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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

BOJANGLES NIGHTCLUB,	]	
	]	**CASE NO. 11CVF-10956**
Appellant,	]	
vs.	]	**JUDGE COCROFT**
	]	
OHIO DEPARTMENT OF HEALTH, et al.,	]	
	]	
Appellees.		

DECISION AND ENTRY

COCROFT, J.

This case is before the Court on an appeal, pursuant to R.C. 119.12, from a decision by the Public Health Dayton and Montgomery County Combined General Health District ("District"), a designee of the Ohio Department of Health, which found the appellant, Bojangles Nightclub, in violation of Smoking in Prohibited Area, in violation of O.A.C. 3701-52-02(A) and R.C. 3794.02(A); and Ashtray Present, in violation of O.A.C. 3701-52-02(F) and R.C. 3794.06(B). The relevant facts and procedural history are as follows:

The Ohio SmokeFree Workplace Complaint Line received a complaint alleging that, on or about April 24, 2010, the appellant was in violation of the Ohio Smokefree Workplace Act. See R.C. Chapter 3794 *et seq.* On April 28, 2010, the District sent a letter to the appellant informing it of the alleged violation and placing it on notice that the District had opened an investigation. See Certified Record at 9.

On May 7, 2010, at approximately 9:30 p.m., sanitarians Jason Dreier and Sara Carine conducted an on-site investigation at Bojangles Nightclub. See Certified Record, at 12. The sanitarians indicated that they smelled cigarette smoke upon entering the nightclub and observed a male patron sitting at the bar with a burning cigarette in a plastic ashtray in front of him. See

Certified Record, at 12 and 13. The sanitarians also observed one black plastic ashtray on a table inside the bar. See Certified Record, at 13.

As a result of the investigation, the appellant was placed on notice that it had violated the following: Smoking in Prohibited Area, in violation of R.C. 3794.02(A) and OAC 3701-52-02(A); and Ashtray Present, in violation of R.C. 3794.06(B) and OAC 3701-52-02(F). The appellee also informed the appellant that since it had received one or more violations of this law within the past two years, it was receiving a civil fine for $2,500 for this subsequent violation. See Certified Record, at 14. The letter informed the appellant of its right to contest the findings of the investigation.

The appellant requested an administrative review of the proposed civil violation. See Certified Record, at 15. The administrative hearing was scheduled before an Impartial Decision Maker on November 3, 2010. See Certified Record, at 16-17. Both parties were represented by counsel and stipulated that the fine at issue was $1000, not $2500, as previously stated in the June 28, 2010 letter. See Tr. 4-5; Certified Record, at 14. On December 10, 2010, Attorney Robert C. Angell, as the Impartial Decision Maker, issued his Decision. See Certified Record, at 18. The Impartial Decision Maker made the following Findings of Fact:

> 1. Bojangles Nightclub is an establishment located at 1925 South Alex Road, West Carrollton, Ohio 45449. Bojangles is a "public place" and a "place of employment" subject to the Ohio Smokefree Workplace Law. Ms. Jo Risk and Mr. John Silva are "proprietors" of the establishment pursuant to R.C. 3794.01(G) and OAC 3701-51-01(P).
>
> 2. On or about December 7, 2006, the provisions of the Ohio Smokefree Workplace Law, Chapter 3794 of the Revised Code, went into effect statewide. Pursuant to R.C. 3794.07(A) and (B), the Department of Health has promulgated rules in accordance with Revised Code Chapter 119 to enforce the provisions of Chapter 3794 of the Revised Code, to establish a system of progressive fines to foster compliance with Chapter 3794 of the Revised Code, and to establish a notification and reporting system for violations of Chapter 3794 of the Revised Code. Those regulations are codified at OAC Chapter 3701-52. In Montgomery County, violations of the law are investigated and cited by the Dayton Montgomery County Public Health Department (PHDMC).

3. On or about August 23, 2007, PHDMC notified Respondent of a first violation of the Smoke-Free Workplace Law, namely: smoking in a prohibited area in violation of R.C. 3794.02(A) and OAC 3701-52-02(A). As this was a first notice of violation, Respondent received a warning.

4. On or about October 19, 2007, PHDMC notified Respondent of two violations of the Smoke –Free Workplace Law, namely: smoking in a prohibited area in violation of R.C. 3794.02(A) and OAC 3701-52-02(A), and ashtray present in violation of R.C. 3794.06(B) and OAC 3701-52-02(F). As this was a second notice of violation, Respondent received a civil monetary penalty of $100.

5. On or about September 2, 2008, PHDMC notified Respondent of two violations of the Smoke-Free Workplace Law, namely; smoking in a prohibited area and ashtray present. As this was a third notice of violation, Respondent received a civil monetary penalty of $500, doubled to $1000 for an intentional violation.

6. On or about April 28, 2010, the PHDMC notified Respondent of a report of violation of the Smoke-Free Workplace Law. On May 7, 2010, Mr. Dreier and Ms. Carine inspected Respondent's establishment pursuant to that report. Mr. Dreier noted on his report that the smell of smoke was evident, and he observed an individual, possibly an employee, seated at the bar with a lit cigarette and a red ash receptacle on the bar in front of her. Mr. Dreier further observed a female seated at a table with a black receptacle in front of her. The ash receptacle contained an extinguished cigarette. Mr. Dreier spoke to the bartender on duty, Mr. Silva, at some length. Mr. Dreier recorded his observations on an investigation worksheet, and informed Mr. Silva that a violation letter would be issued.

7. Mr. Dreier testified that at the time of the inspection, an employee other than Mr. Silva or the bartender instructed the smoker at the bar to extinguish. He stated that the smoker extinguished and removed the ashtray from the bar. The ash receptacle on the table was not removed.

8. On or about June 28, 2010, PHDMC, through Mr. Dreier and Ms. Carine, notified Respondent that the investigation substantiated two violations of the Smoke-Free Workplace Law, namely; smoking in a prohibited area and ashtray present. As the violation was deemed to be a fifth violation of the law within the applicable time limits, PHDMC imposed a civil monetary penalty of $2,500. At the hearing, the parties stipulated that two earlier violations were dismissed and the records of those violations removed from the record. Consequently, Respondent is at the third level of monetary penalty (fourth violation overall), and the proper penalty amount in this proceeding is $1,000.

9. Respondent timely requested an administrative review of the proposed action. The Department scheduled an administrative review for November 3, 2010 at the offices of the Warren County Health Department in Lebanon, Ohio.

10. The administrative review was held as scheduled. The parties appeared, through counsel, and offered witness testimony and documentary evidence. A stenographic record of the administrative review was made; this hearing examiner did not request a copy.

11. At the hearing, Mr. Dreier testified as to the violations he witnessed upon inspection, namely; an individual seated at the bar with a burning cigarette and an ash receptacle on the bar in front of him, and another ash receptacle, containing extinguished smoking materials, on a table within the establishment.

12. At the hearing, Ms. Risk testified that the establishment has a smoking policy and that it attempts to enforce that policy. She testified that her regular customers are compliant with the smoking policy, but "transient" customers are not compliant. She testified that the establishment provides red ashtrays to be used for smoking in an outdoor patio area, and black plastic cups containing peanuts that are distributed in the indoor bar area. Ms. Risk testified that she instructs her employees to "walk away" when a patron is asked to extinguish and refused to do so, because she does not want to lose their business because she does not want to expose her employees to possible confrontations.

The Impartial Decision Maker found the appellant in violation of the Smokefree Workplace Act, recommending that the appellant be found in violation of R.C. 3794.02(A), "Smoking in a Prohibited Area," and R.C. 3794.06(B), "Ashtray Present." The Impartial Decision Maker recommended that a $1000 penalty be assessed against the appellant based upon the schedule of penalties set forth in O.A.C. 3701-52-09. Thereafter, the appellant filed objections. See Certified Record, at 19. In a letter dated August 19, 2011, the Director of Health affirmed the decision of the Impartial Decision Maker. See Certified Record, at 20. Subsequently, the appellant filed a timely notice of appeal and the matter is now before this Court.

Standard of Review

The standard of review set forth in R.C. 119.12 governs administrative appeals brought pursuant to the Smokefree Workplace Act. R.C. 119.12 provides, in pertinent part:

> The court may affirm the order of the agency complained of in the appeal
> if it finds, upon consideration of the entire record and such additional evidence
> as the court has admitted, that the order is supported by reliable, probative

and substantial evidence and is in accordance with law.

If the order from the Ohio Department of Health or its designee is supported by reliable, probative and substantial evidence, and is in accordance with law, the common pleas court may not substitute its judgment for that of the agency, even if the court may come to a different conclusion. See *Our Place, Inc., v. Ohio Liquor Commission.* (1992), 63 Ohio St.3d 570, 589.

Thus, the scope of review for an order of an administrative agency is limited. The common pleas court may not modify the penalty imposed once the court has concluded that there is reliable, probative and substantial evidence and that the sanction imposed was in accordance with law. See *Henry's Café, Inc. v. Bd. of Liquor Control*, 1959 Ohio App LEXIS 10.

Appellant's Arguments

The appellant asserts the following three assignments of error:

Appellant's First Assigment of Error;

CHAPTER 3794 OF THE OHIO REVISED CODE IS VOID FOR VAGUENESS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION I OF THE CONSTITUTION OF OHIO

Appellant's Second Assignment of Error;

THE OHIO DEPARTMENT OF HEALTH FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE PROPRIETOR OF BOJANGLES LOUNGE PERMITTED SMOKING IN VIOLATION OF REVISED CODE 3794

Appellant's Third Assignment of Error;

THE OHIO DEPARTMENT OF HEALTH FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE PROPRIETOR OF BOJANGLES FAILED TO REMOVE FROM A PUBLIC PLACE ASHTRAYS AND/OR SMOKING RECEPTACLES USED FOR DISPOSING OF SMOKING MATERIALS.

A. There is sufficient evidence to affirm the appellant's violations of R.C. 3794.02(A) and R.C. 3794.06(B).

In the second and third assignments of error, the appellant challenges the sufficiency of the evidence of the "Smoking in Prohibited Area" violation, pursuant to R.C. 3794.02(A) and O.A.C. 3701-52-02(A); and the violation of an "Ashtray Present," pursuant to R.C. 3794.06(B) and O.A.C. 3701-52-02(F). R.C. 3794.02(A) provides as follows:

> No proprietor of a public place or place of employment, except as permitted in section 3794.03 of this chapter, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.

O.A.C. 3701-52-02(A) incorporates the same statutory language. Furthermore, R.C. 3794.02(E) adds that "[L]ack of intent to violate a provision of this chapter shall not be a defense to a violation."

The appellant contends that there is insufficient evidence that the proprietor "permitted" smoking in her bar on September 16, 2008. In *Traditions Tavern*, the Tenth District Court of Appeals addressed the validity of the Columbus Smoking Ban and a provision of that ordinance, which stated that no proprietor of a public place shall "permit smoking." See *Traditions Tavern v. City of Columbus,* 171 Ohio App.3d 383, (2006). The Court stated:

> While the phrase "permit smoking" is not included in the definitions, an ordinary person is expected to understand and apply the common meaning of everyday terms used in legislation. The word "permit" is no exception. As this court noted in *Bexley v. Selcer* (1998), 129 Ohio App.3d 72, 716 N.E.2d 1220:
>
>> The word "permit" is defined as "to suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act." *Black's Law Dictionary* (5 Ed.Rev. 1979) 1026. Other Ohio courts have held that this definition "connotes some affirmative act or omission." *Akron v. Meissner* (1993), 92 Ohio App.3d 1, 4, 633 N.E.2d 1201 .

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> *Id.* at 77. Thus, the Ban prohibits a proprietor to allow, consent or expressly assent to smoking within his or her establishment. Likewise, a proprietor is forbidden from being acquiescent to smoking by failing to take appropriate measures to prevent people from using tobacco on the premises, such as posting no smoking signs or removing ashtrays.

Id., 171 Ohio App.3d at p. 393.

The appellant asserts there was no evidence before the District that the proprietor or any agent or employee of the proprietor gave explicit permission to anyone to smoke on the premises or even knew that smoking had occurred. At issue, however, is whether the appellant acquiesced by failing to take reasonable steps to prevent smoking. In other words, this Court must determine whether the evidence shows that the appellant's inaction to take reasonable steps to prevent smoking and/or its silence on the issue may have fostered an environment wherein the patrons felt comfortable to "light up" without any fear of retribution from the people in charge of the bar. The appellant is interjecting a standard that is not in the statute requiring that the appellee show explicit permission or knowledge. The statute sets forth that lack of intent shall not be a defense. See R.C. 3794.02(E).

Moreover, the appellant is basing its argument on hypothetical facts. The appellant is arguing that it has no recourse if it asks a patron to extinguish a cigarette and the patron refuses, and then finds itself with an escalating situation. There is no evidence that this was the case in this instance. The transcript is clear that the person who was smoking in the bar when the sanitarians arrived was not only a regular patron, but was also employed by the appellant to provide the audio/sound system for the nightclub. The evidence demonstrates that he complied with James Duell, the bartender's, request and immediately extinguished his cigarette. Tr. 63-66.

The court's scope of review of the agency's decision in an administrative appeal is limited. The court is permitted to weigh the evidence and to appraise the credibility of the

witnesses. *Univ. of Cincinnati v. Conrad,* 63 Ohio St. 2d at 110. Determining whether an agency order is supported by reliable, probative and substantial evidence essentially is a question of the absence or presence of the requisite quantum of evidence. *Id.*, p. 111. The Court is to "give due deference to the administrative resolution of evidentiary conflicts" because the fact finder had the opportunity to observe the witnesses and weigh their credibility. *Id.* The Court "will not substitute its judgment for the Board's where there is some evidence supporting the Board's Order." *Harris v. Lewis* (1982), 69 Ohio St.2d 577, 579. *See also In re Frank and Glenda Miller* (1976), 1976 Ohio App. LEXIS 6408, (the inference made by the commission should not be altered by the common pleas court or this court merely because we would come to a different conclusion.)

Applying the above legal standards, the Court finds that the record contains reliable, probative and substantial evidence supporting the conclusion that the appellant permitted smoking in violation of R.C. 3794.02(A). As the finder of the fact, the District was entitled to conclude from the evidence that the appellant failed to take reasonable steps to prevent smoking.

R. C. 3794.02(A) restricts a proprietor[1] from permitting smoking in a public place or place of employment. O.A.C. 3701-52-02(A)-(B)[2] sets forth additional responsibilities of a proprietor and states as follows:

> (A) No proprietor, except as permitted in section 3794.03 of the Revised Code, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress and egress to the public place or place of employment.
> (B) In addition to the requirements of paragraph (A) of this rule, a proprietor shall take reasonable steps including, but not limited to, requesting individuals to cease smoking, to ensure that tobacco smoke, in an area directly or indirectly under the control of the proprietor, does not enter

[1] A "proprietor" is statutorily defined as "…an employer, owner, manager, operator, liquor permit holder, or person in charge or control of a public place or place or employment." See R. C. 3794.01(G).
[2] O.A.C. 3701-52-02(A) and R.C. 3794.02(A) contain similar language.

> any area in which smoking is prohibited under Chapter 3794. of the Revised Code and this chapter through entrances, windows, ventilation systems, or other means.

A complaint, standing alone, is not sufficient to support a violation. See O.A.C. 3701-52-08(A). However, a complaint does obligate the health department to begin an investigation. See O.A.C. 3701-52-08. All complaints received during the pendency of an investigation are combined and considered as part of the one on-going investigation. See O.A.C. 3701-52-09(D).

In the facts before this Court, the evidence demonstrates that, after the appellant was placed on notice, sanitarians James Dreier and Sara Carine conducted an on-site investigation on May 7, 2010 at approximately 9:30 p.m. As they entered Bojangles nightclub, both investigators smelled smoke and observed a male, dressed in an orange shirt, smoking. He had a red ashtray in front of him. A male staff member was observed in conversation with him and the cigarette was extinguished and the ashtray was removed. A black plastic ashtray was on a table and a red one was on the bar in front of a patron. Thus, there is sufficient evidence to support the violation of R.C. 3794.02(A).

Likewise, there is sufficient evidence to show that the appellant violated R.C. 3794.06(B) and OAC 3701-52-02(F) by permitting an ashtray to be present in the bar. R.C. 3794.06(B) provides that "[A]ll ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this chapter."

O.A.C. 3701-52-02 includes the following:

> (F) A proprietor shall remove ashtrays and other receptacles used for disposing of smoking materials pursuant to Chapter 3794 of the Revised Code and this chapter ....
>
> (1) A proprietor may provide ashtrays and other receptacles used for disposing of smoking materials in areas where smoking is not prohibited under Chapter 3794 of the Revised Code and this chapter.

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(2) A proprietor may provide ashtrays and other receptacles used for disposing of smoking materials solely for the purpose of disposing smoking materials prior to entering a place of employment or public place.

(3) A proprietor may store ashtrays and other receptacles used for disposing of smoking materials in a location within an area where smoking is prohibited if the location has no public access, the location is used primarily for storage purposes, and the ashtrays or other receptacles are used solely in accordance with paragraph (F)(1) of this rule.

The Court finds that there is reliable, probative and substantial evidence to support the District's findings of fact and conclusions of law.

Under O.A.C. 3701-52-01(A), an "ashtray" is defined as "any receptacle that is used for disposing of smoking materials including but not limited to ash and filters." This definition is broad enough to include traditional ashtrays, Altoid tins and beer bottles. Moreover, even if a patron is smoking discreetly, the smoke from a cigarette gives off a distinct odor. Clearly, any person that is in a room with another person with a lit cigarette should be aware of the cigarette's odor, even if they do not see the person with the lit cigarette. The appellant's argument that the owner and the employees were not aware of the patrons' smoking is specious. Realistically, if nothing else, the smoke from a lit cigarette would trigger a smoke detector to go off inside of a bar, if there was a smoke detector and if it was operational. Under the facts *sub judice*, Mr. Dreier and Mr. Duell both corroborated through their testimony that an ashtray was present.

For the foregoing reasons, the Court finds that the record contains reliable, probative and substantial evidence supporting the District's finding that the appellant violated R.C. 3794.02(A) and R.C. 3794.06(B). The appellant's challenges based on the sufficiency of the evidence as set forth in the second and third assignments of error are hereby **OVERRULED.**

B. The appellant's constitutional challenge based upon a void for vagueness claim is without merit.

The appellant challenges, as void for vagueness, the terms "permit" in R.C. 3794.02(A) which states that "No proprietor … shall permit smoking in the public place or place of employment…" and the provision of O.A.C. 3701-52-02(B) requiring a proprietor to "take reasonable steps including, but not limited to, requesting individuals to cease smoking, to ensure that tobacco smoke … does not enter any area in which smoking is prohibited under Chapter 3794…." Likewise, the appellant challenges the term "remove" in R.C. 3794.06(B) which provides "[A]ll ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this chapter."

It is well-established that laws are "entitled to a strong presumption of constitutionality and that a party challenging the constitutionality of a law bears the burden of proving that the law is unconstitutional beyond a reasonable doubt." *Traditions Tavern* (2006), 171 Ohio App. 3d 383, 392 citing *Yajnik v. Akron Dept. of Health, Housing Div.* (2004), 101 Ohio St. 3d 106. A court's power to invalidate an enactment as unconstitutionally vague must be exercised with great caution. *Id.*

In *Traditions Tavern*, the Tenth District Court of Appeals addressed a void for vagueness challenge to a provision of the Columbus smoking ban which provided that "No proprietor … shall permit smoking in said public place or place of employment." This language is the same wording that is found in R.C. 3794.02(A) and is challenged here. The Tenth District court held that the phrase "permit smoking" "is not unconstitutionally vague, but clearly gives notice of the conduct it prohibits in ordinary language." *Id.* at p. 393. The court explained that the phrase prohibits the proprietor from expressly assenting to smoking and requires the proprietor "to take appropriate measures to prevent people from using tobacco on the premises." This language,

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which the court approved as giving notice of the prohibited conduct, is essentially the same language found in at issue in the facts herein.

For the foregoing reasons, the Court concludes that the appellant's void for vagueness challenge is without merit and is hereby **OVERRULED.**

Any complaints to the SmokeFree Workplace Complaint Line may be anonymous, but an anonymous complaint alone is not a sufficient basis upon which to find a violation. See O.A.C. 3701-52-08(A). The establishment must be given notice of the report of a violation pursuant to O.A.C. 3701-52-08(D). As was done in this case, notice was given to appellant. See Certified Record, at 14.

O.A.C. 3701-52-08(F)(1) is the mechanism by which due process is afforded to the appellant in this case. R.C. Chapter 3794 and its related regulations give the appellant fair and proper notice that if it does not comply with the Smokefree Workplace Act, a penalty will be imposed if the law is violated within the statutory prescribed time period.

The appellee bears the burden of proving that a violation of R.C. 3794.02(A) and R.C. 3794.06(B) took place. Under the facts before this court, James Dreier testified that he and Sara Carine personally observed a person smoking in the appellant's establishment on May 7, 2010 after the appellant had been given notice that it had received previous complaints. Moreover, James Dreier and Sara Carine testified that they observed ashtrays present in the nightclub.

It is a fundamental concept in administrative law that the party asserting the issue bears the burden of proof. The statutes at issue, and the fact that the appellant has filed this administrative appeal, places the burden on the appellant to demonstrate that it has taken reasonable steps to prevent smoking. See *Smith v. Columbus*, 2003 Ohio 3303. However, the record shows that even the appellant's witness, James Duell, the bartender, admitted that he

personally observed a person with an ashtray in the establishment the evening of May 7, 2010 and thus, corroborated the testimony of Mr. Dreier. Tr. 62-67.

The Smokefree Workplace Act is written in ordinary language and includes an extensive list of definitions. Although the term "smoking" is defined, the phrase "permit smoking" is not included in the definitions.[3] An ordinary person is expected to understand and apply the common meaning of everyday terms used in the statute. The word 'permit' is no exception. A plain reading of the statute shows that the proprietor must affirmatively demonstrate that he or she took reasonable steps to prevent smoking. R.C. 3794.02(A) states that:

> "No proprietor…shall permit smoking…"

Similarly, O.A.C. 3701-52-02(B) states that a proprietor:

> "shall take reasonable steps including, but not limited to, requesting individuals to cease smoking, to ensure that tobacco smoke, in an area directly or indirectly under the control of the proprietor, does not enter any area in which smoking is prohibited under Chapter 3794…"

As for the investigation of May 7, 2010, it is incredulous that an owner or an employee of a bar could be in the same room with people lighting up and smoking and not take notice of the cigarette smoke odor created by the lit cigarettes. Moreover, under the facts of this case, it was Billy, the soundman, an employee of the appellant, and not a "transient" customer, who was approached by another employee, James Duell, the bartender, regarding a violation of the appellant's no smoking policy. Clearly, based on the facts of this case, the appellant's statutory and constitutional rights were not violated. Accordingly, the appellant's argument asserting that Chapter 3794 of the Revised Code is void for vagueness is hereby **OVERRULED**.

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[3] R.C. 3794.01(A) defines 'smoking' as "… inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.

The Smokefree Workplace Act has been tested in this court and other courts in the state, and the courts have consistently held that the Smokefree Workplace Act meets the rational basis test and, thus, is constitutional. See *Trish's Café & Catering, Inc. v. Ohio Dept. of Health*, 2011 Ohio 3304; see also, *Traditions Tavern*, supra.

For the foregoing reasons, the Court finds that the record contains reliable, probative and substantial evidence supporting the District's decision that the appellant violated R.C. 3794.02(A) and O.A.C. 3701-52-02(A); and R.C. 3794.06(B) and OAC 3701-52-02(F). Moreover, the appellant's constitutional challenge has no merit.

Accordingly, the District's decision to impose a $1,000 fine upon the appellant based on its number of violation within two years is hereby **AFFIRMED**. This is a final, appealable Order. All Court costs are assessed to the appellant.

Pursuant to Civil Rule 58, the Clerk of Court shall serve notice to all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Copies to:

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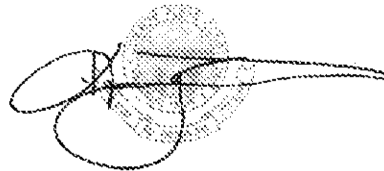
Franklin County Court of Common Pleas

Date:	02-28-2012
Case Title:	BOJANGLES NIGHTCLUB -VS- OHIO STATE DEPARTMENT BUREAU ENVIRONMENTAL H
Case Number:	11CV010956
Type:	MAGISTRATE DECISION

It Is So Ordered.



/s/ Judge Kimberly Cocroft