

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

Prudential Security, Inc.,	:	Case No. 14 CV 7245
	:	
Appellant,	:	
	:	JUDGE KIMBERLY COCROFT
v.	:	
	:	
Ohio Department of Public Safety,	:	
	:	
Appellee.	:	
	:	

DECISION AND ENTRY

COCROFT, J.,

This case involves the R. C. 119.12 administrative appeal filed by appellant, Prudential Security Inc., from a July 3, 2014 Final Adjudication Order issued by appellee, Ohio Department of Public Safety. The July 3, 2014 Final Adjudication Order did not address the merits of the underlying case. The only issue addressed in that Order was appellant’s failure to request a hearing in a timely manner. R.C. 119.07. Thus, appellee determined that appellant was not entitled to an adjudication hearing because it filed its notice of appeal untimely. July 3, 2014 Final Adjudication Order.

The record demonstrates that on May 20, 2014, appellee sent appellant a written Notice of Opportunity setting forth the following Recitation of Charges:

1. Respondent allowed six (6) employees to work unregistered. This is a violation of R.C. 4749.06 and 4749.13, and O.A.C. 4501:5-1-09. Respondent is charged with one hundred and fifty-two days of violation.
2. Respondent submitted late registration applications for eight (8) employees. This violation of R.C. 4749.06 and 4749.13 and O.A.C. 4501:5-1-09. Respondent is charged with two hundred and ninety-one (291) days of violation.

3. Respondent allowed four (4) employees to carry a firearm in the course of their duties without firearm bearer authorization from the Department. This is a violation for R.C. 4749.06, 4749.10, and 4749.13. Respondent is charged with eighty-eight (88) days of violation.

4. In total Respondent is charged with five hundred and thirty-one (531) days of violation.

May 20, 2014 Letter.

The record demonstrates that Attorney Richard F. Chambers II, sent by facsimile, a request for an adjudication hearing on appellant's behalf. The "Facsimile Cover Sheet" demonstrates the date as "June 20, 2014." The June 20, 2014 facsimile transmission from Attorney Chambers to John Born, Director, Ohio Department of Public Safety, provides the following:

Dear Director Born:

Please allow this correspondence to serve as my client's request for an Adjudication Hearing pursuant to your office's May 20, 2014 correspondence to Prudential Security. I have enclosed a copy of this correspondence for your convenience in scheduling this hearing.

Please also allow this to serve as my request for a copy of all investigative materials relevant to this claim.

Thank you for your attention to this matter, and I look forward to working with you to resolve this matter.

June 20, 2014 Letter by facsimile transmission.

Law and Analysis

R.C. 119.07 provides, in relevant part:

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which [section 119.06 of the Revised Code](#) requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing **if the party requests it within thirty days of the time of mailing the notice...**(Emphasis added).

Upon review, the record substantiates that appellant failed to exhaust its administrative remedies when it did not comply with R.C. 119.07. Moreover, R.C. 119.12 provides as follows:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and **stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.** The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice...

A review of the June 20, 2014 facsimile transmission from Attorney Chambers to John Born does not include the mandatory language as set forth in R.C. 119.12.

Likewise, even if this Court had jurisdiction to address this case on the merits, this Court has no authority to grant appellant the relief it seeks in its brief. Courts of law are without authority to review a penalty imposed by an administrative agency if the agency had the authority to impose the penalty. *WFO Corp. v. Ohio Liquor Control Comm'n*, 1996 Ohio App. LEXIS 4788. In this case, this Court need not address the issue as to whether there is reliable, probative and substantial evidence supporting the penalty imposed because it has no jurisdiction.

Upon review, this Court **AFFIRMS** the July 3, 2014 Final Adjudication Order and **GRANTS** appellee's motion to dismiss filed August 19, 2014. .

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. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

Date: 12-03-2014

Case Title: PRUDENTIAL SECURITIES INC -VS- OHIO STATE
DEPARTMENT PUBLICICE SAFETY JOH

Case Number: 14CV007245

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 14CV007245

Case Style: PRUDENTIAL SECURITIES INC -VS- OHIO STATE
DEPARTMENT PUBLICICE SAFETY JOH

Case Terminated: 10 - Magistrate

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0072452014-08-1999980000
Document Title: 08-19-2014-MOTION TO DISMISS
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 14CV0072452014-07-2799980000
Document Title: 07-27-2014-MOTION
Disposition: MOTION IS MOOT