

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

Bell Stores, Inc., :
Appellant, : **CASE NO. 14CVF-260**
v. : **JUDGE SERROTT**
Liquor Control Commission, :
Appellee. :

**DECISION AND ENTRY AFFIRMING THE ORDER OF APPELLEE LIQUOR
CONTROL COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER**

SERROTT, JUDGE.

This matter is before the Court on a R.C. 119.12 appeal from Appellee Liquor Control Commission's (the Commission) Order rejecting Appellant's application for a liquor permit. The following decision is based on a review of the parties' Briefs, the Record of Proceeding and the applicable law.

I. STANDARD OF REVIEW

In a R.C. 119.12 appeal, the Court must affirm the order of the Commission if it is supported by substantial, reliable, and probative evidence. Our Place, Inc. v. Ohio Liquor Control Comm'n, 63 Ohio St.3d 570 (1992). "The Ohio Supreme Court has defined reliable, probative, and substantial evidence 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.” Keydon Mgmt. Co. v. Liquor Control Comm’n, 10th Dist. No. 08AP-965, 2009-Ohio-1809, at ¶5 (quoting Our Place, supra, at 571).

II. RELEVANT FACTS, LAW AND, ANALYSIS

Appellant’s business is located in an area that is permitted three C-1 permits per Ohio’s quota system. However, Appellant is also located in a “dry” area for beer carry-out sales. Therefore, Appellant’s application has been “sitting in a dry-pending status.” Another business owner sits “second in line” for a similar permit. Appellant put a local option question on the ballot seeking voter approval for carryout beer sales at its location. The local option failed, and the Liquor Control Division rejected his application for a liquor permit. However, Appellant’s hearing on his appeal to Appellee was delayed as Appellant had placed the issue on the ballot once again. The hearing was specifically continued to a date post-election to see if Appellant would be successful. The local option again failed, and Appellant requested that he be allowed one more opportunity to present the issue to voters. By a 2 to 1 decision, Appellee affirmed the Division’s rejection of the application.

Pursuant to R.C. 4301.365(C), Appellee cannot grant the permit being requested as Appellant’s location is “dry” for liquor sales. Appellant does not refute this, but rather, sets forth equitable arguments in urging the Court to reverse Appellee’s decision. The Court is sympathetic to Appellant’s plight, but, as noted by Appellee, Appellant was afforded two attempts to convince the voters to pass the liquor option before Appellee officially rejected its permit application. The Court is charged with assessing whether Appellee acted in accordance with the law and is compelled to answer that inquiry in the affirmative.

The Court finds that Appellee’s Order is supported by substantial, reliable, and probative evidence. Accordingly, the Order is AFFIRMED.

Pursuant to Civ. 58(B), the Clerk of Courts is hereby directed to serve upon all parties notice and the date of this judgment.

Copies to (via e-filing notification):

Nathan Gordon
Counsel for Appellant

Paul Kulwinski
Counsel for Appellee

Franklin County Court of Common Pleas

Date: 11-05-2015
Case Title: BELL STORES INC -VS- OHIO STATE LIQUOR CONTROL COMMISSION
Case Number: 14CV000260
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Mark Serrott". The signature is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Mark Serrott

Court Disposition

Case Number: 14CV000260

Case Style: BELL STORES INC -VS- OHIO STATE LIQUOR
CONTROL COMMISSION

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes