

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ABDEL, INC. dba MAVERICK CARRYOUT,	:	
	:	
Appellant,	:	Case No. 13CVF-009102
	:	
v.	:	JUDGE SCHNEIDER
	:	
STATE OF OHIO LIQUOR CONTROL COMMISSION,	:	
	:	
Appellee.	:	
	:	

DECISION AND JUDGMENT ENTRY
NOTICE OF FINAL APPEALABLE ORDER

SCHNEIDER, JUDGE

This is an administrative appeal under R.C. 119.12 from two July 25, 2013 Ohio Liquor Control Commission (“Commission”) Orders wherein the Commission found the Appellant Abdel, Inc. (“Abdel”) dba as Maverick Carryout in violation of selling alcohol to an underage informant on two separate dates. In Case 449-13, Abdel’s store clerk and agent, Jihad Ahmad Albarbara-Wi, sold beer to a 19 year old informant on November 12, 2012. Mr. Albarbara-Wi was criminally convicted under R.C. 4301.69(A) of this sale, a misdemeanor’s of the first degree. In Case 468-13, the same clerk and agent sold beer to a 19 year old informant again on January 17, 2013. Once again, Mr. Albarbara-Wi was criminally convicted under R.C. 4301.69(A), a misdemeanor of the first degree.

On July 11, 2013 a hearing was held before the Commission. At the hearing, in Case 449-13, Abdel entered a plea of Denial with Stipulation to the facts contained in the investigative report, including as to the underage sale. Additionally, at the hearing in

Case 468-13, Abdel entered a plea of Denial with Stipulation to the facts contained in the investigative report, including as to the underage sale. In short, Abdel stipulated to the exhibits at the hearing and the two separate violations in Case Nos. 449-13 and 468-13.

In addition to Cases 449-13 and 468-13, Abdel's permit was cited for and found in violation of selling to underage persons in March and July of 2012. Thus, at the July 2013 Commission hearing, the January 2013 underage sale was Abdel's fourth liquor citation for selling to underage persons in less than a year.

After stipulating to the facts in the investigative reports, Abdel presented testimony from its new manager as mitigating evidence. The new manager testified as to the new sale of alcohol policies that had been implemented by Abdel and to the fact that no additional violations had occurred between January 2013 and July of 2013.

Following the hearing, the Commission issued an order on July 25, 2013 revoking Abdel's permit effective as of the close of business on August 15, 2013. Appellant filed a Notice of Appeal with this Court on August 14, 2013, and a stay order was granted allowing the permit holder to continue operation of the business pending the outcome of the appeal.

Standard of Review

Under R.C. 119.12, a common pleas court, in reviewing an order of an administrative agency, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and the order is in accordance with law. *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110-11 (1980). Reliable evidence is that which can be trusted because it has a "reasonable probability"

of being true; probative evidence is that which helps to prove the issue(s) in question; and substantial evidence is evidence that has "importance and value" to the case. *HealthSouth Corp. v. Testa*, 132 Ohio St.3d 55, 2012-Ohio-1871, ¶ 12; *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992).

The court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.'" *Yohannes Parkwood, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 13AP-974, 2014-Ohio-2736, ¶ 9, quoting *Andrews v. Bd. of Liquor Control*, 164 Ohio St. 275, 280 (1955). The court conducts a de novo review of questions of law, exercising its independent judgment in determining whether the administrative order is "in accordance with law." *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471 (1993); *Yohannes Parkwood* at ¶ 9. The court must also give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad* at 111; *Yohannes Parkwood* at ¶ 9. If, however, any of the grounds for the Commission's decision are "supported by reliable, probative and substantial evidence, then the commission's decision must be upheld." *Our Place*, supra at 572.

Law and Analysis

The facts in this case are stipulated and straightforward. Abdel admits that it sold beer to underage persons in violation of R.C. 4301.69 twice during the twelve month period preceding its application to renew its liquor permit. Abdel's "stipulation to facts contained in the investigative unit's reports binds the trier of fact and the reviewing

court.” *Sammor v. Ohio Liquor Control Comm.*, 10th Dist. No. No. 09AP-20, 2009-Ohio-3439, ¶ 16. “Once entered into by the parties, filed with and accepted by the court, a stipulation is binding upon the parties and is a fact deemed adjudicated for purposes of determining the remaining issues in the case.” *Id.* quoting *DeStephen v. Allstate Ins. Co.*, 96 Ohio St.3d 1495, 2002-Ohio-4534. See also *Cunningham v. J.A. Myers Co.*, 176 Ohio St. 410, 414 (1964) (“[W]hen the facts are thus agreed upon, the result is in the nature of a special verdict or a special finding of fact, and the only function of the court is to apply the law to the facts so placed before it.”). Accordingly, the Court finds the facts contained in the investigative unit’s reports to be supported by reliable, probative and substantial evidence. The Commission had the authority to revoke Abdel’s liquor permit based on Cases 468-13 and 449-13.

In response, Abdel cites a 1999 Ohio Attorney General Opinion, 1999 Ohio Op. Att’y. Gen. No. 99-038 n.3 (July 7, 1999), citing *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19 (1918), for the proposition that the Liquor Control Commission must exercise “intelligent discretion” in imposing a penalty. However, the Tenth District Court of Appeals has consistently held that when, as here, the underlying order is proper, then the penalty determination is within the sole discretion of the Commission and this Court has no authority to modify a penalty lawfully imposed by the Commission. See, e.g., *Jones v. Liquor Control Comm.*, 10th Dist. No. 01AP-334, 2001-Ohio-8766; *American Legion Post 200 Club v. Liquor Comm.*, 10th Dist. No. 01AP-684, 2001-Ohio-8766; *Merrit v. Ohio Liquor Control Comm.*, 10th Dist. No. 02AP-709, 2003-Ohio-822 ¶ 34; *(Mahendrakumar C.) Shah, (M.D) v. State Med. Bd. of Ohio*, 10th Dist. No. 14AP-147,

2014-Ohio-4067. See also *Henry's Café, Inc. v. Bd of Liquor Control*, 170 Ohio St. 223 (1959).

The ability to sell alcohol in Ohio is a privilege. As part of this privilege, a liquor permit holder subjects him or herself to regulation. Not only is selling alcohol to underage persons a violation of Ohio's liquor regulations and liquor citation, but it is a crime. The facts are not in dispute. The Commission imposed a lawful penalty. See R.C. 4301.25(A) and 4301.252 (setting forth the Commission's authority on the sanctions it can impose and its authority to consider a permit holder's history in determining sanctions). This Court has no basis to overrule the Commission.

DECISION

Based on the foregoing, and upon a review of the record, this Court concludes that there is reliable, probative and substantial evidence supporting the July 25, 2013 Order of the Ohio Liquor Control Commission. Moreover, this Court concludes that the Order of the Commission is in accordance with law. Accordingly, the July 25, 2013 Order of the Commission is hereby **AFFIRMED**. The Court's August 27, 2013 Journal Entry Granting Appellant's Motion for Stay and the Court's previously imposed stay is **LIFTED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve

notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

The Court finds that there is no just reason for delay. This is a final appealable order. The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.

IT IS SO ORDERED.

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Franklin County Court of Common Pleas

Date: 10-09-2014
Case Title: ABDEL INC -VS- OHIO STATE LIQUOR CONTROL COMMISSION
Case Number: 13CV009102
Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 13CV009102

Case Style: ABDEL INC -VS- OHIO STATE LIQUOR CONTROL
COMMISSION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes