

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

LKK 2542 CORPORATION	□	CASE NUMBER 12CV-13951
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APPELLANT,	□	JUDGE LYNCH
	]]	
vs.	□	MAGISTRATE MCCARTHY
	]]	
LIQUOR CONTROL COMMISSION,	□	
	]]	
APPELLEE	□	

**DECISION AND JUDGMENT ENTRY**

**LYNCH, J.**

I

This administrative appeal is before this court on appellant’s appeal of appellee Ohio Liquor Control Commission’s October 17, 2012, decision which affirmed the rejection of appellant’s renewal application for its permits to sell alcoholic beverages at its West Broad Street location on the Hilltop in Columbus, Ohio.

By way of background, for many years appellant’s bar was a haven for drugs, drunkenness, danger, disaster, and death, including on-site murders in March 2011 and September 2007. It is accurate to say the presence of the bar was a heavy burden on the Columbus Division of Police, the neighborhood and those who prefer peace and tranquility. Over the recent past it had been successfully charged with numerous liquor law violations. The bar’s continued licensed existence was the subject of objections from the city of Columbus. Without engaging in excessive detail, it could be reasonably concluded that the bar was operated in a manner that was inconsistent with its licensed purpose.

To appellant's most recent application to exist as a permit holder doing business, the city of Columbus objected.<sup>1</sup> Rather than continue to fight the city's objections, appellant (through its owner, Lanita K. Knopp) agreed to shut down the bar and forego the defense of a civil lawsuit to declare the bar a public nuisance and to avoid a raid on the premises by the police authorities. The owner also agreed to sell the liquor permit to solely an unrelated business interest. In short, the owner wanted to cease the bar's operation and sell the liquor license.

Appellant claims that as an intended legal consideration for the immediate closure of the bar, appellant would be granted approval of its renewal application, with the understanding that the liquor license would be transferred to a reputable entity. Indeed, appellant sought out and identified three potential assignees whose reputations for running establishments probably could not be questioned.

In the hope that an agreement could be reached and appellant be granted its license renewal, appellant closed the bar, paid the substantial fine levied by the commission, and paid renewal fees two times. Due apparently to a mix-up or other miscommunication, the agreement never came to fruition. However, appellant introduces that circumstance into the record for consideration.

## II

In reviewing the commission's order in an R.C. 119.12 appeal, a court of common pleas is required to affirm if the commission's order if it is supported by reliable, probative and substantial evidence and is in accordance with law. *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St. 3d 79, 81. In this

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<sup>1</sup> The city objected to renewals for 2008-2009 (overruled) and 2009-2010 (sustained but resolved by settlement).

regard, the statutory standard for review was explained in *Our Place, Inc. v. Ohio Liquor Control Commission* (1992), 63 Ohio St. 3d 570. Therein it was stated:

The evidence required by R.C. 119.12 can be defined 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

An agency's findings of fact are presumed to be correct and must be given deference by a reviewing court unless that court determines that the agency's findings are internally inconsistent, impeached by the evidence of a prior inconsistent statement, rest on improper inferences or are otherwise unsupportable. *VFW Post 8586*, supra.

In support of its appeal, appellant argues that the commission's order is not supported by reliable, probative and substantial evidence and is not in accordance with law. Particularly, appellant contends that the adjudication order which forms the basis of this appeal is not supported by the necessary quantum and quality of the evidence. With this, the court is unable to concur.

### III

In a review of the record on appeal, and by way of a consideration of the underlying background, it is noted that appellant has a less-than-distinguished history as a holder of an Ohio liquor license. Pointedly stated, appellant's bar could be colloquially described to be a "hell hole," to be feared by those not in the

market for serious trouble. Its closure sought by the city was most certainly done in a display of utmost common sense and civil concern.<sup>2</sup>

However, appellant points out that the law recognizes a change in a bar's management coupled with other factors can support a conclusion that minimizes the weight to be given to evidence of illegal conduct occurring before the alteration of management operations. See, *2216 SA, Inc. v. Ohio Liquor Control Commission*, 2007 Ohio 7014, 2007 Ohio App. LEXIS 6135 (Ohio Ct. App., Franklin County, Dec. 27, 2007).

In *2216 SA*, a change in management alleviated ongoing problems in operating *2216 SA's* establishment in nonconformity with the state's liquor laws. In overturning the commission's denial of new permits, the appellate court relied on the fact that new management of the bar had demonstrably turned around the operation of the bar to the point where it could no longer be found to be in noncompliance with Ohio's liquor laws, concluding, generally, that appellant's application for new permits should not be denied.

In further considering the matter, in *Downtown Croton, Inc. v. Liquor Control Commission*, 2012 Ohio 6203, 2012 Ohio App. LEXIS 5330 (Ohio Ct. App., Franklin County, Dec. 28, 2012) the commission employed both R.C. 4303.292(A)(1)(b) and (A)(2)(c) in rejecting an applicant's request for a transfer of ownership and location of operation. In that case, the court of appeals granted applicant's request to change ownership and location, noting that the new owner

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<sup>2</sup> See stipulated testimony of Columbus Detective Houston and the details of the sordid factual history of earlier citations.

of the business and the new manager of the bar had no history of operating a bar in a manner that disregarded the applicable liquor laws.

Appellant also cites the case of *City of Elyria v. Liquor Control Commission*, 2012 Ohio 4132, 2012 Ohio App. LEXIS 3636 (Ohio Ct. App., Franklin County, Sept. 11, 2012), Franklin County Court of Common Pleas No. 11CVF-11-13656. In that case, the city objected to a renewal of the permit of a bar that had gotten out of control. Upon objection, the owner of the bar got rid of the old manager and took on full management responsibilities herself. That change turned the bar around dramatically to where it was not the menace it once was under the old manager. Commenting that there was no evidence showing that the bar's problems were not alleviated, the court of appeals upheld the finding that the administrative renewal of the liquor permits was proper.

Now, in considering the commission's order with respect to its denial of appellant's request to renew its liquor license, it is found to be fully supported by the requisite evidence. There is virtually no question but that the record fully supports the conclusion that appellant has operated its liquor permit premises in a manner that demonstrates a disregard for the state laws and regulations or ordinances of Columbus.

Here, there is overwhelming evidence that appellant, despite being granted numerous opportunities, has failed to run a business in compliance with the dictates of Ohio liquor laws. The pertinent case law reviewed above does not support appellant's position sufficient to warrant a result inconsistent with the decision of the commission. In *2216 SA* and *Elyria*, new management operations

were fully in place and functioning well with proven good results sufficient to support a conclusion that the bars had been “turned around.” In *Downtown Croton*, the new management had not had sufficient time to demonstrate proven results, but at least the new manager was known.

In the instant case there has been no change whatsoever. Although appellant has taken preliminary steps to put into place an arrangement wherein a new and respected manager could take over the business, there exists nothing of a concrete nature.<sup>3</sup> At the end of the day, and in the face of a wholly noncompliant liquor establishment, nothing has changed to warrant the granting of a license renewal.

Therefore, the court sustains the denial of the request to transfer and finds such administrative decision is supported by reliable, probative and substantial evidence and is in accordance with law. Judgment is thus entered in favor of appellee and against appellant. Costs to be paid by appellant.

This is a final appealable order.

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<sup>3</sup> The intended plan to put into place a new and respected management authority for some reason never came to fruition. The city may be implicated in this shortcoming, but that circumstance cannot be used to strengthen appellant’s position. Risk is ever-present when dealing with public agencies. The law places the danger of untoward consequences on the citizen and not on the agency should a miscommunication or a mistake occur. In *Griffith v. J.C. Penney Co.* (1986), 24 Ohio St.3d 112, the Ohio Supreme Court noted that it has consistently refused to apply principles of estoppel against the state, its agencies, or its agents, under circumstances involving an exercise of governmental functions. See additionally *Mateer v. Dir., Ohio Dep’t of Job & Family Servs.*, 2008 Ohio 1426, 2008 Ohio App. LEXIS 1233 (Ohio Ct. App., Franklin County, Mar. 27, 2008), *Kigar v. Ohio Motor Vehicle Dealers Bd.*, 1996 Ohio App. LEXIS 110 (Ohio Ct. App., Franklin County, Jan. 18, 1996).

Franklin County Court of Common Pleas

**Date:** 03-08-2013  
**Case Title:** LKK 2542 CORPORATION -VS- OHIO STATE LIQUOR  
CONTROL COMMISSION  
**Case Number:** 12CV013951  
**Type:** DECISION

It Is So Ordered.

  
The image shows a handwritten signature in black ink that reads "Julie M. Lynch". The signature is written in a cursive style. To the right of the signature is a circular blue ink stamp. The stamp contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the middle, and "ALL THINGS ARE" at the bottom.

/s/ Judge Julie M. Lynch