

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

<b>HAMPTON'S ON KING, INC.,</b>	:	
	:	
<b>Appellant,</b>	:	<b>CASE NO. 13CVF-09-10147</b>
	:	
<b>v.</b>	:	<b>JUDGE TIMOTHY S. HORTON</b>
	:	
<b>DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,</b>	:	
	:	
<b>Appellee.</b>	:	

**DECISION AND ENTRY**

**AFFIRMING THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S  
DECISION OF AUGUST 14, 2013**

The above-styled case is before this Court on an appeal of the Decision issued by the Unemployment Compensation Review Commission (hereinafter referred to as the "Commission") that held that Appellant is a successor in interest. The Commission's Decision was dated August 14, 2013. In this appeal, the Appellant named the Ohio Department of Job and Family Services (the "Department" or "Appellee").

Appellant filed its Brief on November 20, 2013. Appellee filed its Brief on December 2, 2013. Appellant filed its Reply on December 11, 2013. After a review of the pleadings, briefings, and certified record, this Court **AFFIRMS** the Commission's decision dated August 14, 2013.

**I. STATEMENT OF THE CASE.**

This appeal arises as a result of the Commission's Decision holding that Appellant was the successor in interest to C.C.A.C., Inc. dba B. Hampton's Bar and Grill ("CCAC"). Appellant contests that holding because of the corresponding unfavorable change in its contribution rates. As a successor in interest, Appellant would inherit the unemployment contribution rates of CCAC.

CCAC operated a bar and restaurant in Columbus. Appellant agreed to purchase rights to CCAC's dba "B. Hampton's Bar and Grill", CCAC's goodwill associated with the dba, the liquor

permit held by CCAC, and other elements of the current décor in the bar and restaurant. After the purchase, Appellant moved the bar and restaurant to a new location.

On September 20, 2012 the Director of the Department issued a reconsideration decision. The Decision noted that the name, the good will, and the liquor license of CCAC had been purchased by Appellant. Specifically it opined: "Given that the liquor license was transferred, the evidence and testimony presented establishes that the assets integral to conducting the business of the two entities at issue were transferred under the purchase agreement." Reconsideration Decision, page 3. Hence, the Department concluded that Appellant was the successor in interest to CCAC.

Appellant filed a timely appeal of that Decision and jurisdiction was transferred to the Commission. At the Commission a telephone hearing was conducted on July 22, 2013. Both parties (i.e., Appellant and Appellee) appeared with counsel.

At the hearing Mary Catherine Lewis testified on behalf of the Commission. Ms. Lewis reviewed the matter and it was she who sent out the report determining the liability of the Appellant concerning the rates. Ms. Lewis identified the sale of the liquor license and the sale of all of the business to the Appellant from CCAC. The fact that CCAC ceased to operate after the sale was another important fact Ms. Lewis took under consideration.

Ms. Lewis also testified to having read an article from the 'Short North Gazette' indicating that the business was going to be a continuation of the old business, just at a new location. Counsel for Appellant did object to the hearsay nature of the article, but the Hearing Officer reminded Appellant's counsel that the formal rules of evidence did not apply to the proceeding.

Ms. Lewis testified that she asked the Appellant for information concerning the description and nature of the transfer, but Appellant did not respond. Appellant also apparently failed to respond to a 'Report to Determine Liability' she sent to Appellant. Ms. Lewis discovered that the employees of CCAC were in fact transferred to the Appellant.

Ms. Lewis testified that she based her determination that the Appellant was a successor in interest under the theory that there was a common ownership, management, and or control between CCAC and the Appellant. However, the Director also noted that the Appellant was a successor in interest because CCAC transferred substantially all of its business to the Appellant. Ms. Lewis found that Catherine Cupuano had an interest in both CCAC and in Appellant after the transfer. During her review, Ms. Lewis also found a document that indicated that Mr. Lawson—the President of the Appellant—had agreed to guarantee Mr. Charles Cupuano’s outstanding obligation to the “Bureau of Worker’s Compensation and the Ohio Department of Job and Family Services.” Hr. Tr. At 23:4-8. According to Ms. Lewis, this agreement demonstrates that the sales agreement was not a true arms-length transaction.

Ms. Lewis also testified that she took into consideration statements made in a number of publications concerning the continuation of the business after the sale by CCAC to Appellant. She reviewed Appellant’s “Facebook” page and noted statements attributed to the Appellant that Appellant was the continuation and/or successor to the prior business. These statements established that Appellant was holding itself out as a successor.

Ms. Lewis also reviewed the corporate filings of CCAC and Appellant. According to these filings, Ms. Catherine Cupuano signed as a director for CCAC and was also listed as an authorized representative of Appellant. Under cross examination Ms. Lewis provided the following information concerning association between Ms. Cupuano/CCAC and Appellant:

Her likeness is on the [Appellant’s] Facebook page. Her, she was interviewed as the owner [Appellant]. She identified herself in the article quoted as the owner [Appellant]. She owned the liquor license that was sold to the Hampton’s on King and she identified herself as the one who saw the need to change locations and specifically sought out the King location because of the large patio for smoking patrons.

Hr. Tr. at 48:10-15.

Mr. Lawson, president of Appellant, contested Ms. Lewis’ testimony concerning Ms. Cupuano’s involvement in the new company. Mr. Lawson asserted that Cupuano’s name on the

corporate filings was an error made by his accountant. In addition, Mr. Lawson testified that he had actually paid to have the article wherein Ms. Cupuano held herself out to be the owner of the new bar published in the 'Short North Gazette.' He stated that the statements within the article were all lies that he authorized, a marketing tactic to capture the good will of the old business.

In reference to interactions of Ms. Cupuano and the new business (i.e. Appellant), Mr. Lawson admitted that Ms. Cupuano did come into the bar and sometimes went back into the kitchen. The following is from the hearing transcript:

Q: To you [sic] knowledge, why would she go into employee areas like the kitchen?

A: Uh talking to some of the servers, people she knows. That's kind of typical of some of [sic] regulars.

Hr. Tr. at 64:18-21. Yet, although he made the above statement, Mr. Lawson was adamant that he did not employ anyone who had worked for Ms. Cupuano.

Ms. Cupuano also testified on behalf of the Appellant. She denied any relationship with the Appellant and denied the statements from the Short North Gazette article.

On or about August 14, 2013 the Hearing Officer issued his Decision affirming the Director's prior September 20, 2012 Reconsideration Decision. The Hearing Officer also found that the purchase of the good will, name and liquor license was sufficient to hold the Appellant to be the successor to the prior business.

On September 4, 2013 the Appellant filed a request for further review at the agency level. The Certified Record showed that on September 5, 2013 the Commission informed Appellant that it had exhausted the available administrative remedies. That letter was served on the Appellant in enough time to allow it to perfect its appeal to this Court. Appellant did appeal the Commission's Decision to this Court and the matter has now been briefed. This case is ready for review.

## **II. STANDARD OF REVIEW.**

R.C. 4141.26(D) sets forth the standard of review that the Court must apply when considering appeals of decisions rendered by the Commission relevant to the issues now before

this Court. Under R.C. 4141.26(D) a reviewing court “may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law.” If the order is not supported by such evidence, the court may reverse, vacate, or modify the administrative decision.

When an administrative appeal deals with the interpretation of a code and/or statute, “courts must give due deference to an administrative agency’s interpretation of its own administrative rules.” *City of Salem v. Koncelik*, 164 Ohio App.3d 597, 604, 2005-Ohio-5537,843 N.E.2d 799 (10th Dist.). The Ohio Supreme Court has held that “unless construction is *unreasonable or repugnant* to that statute or rule, this court should follow the construction given to it by the agency.” (Emphasis added.) *Id.*, citing *Leon v. Ohio Bd.of Psychology*, 63 Ohio St.3d 683, 590 N.E.2d 1223 (1992).

From within the above framework, this Court will render its decision.

### **III. LAW AND ANALYSIS.**

R.C. 4141.24 governs the determination of whether a business is a successor in interest to a business. R.C. 4141.24(F) states in relevant part as follows:

If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

If an employer or person acquires substantially all, or a clearly segregable and identifiable portion of an employer's trade or business, then upon the director's approval of a properly completed application for successorship, the employer or person acquiring the trade or business, or portion thereof, shall be the successor in interest. The director by rule may prescribe procedures for effecting transfers of experience as provided for in this section.

Ohio Administrative Code (“OAC”) Section 4141-17-04 further amplifies the Revised Code provision. The OAC provision states:

**4141-17-04. Automatic successorship**

(A) The transferee shall become a successor in interest by operation of law where:

(1) There is a transfer of all of the transferor's trade or business located in the state of Ohio; and

(2) At the time of the transfer the transferor is liable under Chapter 4141. of the Revised Code.

(B) The transferee, as successor in interest, shall assume all of the resources and liabilities of the transferor's account. The director shall revise the contribution rates of the transferee to reflect the result of the successorship.

(C) The director shall not approve a transfer of experience or contribution rates of the transferee or transferor for any contribution period with respect to which the director has determined contribution rates for the transferee or transferor pursuant to division (G) of section 4141.24 or section 4141.48 of the Revised Code.

The evidence presented established that Appellant purchased the name, good will, and the liquor permit of the prior business. Appellant also purchased of some of the memorabilia/décor from the prior business location to be displayed in the new location. Additionally, CCAC stopped doing business and no longer existed in the marketplace after the transfer of its assets to Appellant. The record also contained evidence of a document demonstrating that Appellant, as part of its acquisition of the business, had agreed to handle the governmental liabilities of CCAC. There was also evidence on the record indicating that the prior owner/manager cooperated with the Appellant and held the Appellant out to be the successor to the bar. Appellee concluded that all of the essential assets of the prior business was transferred to the Appellant and there was sufficient evidence to make the Appellant the successor in interest.

Appellant contends that Appellee has incorrectly argued the standard of proof/review for this appeal. According to Appellant, this Court only is to review a question of law. The statement within the statute that reads “*all* of its trade or business” is the focal point of the inquiry. In its Reply, Appellant engages in an extensive review of the legislative history of the

statute, the integrity of the Appellee's arguments, the interplay between old case law and the new statute, and the interaction between the statute and code. Appellant reads the statute to mean that "all" must include a transfer of everything, not just substantially all of a predecessor's assets. Appellant's reading, however, is contrary to the intent of the statute and would lead to an unreasonable result that the mere failure to transfer serving dishes could defeat a finding of predecessor in interest.

Ultimately, the Hearing Officer was free to find the Appellant's testimony incredible. There is a basis for that finding in two of Appellant's own witnesses who admitted to lying to the public (i.e., trust us now when we say that we are not working together when we published to the community that we were/are). The failure of Appellant to cooperate during the prehearing investigation process may have also weighted heavily on the Hearing Officer's judgment. The Court finds that the conclusion reached in the Decision of August 14, 2013 is in fact supported reliable, probative, and substantial evidence and is in accordance with law.

#### **IV. DECISION.**

Based upon the foregoing, the Court **AFFIRMS** the Decision dated August 14, 2013.

**THIS IS A FINAL APPEALABLE ORDER.**

**IT IS SO ORDERED.**

**JUDGE TIMOTHY S. HORTON**

Copy To (via Electronic Delivery):

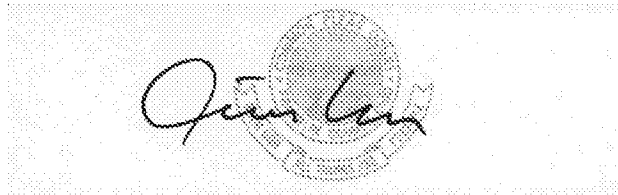
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Franklin County Court of Common Pleas

**Date:** 03-06-2014  
**Case Title:** HAMPTONS ON KING INC -VS- OHIO STATE DEPARTMENT  
JOB & FAMILY SERVI ET AL  
**Case Number:** 13CV010147  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, appearing to read "Timothy S. Horton", is written over a circular, textured seal. The seal is partially obscured by the signature and has a grainy, dotted appearance.

/s/ Judge Timothy S. Horton



Court Disposition

Case Number: 13CV010147

Case Style: HAMPTONS ON KING INC -VS- OHIO STATE  
DEPARTMENT JOB & FAMILY SERVI ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes