

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Kamal Sammor,	:	
Appellant-Appellant,	:	No. 09AP-20
v.	:	(C.P.C. No. 08CVF05-7012)
Ohio Liquor Control Commission,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on July 14, 2009

James J. Andrioff, for appellant.

Richard Cordray, Attorney General, and *David H. Dokko*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} Appellant, Kamal Sammor, appeals from a judgment of the Franklin County Court of Common Pleas, which affirmed the Ohio Liquor Control Commission's ("commission") revocation of his liquor license. Sammor claims that the trial court's judgment was not supported by reliable, probative, and substantial evidence. However, because he stipulated to an array of facts surrounding his dealing in stolen goods on several occasions upon the permit premises, and because he failed to object to this evidence below, we affirm the judgment of the trial court.

{¶2} Sammor is the liquor permit holder and sole owner of the permit premises, d/b/a Sam Sleedz, a family-operated drive-thru store in Akron, Ohio. In 2006, Sammor's business became the target of a special task force aimed at cracking down on organized crime. During the task force's investigation of the drive-thru, Sammor and his brothers purchased thousands of dollars worth of merchandise—including baby formula, alcoholic beverages, and tobacco—from an undercover detective, at a fraction of its retail price. On each such occasion, the undercover detective, whom Sammor knew only as "Bill," specifically identified the goods as stolen, and each of the transactions took place inside the permit premises.

{¶3} On October 15, 2007, Sammor pleaded guilty to, and was convicted of 30 felonies including engaging in a pattern of corrupt activity, money laundering, and receiving stolen property. The court sentenced him to a two-year prison term. The court also convicted Sammor's brothers, Samer and Sami, of multiple felonies for their involvement.

{¶4} Based on these convictions, the Investigative Unit of the Ohio Department of Public Safety ("investigative unit") cited Sammor for improper conduct violations of theft and receiving stolen property, under Ohio Adm.Code 4301:1-1-52(B)(7), and for purchasing alcoholic beverages from an unauthorized source, a violation of R.C. 4303.35. One of the commission's notices of hearing contains representative violations of Ohio Adm.Code 4301:1-1-52(B)(7):

Violation #1 On or about March 1, 2007, you and/or your agent and/or employee(s) KAMAL SAMMOR, and/or your unidentified agent and/or employee did knowingly and/or willfully allow in and upon or about the permit premises improper conduct in that you and/or your agent and/or employee(s) KAMAL SAMMOR, and/or your unidentified

agent and/or employee did allow Improper Conduct, to wit: ILLEGAL POSSESSION OF EBT – in violation of 4301:1-1-52 (B)(6), a regulation of the Ohio Liquor Control Commission.

Violation #2 On or about March 1, 2007, you and/or your agent and/or employee(s) KAMAL SAMMOR, and/or your unidentified agent and/or employee did knowingly and/or willfully allow in and upon or about the permit premises improper conduct in that you and/or your agent and/or employee(s) KAMAL SAMMOR, and/or your unidentified agent and/or employee did allow Improper Conduct, to wit: RECEIVING STOLEN PROPERTY – in violation of 4301:1-1-52 (B)(7), a regulation of the Ohio Liquor Control Commission.

(Commission record, at 36.)

{¶5} Another of the commission's notices of hearing contains representative violation language of R.C. 4303.35:

Violation #3 On or about January 11, 2006, you and/or your agent(s) and or employee(s) SAMER SAMMOR, and/or your unidentified agent(s) or employee(s) did purchase beer, wine, and/or mixed beverages from someone other than a Class A and/or Class B permit holder, for resale in and upon the permit premises, in violation of Section 4303.35 of the Ohio Revised Code.

(Commission record, at 24.)

{¶6} The commission held an administrative hearing on April 8, 2008, at which Sammor stipulated to the facts contained in the investigative unit's reports. The facts in these reports describe 14 improper conduct violations, as well as two violations of R.C. 4303.35, purchasing alcoholic beverages from an unauthorized source. He entered a plea of denial with stipulation to these 16 violations. In light of those stipulated facts, the commission found him in violation of all 16, and revoked his liquor permit, effective May 16, 2008. (Commission record, at 4–10.)

{¶7} Sammor timely appealed the commission's decision to the trial court, under R.C. 119.12, claiming that the commission's order was not supported by reliable, probative, and substantial evidence, and that the order was not in accordance with law. The trial court granted Sammor's motion to stay execution of the commission's order while the court considered his appeal. (Commission record, at 12–13.)

{¶8} After reviewing the record, the trial court affirmed the commission's order of revocation, finding that it was supported by reliable, probative, and substantial evidence, that the penalty imposed was within the commission's discretion, and that the court was without jurisdiction to alter the penalty.

{¶9} Sammor timely appealed to this court, and again moved for a stay of execution of the commission's order. We granted his motion pending the outcome of the case. (Commission record, at 42–43.)

{¶10} Sammor assigns a single error for our consideration:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT RULED THAT THE ORDER OF THE OHIO LIQUOR CONTROL COMMISSION WAS SUPPORTED BY RELIABLE, PROBATIVE[,] AND SUBSTANTIAL EVIDENCE.

{¶11} The trial court's standard of review for appeals from administrative agencies is provided in R.C. 119.12. After considering the entire record, the court must determine whether the agency's order is "supported by reliable, probative, and substantial evidence and is in accordance with law." *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571. Reliable evidence is that which can be trusted because it has a "reasonable probability" of being true; probative evidence is that which helps to prove the issue(s) in question; and substantial evidence is evidence that has "importance and value" to the case. *Id.*

{¶12} The trial 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 the weight thereof.' " *Lies v. Ohio Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207 (quoting *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280). Although the trial court must give deference to the administrative agency's resolution of evidentiary conflicts, the agency's findings are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

{¶13} Our review is more limited than that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. We review the record to determine whether the trial court abused its discretion—i.e., "not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency." *Id.* This court may not substitute our own judgment for that of the administrative agency or the trial court, and absent an abuse of discretion, we must affirm the trial court's judgment. *Id.*

{¶14} Appellate courts do, however, have plenary review of questions of law in administrative appeals. *Big Bob's, Inc. v. Ohio Liquor Control Comm.*, 151 Ohio App.3d 498 2003-Ohio-418 (citing *Steinfels v. Ohio Dept. of Commerce, Div. of Sec.* (1998), 129 Ohio App.3d 800, 803, appeal not allowed (1999), 84 Ohio St.3d 1488).

{¶15} Sammor argues that the stipulated facts failed to provide reliable, probative, and substantial evidence of improper conduct violations, under the Ohio Administrative Code. We disagree. Ohio Adm.Code 4301:1-1-52 states, in pertinent part:

(B) Prohibited activities; no permit holder, his agent, or employee shall knowingly or willfully allow in and upon his licensed permit premises any persons to:

* * *

(7) Obtain or exert control over property or services of another, with purpose to deprive the owner thereof, without the consent of the owner or person authorized to consent, or by deception, fraud[,] or threat. Nor shall any permit holder, his agent, or employee, use the licensed permit premises to receive, retain, or dispose [of] property of another, knowing or having reasonable cause to believe such property has been obtained through the commission of a theft offense.

{¶16} Sammor's stipulation to facts contained in the investigative unit's reports binds the trier of fact and the reviewing court. "Once entered into by the parties, filed with and accepted by the court, a stipulation is binding upon the parties and is a fact deemed adjudicated for purposes of determining the remaining issues in the case." *DeStephen v. Allstate Ins. Co.*, 96 Ohio St.3d 1495, 2002-Ohio-4534 (citing *Whitehall ex rel. Fennessy v. Bambi Motel* (1998), 131 Ohio App.3d 734, 742; see also *Cunningham v. J.A. Myers Co.* (1964), 176 Ohio St. 410, 414 (" '[W]hen the facts are thus agreed upon, the result is in the nature of a special verdict or a special finding of fact, and the only function of the court is to apply the law to the facts so placed before it.' "). Accordingly, we find the facts contained in the investigative unit's reports to be reliable.

{¶17} The commission found that all of the violations Sammor and his brothers committed occurred on the permit premises. Sammor argues that because the record does not include a "sketch of the premises," there is a legitimate question as to whether the violations actually occurred on the permit premises. See *Johns 3301 Toledo Café, Inc. v. Liquor Control Comm.*, 10th Dist. No. 05AP-1037, 2006-Ohio-1028.

{¶18} In *Johns*, the permit holder's agents and/or employees trafficked in stolen goods in a garage attached to the bar. The permit holder in that case argued that the garage was not part of the permit premises. The "sketch of the permit premises" on file

with the agency showed that the garage was not included. Sammor's reliance on *Johns* is misplaced, because *Johns* did not hold that the "sketch of the permit premises" was required to prove that the alleged violation activity occurred there. The *Johns* court merely compared the sketch on file to the location in which the alleged violation activity occurred, and determined that the alleged violation activity occurred outside of the boundaries of the permit premises.

{¶19} In this case, neither Sammor nor the commission sought to admit a sketch of the premises into evidence, at the agency level or at the trial court. There is no question, here, whether the unlawful activity occurred on the permit premises. All the evidence demonstrates that the stolen goods transactions took place inside Sammor's drive-thru, not some remote or even adjacent location. The investigative unit's reports make clear that the undercover agent and his unmarked van were inside Sammor's drive-thru, at the point-of-sale location each time Sammor and/or his brother(s) helped to unload it. In addition, the reports are clear that most of the conversations and money exchanges between the undercover agent and Sammor and/or his brother(s) also occurred inside of the premises. Sammor stipulated to those facts. Because of these facts to which Sammor stipulated, there is enough evidence to support the finding that the trial court was within its discretion in determining these facts to be probative of the violations occurring on the permit premises.

{¶20} Because Sammor did not raise this argument in the commission hearing, however, he has waived his right to raise the argument now. "Errors which are not brought to the attention of the administrative agency by objection or otherwise are waived and may not be raised on appeal." *1609 Gilsey Invests., Inc. v. Liquor Control Comm.*,

10th Dist. No. 07AP-1069, 2008-Ohio-2795, (citing *Staschak v. State Med. Bd. of Ohio*, 10th Dist. No. 03AP-799, 2004-Ohio-4650; *Morgan v. Girard City School Dist. Bd. of Edn.* (1993), 90 Ohio App.3d 627, 631 (citing *Stores Realty Co. v. Cleveland* (1975), 41 Ohio St.2d 41, 43).

{¶21} Sammor also argues that because the majority of the evidence contained in the investigative unit's reports implicated his brothers, there is a void of "substantial" evidence against the actual permit holder. But this argument is also flawed because Ohio Adm.Code 4301:1-1-52(B)(7) is clear that the violation can be committed by either the permit holder, his agent, or employee. Even if the reports failed to show direct participation by the permit holder (which they do not), there is enough evidence against Sammor's brothers, acting as his agents or employees, to support the commission's order. Regardless, Sammor did not raise this argument in the commission hearing; he has therefore waived it for the purposes of this appeal.

{¶22} Finally, Sammor argues that he did not know or have reasonable cause to believe that the property he and his brother(s) purchased was stolen, that there was no evidence that his brother(s) were acting as agent(s) on behalf of Sammor, or that Sammor personally profited from the transactions in which only he was involved. We disagree.

{¶23} At one of the transactions, which occurred on January 17, 2006, Sammor asked the undercover detective what merchandise he had to offer. Bill answered: "I stole you some Skoal that's flavored." Sammor responded, "good Bill but you have to watch the dates on that shit Bill." Bill told Sammor that he also had baby formula, alcohol, and cigars. Sammor then relayed this information to his brother via telephone. Next, Sammor

asked Bill to drive the van inside the store's drive-thru, and helped him unload all of the items that Bill represented to him as stolen. Sammor asked Bill how much he wanted for the merchandise, which was valued at approximately \$617.46. Bill replied: "\$175.00." Sammor remarked, "damn, that's allot [sic]," and then his brother arrived, and paid the detective \$150. (Commission record, at 116.)

{¶24} Based on the dialog between Sammor and the undercover detective, there can be no question that Sammor knew that the goods were stolen. Even if we ignored the explicit language ("I *stole* you some Skoal"), anyone who pays \$175 for merchandise valued at over \$600 should have reason to believe that the transaction is questionable.

{¶25} By itself, the evidence of the January 17, 2006 transaction is enough to support the trial court's finding that the evidence was reliable, probative, and substantial. Furthermore, since Sammor failed to raise this final argument at the commission hearing, he has waived his right to raise the argument now.

{¶26} The facts to which Sammor stipulated provide reliable, probative, and substantial evidence of the violations determined by the commission, and the trial court was within its discretion to uphold the commission's order. We find that the trial court's decision was in accordance with the law.

{¶27} Accordingly, appellant's single assignment of error is overruled, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and CONNOR, JJ., concur.
