

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

Legendary GCE Group, LLC, :  
Appellant, : CASE NO. 14CVF03-3444  
-vs- : **JUDGE DAVID W. FAIS**  
Ohio State Liquor Control Commission, :  
Appellee. :

**DECISION AND ENTRY AFFIRMING APPEAL**

FAIS, JUDGE

**I. INTRODUCTION**

This action was filed March 28, 2014 by Appellant Legendary GCE Group, LLC (hereinafter “Appellant”) under the provisions of R.C. 119.12. Appellant has sought review of an order issued by the Liquor Control Commission (hereinafter “Commission” or “Appellee”) on January 24, 2014.

That Order affirmed a non-renewal of Appellant’s liquor permit, No. 5096604. The matter is ripe for review and the record of administrative proceedings has been submitted.

**II. STANDARD OF REVIEW**

Pursuant to R.C. 119.12, a reviewing trial court must affirm the order of the Commission 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; *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621; *Insight Enterprises, Inc. v. Liquor Control Comm.* (1993), 87 Ohio App.3d 692.

This quality of the required evidence was defined 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.

The Common Pleas Court’s review of the administrative record is neither a trial de novo, nor an appeal on questions of law only, but consists of “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.” *Marciano v. Liquor Control Comm.* (Apr. 22, 2003), Franklin App. No. 02AP-943, unreported, citing *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207. In undertaking such a review, the court must give due deference to the administrative agency’s resolution of evidentiary conflicts, but the findings of the agency are not conclusive. *Id.* However, the court is obligated to accord due deference to the agency’s interpretation of the technical and ethical requirements of its profession. *Pons v. Ohio State Med. Bd, supra* at 621; *Rossiter v. State Med. Bd* (2004), 155 Ohio App. 3d 689.

Once a violation is established, the penalty, if legal, is entirely within the province of the agency. Even if the reviewing trial court were inclined to be more lenient, it is powerless to do so given the long-settled rule of *Henry’s Cafe v. Board of Liquor Control* (1959), 170 Ohio St. 233, found at paragraph three of the syllabus:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

See also *Hale v. Ohio State Veterinary Medical Board* (1988), 47 Ohio App. 3d 167; *Evans v. Board of Liquor Control* (1960), 112 Ohio App. 264; *Ganson v. Board of Liquor Control* (1953), 70 Ohio L. Abs. 242.

### III. ANALYSIS AND FINDINGS OF THE COURT

The non-renewal of the liquor permit in this instance was based upon uncontested evidence presented at the hearing that Appellant owed over \$26,192.94 in unpaid taxes and assessments to the State.

The record reflects that Appellant did not timely offer a brief, which had a deadline of June 6, 2014.<sup>1</sup> Subsequently, Appellant filed a Motion for Leave to File Corrected Brief and Request for Admission of Additional Evidence, dated July 10, 2014. Despite this request, no proposed brief was included or has ever been filed by Appellant. Additionally, Appellant's Motion is opposed and the Commission has moved for judgment on the record.

Given the circumstances and the aforementioned history, the Court declines to exercise its discretion to allow for an out-of-rule brief sought by Appellant. Moreover, the Court finds that although Appellant attempts to characterize its additional exhibits as "newly discovered evidence", it has not been demonstrated that such evidence satisfies the requirements of R.C. 119.12. The proffered documents attached to Appellant's motion cannot substitute for existing evidence that must be limited to the administrative record, unless invoking a very limited exception for newly discovered evidence. *Leak v. State Med. Bd.*, 2011-Ohio-2483, at ¶23 (Ohio Ct. App., Franklin County May 24, 2011).

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<sup>1</sup> It appears that an Appellees' brief concerning an unrelated case and permit, 14CV2464, was inadvertently filed in this case on May 29, 2014.

A review of the transcript reveals that the two attesting witnesses at the January 10, 2014 hearing confirmed that the basis for non-renewal was Appellant's unpaid tax obligations. First, Christine Tufford testified as the designated representative from the Ohio Department of Taxation. According to Ms. Tufford, Appellant showed an outstanding sales tax assessment in the amount of \$5,501.11. (Tr. 4). As a result, the Department of Taxation recommended non-renewal. Next, Yvette Cruse attested that the Collections Office of the Ohio Attorney General confirmed non-renewal for sales tax in the amount of \$26,192.94. (Tr. 5).

In response, counsel for Appellant declined to cross-examine these two witnesses, introduce any affirmative evidence for Appellant, or call witnesses at the January 10, 2014 hearing. Rather, it was stated that "we're aware of the amounts and we're working with all the agencies." (Tr. 5). Nevertheless, Appellant failed to pay its taxes by either the hearing date, or the date the Commission's order was mailed. See R.C. 4303.271(D)(2).

This Court lacks the ability to offer equitable remedies in statutory appeals, which constitutes the only basis for appeal that can be inferred, given counsel for Appellant's admission at the administrative hearing. Collateral agreements between the permit holder and the Department are within the discretion of the agency, not the province of this Court. As a result, the Commission was within its power to order non-renewal, pursuant to R.C. 4303.271(D), upon finding that Appellant was delinquent in filing sales or withholding tax returns and/or has outstanding liability for sales or withholding tax, penalties, or interest imposed by law.

Appellant has offered no legal defense whatsoever to the action of the Commission and the Commission's Order is independently supported by reliable, probative, and substantial evidence, and is in accordance with law. Accordingly, the Order is hereby **AFFIRMED**.

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.

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Franklin County Court of Common Pleas

**Date:** 01-15-2015  
**Case Title:** LEGNDARY GCE GROUP LLC -VS- OHIO STATE LIQUOR  
CONTROL COMMISSION  
**Case Number:** 14CV003444  
**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 SHALL BE DONE WITH EQUITY" at the bottom.

/s/ Judge David W. Fais

Court Disposition

Case Number: 14CV003444

Case Style: LEGNDARY GCE GROUP LLC -VS- OHIO STATE  
LIQUOR CONTROL COMMISSION

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes