

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

Yeckley Enterprises, Inc., :
Appellant, : CASE NO. 12CVF09-12336
-vs- : **JUDGE DAVID W. FAIS**
Ohio Liquor Control Commission, :
Appellee. :

**DECISION AND ENTRY AFFIRMING THE ORDER OF THE LIQUOR
CONTROL COMMISSION**

FAIS, JUDGE

The above-styled case is before the Court on an appeal under R.C. 119.12 from an Order of the Ohio Liquor Control Commission.

Appellant Yeckley Enterprises, Inc. (hereinafter "Appellant") operates the bar known as Bench Lounge located at 26594 Lakeshore Boulevard in Euclid, Ohio. Appellant was cited for underage drinking on February 8, 2012, in violation of Section 4301.69(A) of the Ohio Revised Code (furnishing/serving underage persons), as well as R.C. 4301.66 (hindering/obstructing investigation and inspection). After Appellant requesting a hearing, which took place on August 16, 2012, an Order was issued by the Commission on September 7, 2012. Said Order required the permit holder to either pay a forfeiture in the amount of \$2,000.00, or serve a 12 day suspension, effective at noon, October 5, 2012 until noon, October 17, 2012. Appellant responded by initiating the instant appeal on September 28, 2012.

Pursuant to R.C. 119.12, a reviewing trial court must affirm the order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. *Univ. of*

Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108, 111; *Henry's Cafe, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233.

That quality of proof was articulated by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570 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. *Id.* at 571.

Appellant has failed to file a brief in this appeal and thus has not identified any alleged errors in the Commission's Order. A review of the Case Scheduling Order reveals that the deadline for Appellant to submit a brief was December 7, 2012 and no motions for extension or amendment of the briefing schedule have been filed with the Court. Furthermore, the Court observes that Appellant's Notice of Appeal is limited to the general contention that the Commission's Order was not supported by reliable, probative and substantial evidence and is not in accordance with law.

The Court has reviewed the record. The basis of the Order was the Commission's finding that Appellant was in violation of Ohio Revised Code Section 4301.69(A) pertaining to offenses involving underage consumption of alcohol. *Order of Division of Liquor Control*, dated September 7, 2012. On February 18, 2012, Euclid Police Department Officers responded to the permit premises as the result of a complaint of underage drinking. Upon entering the establishment, officers observed two youthful appearing males. After questioning Phillip Maglich, he admitted to using a fake driver's license and only being 17 years of age. Next, the attending bar manager Toni Maglich indicated that she did not know Mr. Maglich, but believed

he was 21 years of age. Later, it was admitted that Ms. Maglich did in fact know her son Phillip, and equally was aware of his underage status. Similar circumstances surrounded Richard Tyler, who was a friend of Mr. Maglich and age 18 at the time. Both patrons were observed with bottles of Budweiser Beer, which Ms. Maglich admitted serving to them. Subsequently, the permit owner was advised of the resulting violations and opportunity for hearing.

During the August 16, 2012 administrative hearing, the Department of Liquor Control called Phillip Maglich and Richard Tyler as witnesses. At the hearing, the parties reached a preliminary stipulation as to the Investigative Report, and Appellant entered a pleas of denial with stipulation as to violation 1. *Hearing Exhibit 1*. The Commission then dismissed violations 2 and 3. Both Mr. Maglich and Mr. Tyler attested that they were underage on the day in question, and purchased alcohol at the Bench Lounge first floor basement. (Tr. 6-7). Lastly, Appellant's owner Dennis Yeckley testified that former bar manager Toni Maglich no longer works at the establishment. (Tr. 9). It was added that Yeckley did not have advanced knowledge of such conduct and that he finds it unacceptable. (Tr. 10-11). In light of this evidence, the Commission ordered that the single alleged violation was demonstrated, and Appellant was required to either pay a forfeiture in the amount of \$2,000.00, or serve a 12 day suspension.

Based on the uncontroverted evidence submitted at the hearing, this Court finds that the Order of the Commission is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, the Court hereby **AFFIRMS** the Order of the Commission.

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.

COPIES TO:

Yeckley Enterprises, Inc., Appellant
Paul Kulwinski, Esq., Counsel for Appellee

Franklin County Court of Common Pleas

Date: 05-06-2013
Case Title: YECKLEY ENTERPRISES INC -VS- OHIO STATE LIQUOR
CONTROL COMMISSION
Case Number: 12CV012336
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. W. Fais", is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" around the perimeter, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge David W. Fais

Court Disposition

Case Number: 12CV012336

Case Style: YECKLEY ENTERPRISES INC -VS- OHIO STATE
LIQUOR CONTROL COMMISSION

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes