a party to the agreements and did not sign off on them. By order mailed May 17, 2002, the commission affirmed the division’s decision rejecting appellant’s renewal application.

{¶12} Appellant timely appealed to the common pleas court, contending the Superintendent of the division should reconsider its decision and implement “the parties” agreement that appellant’s 1999-2000 liquor permit application be renewed. The common pleas court determined the division’s consent was required for appellant to dismiss its appeal and to have the Superintendent reconsider his prior decision, but the court found such consent had not been given. Instead, the court determined the commission acted

upon the evidence before it, which showed the agreement between appellant and the city for renewal of appellant's liquor permit did not include the division or the Superintendent of the division. Finding the commission's order to be supported by reliable, probative and substantial evidence and to be in accordance with law, the common pleas court affirmed the commission's May 17, 2002 non-renewal order. Appellant appeals, assigning the following errors:

{¶13} "1. The trial court erred in its decision to affirm the decision of the Ohio Liquor Control Commission denying Appellant's application for renewal of its liquor permit upon grounds that the decision of the Ohio Liquor Control Commission was supported by reliable, probative evidence.

{¶14} "2. The trial court erred in its decision to affirm the decision of the Ohio Liquor Control Commission denying Appellant's application for renewal of its liquor permit because the Ohio Liquor Control Commission did not meet its burden of 'good cause shown' as required by R.C. 4303.27.1[sic]."

{¶15} Under R.C. 119.12, when a common pleas court reviews an order of an administrative agency, the common pleas court 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.

{¶16} The common pleas court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence and the weight thereof.'" *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews* at 280. In its review, the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Univ. of Cincinnati v. Conrad*, supra.

{¶17} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, rehearing denied, 67 Ohio St.3d 1439. In *Pons*, the Ohio Supreme Court noted:

“* * * While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion[.] * * * Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for [that of an administrative agency] or trial court. Instead, the appellate court must affirm the trial court’s judgment.” *Id.*, 66 Ohio St.3d at 621.

{¶18} An appellate court, however, has plenary review of purely legal questions. *Steinfelds v. Ohio Dept. of Commerce, Div. of Securities* (1998), 129 Ohio App.3d 800, 803, appeal not allowed (1999), 84 Ohio St.3d 1488; *McGee v. Ohio State Bd. of Psychology* (1993), 82 Ohio App.3d 301, 305, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, paragraph one of the syllabus, rehearing denied, 63 Ohio St.3d 1459.

{¶19} Appellant’s two assignments of error together assert the commission’s order affirming the division’s decision not to renew appellant’s liquor permit is not supported by reliable, probative evidence. Specifically, appellant contends the division’s denial of the renewal application was based upon the city’s resolution objecting to renewal of appellant’s liquor permit. Therefore, appellant asserts, when the city withdrew its objection the day before the commission’s hearing, good cause to deny renewal of appellant’s liquor permit no longer existed and the commission thus erred in affirming the division’s decision.

{¶20} Upon appellant’s appealing to the commission the division’s denial of his renewal, the commission had the power to consider, hear and determine the appeal and to revoke appellant’s permit. R.C. 4301.04(A) and (B). Pursuant to R.C. 4303.271(A), a liquor permit renewal can be denied for reasons independent of a legislative authority’s objection to such renewal. See *Sowders v. Ohio Liquor Control Comm.* (Aug. 4, 2000), Montgomery App. No. 18173, appeal not allowed, 90 Ohio St.3d 1484 (determining the commission’s authority to reject a renewal application is not dependent upon an objection by a legislative authority); *Triplett Grille, Inc. v. Ohio Liquor Control Comm.* (Dec. 12, 1996), Franklin App. No. 95APE06-712 (noting a permit renewal may be denied on a ground contained in R.C. 4303.292[A], despite lack of objection to the renewal).

Therefore, the commission had the authority to decide whether good cause and grounds under R.C. 4303.292 were established that warranted denying renewal of appellant's permit, regardless of the city's withdrawing its previous objection. *Marciano v. Ohio Liquor Control Comm.*, Franklin App. No. 02AP-943, 2003-Ohio-2023. The city's withdrawal of its objection did not render the matter moot. *Id.*

{¶21} According to R.C. 4303.271, a permit holder is entitled to renew its liquor permit unless good cause exists to reject the renewal application. *Buckeye Bar, Inc. v. Liquor Control Comm.* (1972), 32 Ohio App.2d 89, 90. The grounds on which the division, and ultimately the commission, may deny a liquor permit renewal are set forth in R.C. 4303.292. If any of the grounds the commission cited for rejecting the renewal application is supported by reliable, probative and substantial evidence, the commission's decision must be upheld. *Maggiore v. Ohio Liquor Control Comm.* (Mar. 29, 1996), Franklin App. No. 95APE06-713, citing *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570.

{¶22} Contrary to appellant's assertion, the division did not deny appellant's renewal application simply because the city objected to renewal of appellant's liquor permit. Rather, the division denied renewal of appellant's liquor permit for "good cause" as established under R.C. 4303.292(A)(1)(b) and 4303.292(A)(2)(c). (Sept. 1, 2000 Order.)

{¶23} The grounds the division cited for rejecting appellant's renewal application, affirmed by the commission, are supported by reliable, probative and substantial evidence. As noted, the Superintendent's order, subsequently considered by the commission, found (1) excessive loitering, drug activity, and alcohol violations occurring on the permit premises, and (2) the permit premises is one of the most problematic liquor establishments in its police district, with numerous incidents and arrests on the permit premises in 1999 involving drug law violations, firearm violations, assaults, and robberies. The record before the division also showed appellant had been charged with two violations for underage alcohol sales.

{¶24} The foregoing establishes good cause for denying renewal of appellant's liquor permit and amply supports the findings that (1) appellant operated the permit

business in a manner that demonstrates a disregard for the law pursuant to R.C. 4303.292(A)(1)(b), and (2) the location of the permit premises substantially interferes with public decency, sobriety, peace, or good order pursuant to R.C. 4303.292(A)(2)(c). See *Marciano*, supra (determining a permit holder's allowing activity on the premises that results in criminal arrests and subjects the permit holder to repeated liquor violations demonstrates substantial disregard for the law); *3M, Inc. v. Liquor Control Comm.* (Jan. 25, 2001), Franklin App. No. 00AP-529 (holding "the adverse affects of the premises and its patrons on its surroundings and law enforcement are sufficient alone for rejection" of a renewal application); and *Buckeye Bar*, supra (noting that a bar and its patrons' effect on the neighborhood are sufficient grounds for rejection of a renewal application).

{¶25} Because the evidence reveals the common pleas court did not abuse its discretion in finding the commission's decision to be supported by substantial, reliable, and probative evidence and to be in accordance with the law, we overrule appellant's assignments of error and affirm the judgment of the common pleas court.

Judgment affirmed.

TYACK and KLATT, JJ., concur.
