

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

|                                   |   |                             |
|-----------------------------------|---|-----------------------------|
| City of Elyria,                   | : |                             |
| Appellant-Appellant,              | : |                             |
| v.                                | : | No. 12AP-244                |
| Liquor Control Commission et al., | : | (C.P.C. No. 11CVF-11-13656) |
| Appellees-Appellees.              | : | (ACCELERATED CALENDAR)      |

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D E C I S I O N

Rendered on September 11, 2012

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*Terry S. Shilling* and *Erik A. Breunig*, for appellant city of Elyria.

*Mike DeWine*, Attorney General, and *Scott A. Longo*, for appellee Ohio Liquor Control Commission.

*Lumpe & Raber, J. Richard Lumpe* and *David A. Raber*, for appellee McGhee's, Inc.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} The city of Elyria is appealing from the trial court's decision supporting the renewal of liquor permits for the Red Fox Lounge in Elyria. A single assignment of error is presented for review:

THE TRIAL COURT ABUSED ITS DISCRETION IN AFFIRMING THE ORDER OF THE LIQUOR CONTROL COMMISSION, IN THAT THE ORDER IS NOT SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE AND IS NOT IN ACCORDANCE WITH LAW.

{¶ 2} Elyria sought to prevent renewal of the permits based upon R.C. 4303.292(A)(1) and (2). Those paragraphs read:

(A) The division of liquor control may refuse to issue, transfer the ownership of, or renew, and shall refuse to transfer the location of, any retail permit issued under this chapter if it finds either of the following:

(1) That the applicant, or any partner, member, officer, director, or manager of the applicant, or, if the applicant is a corporation or limited liability company, any shareholder owning five per cent or more of the applicant's capital stock in the corporation or any member owning five per cent or more of either the voting interests or membership interests in the limited liability company:

(a) Has been convicted at any time of a crime that relates to fitness to operate a liquor establishment;

(b) Has operated liquor permit businesses in a manner that demonstrates a disregard for the laws, regulations, or local ordinances of this state or any other state;

(c) Has misrepresented a material fact in applying to the division for a permit; or

(d) Is in the habit of using alcoholic beverages or dangerous drugs to excess, or is addicted to the use of narcotics.

(2) That the place for which the permit is sought:

(a) Does not conform to the building, safety, or health requirements of the governing body of the county or municipal corporation in which the place is located. As used in division (A)(2)(a) of this section, "building, safety, or health requirements" does not include local zoning ordinances. The validity of local zoning regulations shall not be affected by this section.

(b) Is so constructed or arranged that law enforcement officers and duly authorized agents of the division are prevented from reasonable access to rooms within which beer or intoxicating liquor is to be sold or consumed;

(c) Is so located with respect to the neighborhood that substantial interference with public decency, sobriety, peace,

or good order would result from the issuance, renewal, transfer of location, or transfer of ownership of the permit and operation under it by the applicant; or

(d) Has been declared a nuisance pursuant to Chapter 3767. of the Revised Code since the time of the most recent issuance, renewal, or transfer of ownership or location of the liquor permit.

{¶ 3} The Ohio Liquor Control Commission ("OLCC") conducted an evidentiary hearing on the renewals. The OLCC heard testimony from a Detective James Welsh from the Elyria Police Department who indicated that some 31 police runs to the Red Fox Lounge area had occurred in ten months of 2010. The detective acknowledged that two other bars were next to the Red Fox Lounge.

{¶ 4} The OLCC also heard testimony from Janelle McGhee, the president of the corporation which runs the bar and holds the liquor permits. McGhee blamed the problems on a former manager of the bar. McGhee testified that she had fired the manager and had taken over the responsibility for day-to-day management of the Red Fox Lounge. As a result of McGhee's testimony, the OLCC allowed renewal of the permits.

{¶ 5} As acknowledged by counsel for Elyria, once an administrative appeal has resulted in an affirmance of OLCC's order, the Court of Appeals is to review the order utilizing an abuse of discretion standard.

{¶ 6} "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 7} An abuse of discretion connotes more than an error of judgment; it implies a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. *Pembaur v. Leis*, 1 Ohio St.3d 89 (1982); *Wise v. Ohio Motor Vehicle Dealers Bd.*, 106 Ohio App.3d 562, 565 (9th Dist.1995); and *In re Ghali*, 83 Ohio App.3d 460, 466 (10th Dist.1992).

{¶ 8} The trial court considered our case of *2216 SA, Inc. v. Ohio Liquor Control Comm.*, 10th Dist. No. 07AP-600, 2007-Ohio-7014 in evaluating the OLCC's actions. In the *2166 SA* case, we told trial courts they could consider efforts to alleviate problems at a

liquor control premises, such as the change in day-to-day management which occurred here in deciding if the permits should be renewed.

{¶ 9} The trial court here affirmed the OLCC's renewal basically because the evidence before the OLCC did not demonstrate that the problems had not been alleviated by the change of bar managers. Thus, the trial court found that the renewals were supported by reliable, substantial, and probative evidence and were in accord with law.

{¶ 10} We cannot find that the trial court abused its discretion in its ruling. We, therefore, overrule the sole assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

SADLER and CONNOR, JJ., concur.

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