

IN THE UTAH COURT OF APPEALS

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COMO, a Senior Organization,)	MEMORANDUM DECISION	
Inc., a Utah corporation,)	(Not For Official Publication)	
)		
Petitioner and Appellant,)	Case No. 20060371-CA	
)		
v.)	F I L E D	
)	(February 8, 2007)	
West Valley City, a municipal)		
corporation,)	<table border="1"><tr><td>2007 UT App 40</td></tr></table>	2007 UT App 40
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Respondent and Appellee.)		

Third District, Salt Lake Department, 050914248
The Honorable Tyrone E. Medley

Attorneys: Robert J. Stansfield, Salt Lake City, for Appellant
Nicole Cottle and Carol Dain, West Valley City, for Appellee

Before Judges Bench, Greenwood, and Orme.

BENCH, Presiding Judge:

The West Valley City License Hearing Board (the Board) upheld the revocation of the business license of COMO, a Senior Organization, Inc. (COMO) pursuant to West Valley City Code section 17-3-102. See West Valley City, Utah, Code § 17-3-102 (2004). Under section 102, the Board may revoke a business license for such things as providing "[f]alse or incomplete information on an application," id. at § 102(2), and violating city, state, or federal regulations. See id. at § 102(3). The district court affirmed the license revocation, and COMO now appeals. We will review the decision of the Board, and not the decision of the district court. See Save Our Canyons v. Board of Adjustment, 2005 UT App 285, ¶12, 116 P.3d 978 (holding that appellate courts review the administrative agency decision directly and do not defer to the lower court's decision).

COMO claims that the Board's decision to revoke the business license was not supported by the evidence presented at the revocation hearing. "Judicial review of license revocations by municipalities is limited to a determination whether the

municipality acted within its lawful authority and in a manner that is not arbitrary or capricious." Whiting v. Clayton, 617 P.2d 362, 364 (Utah 1980).

We will consider the Board's decision arbitrary or capricious only if it is not supported by substantial evidence in the record. "In determining whether substantial evidence supports the Board's decision we will consider all the evidence in the record, both favorable and contrary [and] determine . . . whether a reasonable mind could reach the same conclusion as the Board. It is not our prerogative to weigh the evidence anew."

Save Our Canyons, 2005 UT App 285 at ¶12 (alterations in original) (quoting Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602, 604 (Utah Ct. App. 1995)) (additional quotations and citation omitted). "Substantial evidence is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." First Nat'l Bank of Boston v. County Bd. of Equalization, 799 P.2d 1163, 1165 (Utah 1990).

COMO challenges the Board's determination that COMO was engaged in illegal gambling. See Utah Const. art. VI, § 27 ("The Legislature shall not authorize any game of chance, lottery or gift enterprise under any pretense or for any purpose."). For COMO's activities to be considered a lottery under Utah law, its "scheme must involve [some] property (or prize), distribution by chance, and the payment of any valuable consideration for the chance [to win]." Albertson's, Inc. v. Hansen, 600 P.2d 982, 985 (Utah 1979) (quotations omitted). Specifically, COMO claims that patrons did not pay valuable consideration for the chance to win property or prizes in COMO's bingo games and that the money patrons paid was for buffet-style meals.

A review of the record shows that COMO charged an unusually high price to enter the premises, though COMO claims that patrons paid only to eat and that bingo was a free, tangential attraction. Contradicting COMO's claims was evidence from COMO's informational literature that only a small fraction of the entrance fee was allocated to meal costs, and that patrons were able to purchase additional bingo cards for bonus games not included in the original entrance fee. The evidence in the record is sufficient to lead a reasonable mind to conclude, as the Board did, that COMO's patrons were paying valuable consideration for the chance to play bingo and that COMO was

therefore operating an illegal bingo parlor. Because the Board's decision regarding the illegality of COMO's bingo parlor is supported by substantial evidence, the revocation of the license based on COMO's violation of state regulations is not arbitrary or capricious.

COMO also argues that it was denied due process, claiming that COMO did not have a chance to object to the proposed order because the first copy of the order COMO received was already signed by the Board. There is no evidence in the record to support COMO's claims that the Board refused to hear COMO's objections. While COMO has expressed its multiple objections to the order here on appeal, it has failed to show that these objections were presented to the Board or that the Board refused to consider these objections because of timeliness issues. We therefore conclude that COMO was not denied due process of law.¹

For the foregoing reasons, we affirm the Board's decision.

Russell W. Bench,
Presiding Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

Gregory K. Orme, Judge

¹While we find no due process violation in this case, we remind the Board of its own rule that non-prevailing parties are to be provided with copies of draft orders that have been prepared by prevailing parties before such orders are issued. See West Valley City, Utah, Code § 17-3-108 (2004). Strict adherence to this rule will ensure that a non-prevailing party has sufficient opportunity to make objections. Id.