

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

FOR COURT USE ONLY
S.C. Line #: 10



1st CHOICE SECURITY, INC., : Case No. A1404020

Appellant, : Judge Metz

v. :

ENTRY ADOPTING
MAGISTRATE'S DECISION

OHIO DEPARTMENT
OF PUBLIC SAFETY, et al., :

Appellees. :

ENTERED
MAR 25 2015

Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's Decision entered on February 20, 2015. The objection period has expired with no objections having been filed and no extensions having been granted. The Magistrate's Decision is AFFIRMED.

The number of days in violation must be reduced by six thousand seven hundred and twenty-three (6,723) days. The Department's July 3, 2014 Order is affirmed in all other respects.

MAGISTRATE
MAR 17 2015
HAS SEEN

COURT OF COMMON PLEAS
ENTERED
JEROME J. METZ, JR., JUDGE
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 60.02 AS TO THE ENTRY OF THIS ORDER.
JEROME J. METZ, JR. JUDGE
JUDGE
COURT OF COMMON PLEAS

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HAMILTON COUNTY, OHIO

1ST CHOICE SECURITY INC., : Case No. A1404020

Appellant, : Judge Metz

v.

OHIO DEPARTMENT
OF PUBLIC SAFETY,

MAGISTRATE'S DECISION

Appellee.



D109643306

RENDERED THIS 2ND DAY OF FEBRUARY, 2015.

This case is an administrative appeal from a July 3, 2014 Director's Order ("Order") of the Ohio State Department of Public Safety ("Department") which fined Appellant for a total of six thousand and nine hundred and eighty (6,980) days of violation. The appeal was filed pursuant to R.C. § 119.12. Oral arguments were held on February 19, 2015 before the Common Pleas Magistrate.

STANDARD OF REVIEW

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.¹

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 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

¹ / Ohio Rev. Code § 119.12 (West 2013).

the weight thereof. In its review, the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but the findings of the agency are not conclusive.²

The Ohio Supreme Court has given Ohio jurists guidance regarding definitions of the key evidentiary terms contained in R.C. § 119.12.³ Reliable evidence is dependable, confidently trusted, and there is reasonable probability that the evidence is true.⁴ Probative evidence is relevant and tends to prove the issue in question.⁵ Substantial evidence is evidence with some weight; it must have importance and value.⁶

DISCUSSION

The Order found Appellant had failed to obtain employee registration cards, submitted late registration applications for employees, failed to submit termination reports, and provided security in a vehicle with decals that could be easily mistaken for law enforcement. The Department found the total amount of days in violation was six thousand and nine hundred and eighty (6,980). Appellant argues that six thousand seven hundred and twenty-three (6,723) days of those violations were the subject of a previous settlement agreement and as part of that agreement, the Department agreed to waive the failure to file termination reports for these particular employees.

The court agrees with Appellant. Although Appellant failed to appear at the hearing before the Department, the previous settlement agreement was made part of the record below.⁷ The agreement stated in pertinent part, “In consideration of the mutual promises set forth herein, and for purposes of settlement, Department agrees to waive the

² / *Althof v. Ohio State Bd. of Psychology* (Mar. 8, 2007), 2007-Ohio-1010 at ¶¶ 7, 8 (App. 10 Dist.) (citations and quotation punctuation omitted).

³ / *Our Place, Inc. v. Ohio Liquor Control Comm'n.* (1992), 63 Ohio St.3d 570, 571.

⁴ / *Id.*

⁵ / *Id.*

⁶ / *Id.*

⁷ / Record, Ex. 8.

failure to file termination reports for seventy-three employees for a total of twenty-four thousand three hundred and twenty-six days of violation in violation of O.A.C. § 4501:5-1-09.”⁸ Therefore, the court finds that the Department did explicitly waive the violations that were covered by the settlement agreement and Appellant cannot be furthered disciplined for these violations. Fining Appellant for these violations was against the reliable, probative, and substantial evidence.

DECISION

The number of days in violation must be reduced by six thousand seven hundred and twenty-three (6,723) days. The Department’s July 3, 2014 Order is affirmed in all other respects.



**MICHAEL L. BACHMAN
MAGISTRATE
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate’s Decision must be filed within fourteen days of the filing date of the Magistrate’s Decision. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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⁸ / *Id.* at ¶10.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION
HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR
ATTORNEYS AS PROVIDED ABOVE.

Date: 2-23 Deputy Clerk: 