

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

SOLOMON OIL CO.,

Appellant,

vs.

OHIO LIQUOR CONTROL
COMMISSION,

Appellee.

CASE NO: 12CVF-02-2042

JUDGE: HOGAN

DECISION AND ENTRY
ON THE MERITS OF THE REVISED CODE §119.12 ADMINISTRATIVE
APPEAL AFFIRMING THE LIQUOR CONTROL COMMISSION'S ORDER
JANUARY 26, 2012

HOGAN, J.

This action comes before the Court upon an appeal of an Order of the Liquor Control Commission (hereinafter referred to as Commission) dated January 26, 2012.

The appeal, pursuant to the provisions of R.C. §119 was timely filed. The record from the administrative proceeding has been provided with attachments. As set forth below, the Order of the Commission is **AFFIRMED**.

I. STATEMENT OF THE CASE

Appellant violated O.A.C §4301:1-1-21 and R.C. §4301.69(A). Appellant was fined \$1,500.00 or, in the alternative the Appellant could accept a ten day suspension. Appellant moved to have the penalty reconsidered. The Commission declined to change its fine and issued that holding on February 15, 2012. The Appellant timely filed its appeal of the January 26, 2012 Order of the Commission with this Court.

II. STATEMENT OF THE FACTS

After a review of the record and the briefs of the parties, the following facts are not in dispute. The Appellant is a holder of a C1, C2 and D6 liquor permit. It first

secured those permits in November of 1999. Prior to the events leading up to its current problem, the Appellant had been violation free for over 6 years.

On May 6, 2011 an underage confidential informant purchased alcohol from the Appellant. After the purchase occurred the Appellant was asked to produce its permits. The permits were promptly produced but it is clear that they were not conspicuously displayed on the date in question. In fact, they were kept in a bound notebook with the Appellant's other licenses and vendor information.

It is uncontroverted that the Appellant produced evidence of its efforts to not allow underage purchases. Various training documents were produced in an effort to establish to the Commission that the Appellant did not take the issue lightly and did attempt to avoid the type of problem that occurred on May 6, 2011.

However, these issues were – as expressed by the Appellant – mitigating factors. There was no issue as to the two violations. They occurred and the Appellant had no defense. The Appellant admitted as much within its merit Brief. The Appellant concentrated its arguments on the mitigation factors and also asserted its belief that other permit holders had received less harsh fines.

The Commission issued its Order of January 26, 2012. The Appellant asked for the Commission to reconsider its sanction. On February 15, 2012 the Commission declined formally to change its sanction. The Appellant timely filed its Notice of Appeal on February 16, 2012. Appellant filed its merit Brief on April 16, 2012. The Commission's Brief was filed on April 24, 2012. The matter is ready for consideration by this Court.

III. STANDARD OF REVIEW

Review by this Court of an administrative agency, such as the Commission, is governed by R.C. §119.12 and the multitude of cases addressing that section. An often

cited case is that of *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E.2d 1265. The *Conrad* decision states that in an administrative appeal filed pursuant to R.C. §119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law.

The Court stated at pages 111 and 112 that:

In undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive.

Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order. Thus, where a witness' testimony is internally inconsistent, or is impeached by evidence of a prior inconsistent statement, the court may properly decide that such testimony should be given no weight. Likewise, where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order.

The *Conrad* case has been cited with approval numerous times. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591 noted *Conrad* and stated that although a review of applicable law is *de novo*, the reviewing court should defer to the agency's factual findings. See *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St.3d 79, 82, 697 N.E.2d 655.

The quality of proof was articulated by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570 as follows:

“Reliable” evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) “Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) “Substantial” evidence is evidence with some weight; it must have importance and value. *Id.* at 571.

This Court must examine the record to determine whether the Commission's 'Order' is supported by reliable, probative and substantial evidence and is in accordance with law. *Red Hotz, Inc. v. Liquor Control Commission* (1993), Tenth App. Dist. Case No. 93AP-87, 1993 Ohio App. LEXIS 4032 relying on *Grecian Gardens v. Bd. Of Liquor Control* (1964), 2 Ohio App.2d 112.

Based on this authority, the Court will review the appeal on the merits.

IV. REVIEW ON THE MERITS

First and foremost, it is apparent that the Commission's decision is supported by reliable, probative and substantial evidence and is in accordance with law. Appellant did not, nor could the Appellant contest that. The Appellant instead argued that the Commission erred when it failed to take into account its prior clean record and its attempts to avoid the violation. The second argument advanced by the Appellant concerned its belief that other *similarly* situated permit holders were treated better than the Appellant.

Clearly, the first argument has no merit. This Court cannot address mitigation or fines. If the fine imposed is within the range of fines given to the legal authority by statute, this Court may not substitute its judgment for that of the agency. See, *Henry's Café, Inc., v. Bd. Of Liquor Control*, 170 Ohio St. 233 and the string of cases that have followed it. The sanction was lawful so there is nothing this Court can do.

Concerning the disparate treatment argument of the Appellant, the Commission pointed out that, even if this Court could/would review the matter, the evidence produced by the Appellant is not sufficient to establish the claim. From a review of the certified record, it appears to this Court that the issue of disparate treatment was not even part of the Appellant's Motion to Reconsider as filed with the Commission. This Court agrees

with the Commission on this position and holds that Appellant's disparate treatment argument fails on both legal and factual grounds.

The Commission Order of January 26, 2012 is **AFFIRMED**.

V. DECISION

The Court finds that the January 26, 2012 Order of the Commission is supported by reliable, probative and substantial evidence and is accordance with law. The Order is

AFFIRMED.

THIS IS A FINAL APPEALABLE ORDER

Copies to:

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Franklin County Court of Common Pleas

Date: 05-17-2012
Case Title: SOLOMON OIL CO -VS- OHIO STATE LIQUOR CONTROL COMMISSION
Case Number: 12CV002042
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. T. Hogan", is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top and "ALL THINGS ARE" at the bottom, with a central emblem.

/s/ Judge Daniel T. Hogan

Court Disposition

Case Number: 12CV002042

Case Style: SOLOMON OIL CO -VS- OHIO STATE LIQUOR CONTROL
COMMISSION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes