

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

GREGORY JORDAN, :

APPELLANT, : **CASE NO. 12 CVF 08 10576**

vs. : **JUDGE ALAN C. TRAVIS**

**OHIO STATE DEPARTMENT OF
LIQUOR CONTROL COMMISSION,** :

APPELLEE. :

DECISION AND ENTRY

TRAVIS, J.

This case involves the R. C. 119.12 administrative appeal filed by Appellant Gregory L. Jordan (dba Club Jada) from an Order issued July 20, 2012 by the Ohio Liquor Control Commission (“Commission”). The July 20, 2012 Order affirmed the March 9, 2012 Division Order rejecting appellant’s 2011-2012 renewal application of a Class D-5 liquor permit. A D-5 liquor permit allows the retail establishment to sell alcohol for consumption on premises until 2:30 a.m. The appellant filed a notice of appeal with this Court on August 21, 2012.

The record certified by the Commission is summarized as follows:

After the appellant filed his 2011-2012 renewal application, Harrison Township Trustees filed an objection. The Division held a hearing on December 1, 2011. On March 9, 2012 the Division rejected the appellant’s renewal application pursuant to R.C. 4303.292(A)(2)(c), R.C. 4303.292(A)(1)(b), R.C. 4303.271(A), R.C. 4301.10(A)(2) and O.A.C. 4301:1-1-12(B). The appellant appealed and the Commission held a hearing on July 12, 2012. Thereafter, the Commission issued its Order affirming the Division’s decision not to renew the appellant’s Class D-

5 liquor permit for the time period of 2011-2012. The appellant filed his appeal which is now before this Court.

Standard of Review

This Court must affirm the order of the Commission if the order is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 111, (1980). That quality of proof was defined by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.*, 63 Ohio St. 3d 570, (1992), as follows:

- (1) "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.

Moreover, there is a distinction to be made since the standard used in the rejection of a renewal for an existing liquor license is different from the standard applied when denying an application for a new liquor permit. See *In the Matter of Frank and Glenda Miller*, 1976 Ohio App. LEXIS 6408.

When considering the continuation of an existing liquor permit, the court must consider the actual effect that the operation of the business has on its surrounding environment. The actual effect that the operation of the business has on its surrounding environment can and should be factually presented. However, when considering whether to issue a new permit, it is the potential effect, rather than the actual effect, that is at issue. *Id.* at 2376. The record in the

case before this Court demonstrates that the actual effect that appellant's establishment had on its surrounding environment was factually presented.

Appellant asserts the following assignment of error:

ASSIGNMENT OF ERROR

I. THE LIQUOR CONTROL COMMISSION ERRED WHEN IT AFFIRMED THE ORDER OF THE DIVISION OF LIQUOR CONTROL BECAUSE THE ORDER OF THE DIVISION OF LIQUOR CONTROL VIOLATED R C 119.09 AND THEREFORE THE LIQUOR CONTROL COMMISSION DID NOT HAVE JURISDICTION TO HEAR THE CASE.

- 1) The Division of Liquor Control did not certify its order violating R C 110.09. (Law and Argument #1).
- 2) The Division of Liquor Control did not send a copy of the report and recommendation to the permit holder of the permit holder's attorney violating R C 119.09. (Law and Argument #1)

Law and Argument

The appellant asserts that the Division's hearing process is governed by R.C. 119 et seq. However, the Tenth District Court of appeals has held otherwise. In *D.L. Lack Corp. v. Liquor Control Commission*, the Court held that Division's hearings fall within the exception set forth in R.C. 119.06(C). 191 Ohio App.3d 20, 14, (2010).¹ The appellant's hearing before a Division hearing officer was held pursuant to R.C. 4303.271(B). When the Superintendent of the Division issued an order not to renew the appellant's liquor permit, the appellant then appealed pursuant to R.C. 4303.271(A) and R.C. 4301.28(A)(1). On July 12, 2012 a hearing was held before the Commission as provided by R.C. 4301.04(B) and O.A.C. 4301:1-1-65(B). As the Court in *D.L. Lack Corp.* noted, the Division's hearing "occurred by command of R.C. 4303.271(B), not R.C. 119.06." *Id.* at ¶ 15.

¹ This Court will note that appellant's attorney, Kurt O. Gearhiser, represented the appellant in *D.L. Lack Corp. v. Liquor Control Commission*. See 191 Ohio App.3d 20, (2010).

Similarly, the appellant is not entitled to two separate R.C. 119 hearings. Thus, the Commission's July 20, 2012 Order is in accordance with law. Likewise, the Division did not have to prepare a report and recommendation, and certify its order since R.C. 119 did not apply.

Upon review of the merits of the case *sub judice*, there is detailed testimony and ample evidence supporting the Commission's Order denying the renewal of appellant's liquor permit. Captain Jeff Papenek, a twenty-five year veteran of the Montgomery County Sheriff's Office, described the calls for police response between November 20, 2010 and November 29, 2011. See Exhibit E. The calls involved shootings, shots fired, felonious assault, simple assaults, disorderly patrons, large crowds, intoxicated patrons, liquor violations, underage sales, and a deputy being assaulted, among other reasons. See Tr. 10-14. He stated that in regards to the 60 liquor permits in the affected area, the appellant's establishment is one of the top three problem locations. From approximately 90 calls to this location within the relevant time period, he stated that 30/40 of those calls were serious. He testified that since the calls to this establishment involved shots fired and large fights, this establishment not only threatens public safety and the safety of the responding officers, but places a drain on the resources of the Montgomery County Sheriff's office. See *Aldi Inc. v. Liquor Control Comm.*, 2006 Ohio 1650.

Deputies Gus Teague and Joshua Haas also testified to circumstances officers encounter when responding to calls at the appellant's establishment. Deputy Haas testified as to the June 12, 2011 incident where police responded to shots fired while police were actually in the parking lot as a result of another call, resulting in 60-65 police cruisers at the scene. See Tr. 45. Deputy Teague testified as to his sustaining a broken

jaw by unruly patrons. See Tr. 74. Deputy Haas stated that the problems at this establishment are compounded by the lack of cooperation from the permit holder and the employees at this establishment. He stated that the owner is uncooperative and belligerent, and that the employer and his employees have locked the police out and kept them from doing their jobs. See Tr. 44. He also corroborated that there are shootings, robberies, fights, disorderly patrons and noise complaints at this establishment.

The permit holder testified that he does not spend much time at the establishment and is rarely there. See Tr. 104-106. The permit holder acknowledged that his manager drinks on the job and that he encourages it. See Tr. 98-99. Furthermore, the permit holder testified that when local law enforcement come into his bar he intentionally does not identify himself. See Tr. 96-97.

Environmental conditions relating to decency, sobriety and good order of the renewal application under R. C. 4303.271, regardless of the permit holder's fitness or order may, where those conditions are extreme enough, constitute good cause to reject a satisfactory business operation. See *Buckeye Bar v. Liquor Control Commission*, 32 Ohio App.2d 89, (1972). A renewal application is properly rejected even though the permit holder's operation may not per se cause the illicit activity because there may be good cause for rejecting the permit application where the activity constitutes a breeding ground for a deleterious environment. See *Harbi Abuzhrieh & Co., Inc. v. Ohio Liquor Control Commission* 1999 Ohio App. LEXIS 3396.

There is evidence in the record demonstrating that the operation of appellant's establishment substantially interfered with the public decency, sobriety, peace and good order of the neighborhood and that the criminal activity taking place in and around the premises was

directly related to its operation. Furthermore, although this court finds a cause-effect relationship between the operation of the liquor permit premises and the adverse conduct, environmental conditions, even if not caused by the appellant, nonetheless constitute good cause for not renewing the liquor license. See *Id.*

Appellant's assignment of error is not well taken and is **OVERRULED**. Furthermore, the appellant's motion for a stay is hereby **DENIED**.

DECISION

Upon consideration of the Commission's certified record, the Court concludes that the Commission's July 20, 2012 Order rejecting the renewal of appellant's liquor permit for the years 2011-2012 is supported by reliable, probative and substantial evidence and is in accordance with law. See R.C. 119.12. Accordingly, the July 20, 2012 Order of the Liquor Control Commission is hereby **AFFIRMED**.

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice of this judgment and its date of entry upon all parties.

It is so ordered.

Copies to all parties registered for efilng

Franklin County Court of Common Pleas

Date: 01-07-2013
Case Title: GREGORY L JORDAN -VS- OHIO STATE LIQUOR CONTROL COMMISSION
Case Number: 12CV010576
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive, "Alan C. Travis", is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "COMMON PLEAS COURT" around the perimeter, with "ALL THINGS ARE" at the bottom.

/s/ Visiting Judge Alan C. Travis

Court Disposition

Case Number: 12CV010576

Case Style: GREGORY L JORDAN -VS- OHIO STATE LIQUOR
CONTROL COMMISSION

Final Appealable Order: Yes