

[Cite as *Ewing v. Ohio Dept. of Commerce*, 2004-Ohio-3755.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT B. EWING	:	
Plaintiff	:	
v.	:	CASE NO. 2003-12158-AD
OHIO DEPARTMENT OF COMMERCE	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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{¶1} On July 8, 2003, plaintiff, Robert Ewing, filed a Private Investigator/Security Guard Employee Registration Application with defendant, Department of Commerce, Division of Real Estate and Professional Licensing. Apparently, plaintiff filed this application to register to work as a security guard. Defendant is the authorized agency charged with approving such registrations and issuing identification cards. On his security guard registration application, plaintiff certified, under oath, that he had not been convicted of a felony within the last twenty year period preceding the filing of the application.

{¶2} Once plaintiff completed the application, defendant began a review pursuant to the statutory directive of R.C. 4749.06(B)(2) regarding investigation into any prior felony conviction of the plaintiff applicant. Upon examining criminal records, defendant discovered plaintiff had been convicted in Union County Common Pleas Court of theft, a fifth degree felony. This felony conviction occurred on or about January 6, 1999. Despite acquiring

this information regarding plaintiff's criminal history, defendant issued plaintiff a security guard registration and identification card. On January 30, 2004, defendant notified plaintiff by letter that a formal hearing was scheduled for March 3, 2004, concerning revocation of plaintiff's security guard registration status based on his failure to disclose his prior felony conviction.

{¶3} Plaintiff stated he was notified by his employer on or about November 18, 2003, that his security guard registration had been revoked by defendant due to a previous felony arrest in Union County. On or about November 19, 2003, plaintiff obtained a document which contained a written declaration plaintiff had no criminal record with office of the Union County Sheriff. Plaintiff submitted this document to the court. Plaintiff maintained efforts were made to have defendant lift the revocation of his security guard registration apparently in light of the information supplied by the Union County Sheriff's office. However, plaintiff professed defendant refused to, "clear up my record." Plaintiff suggested his registration was revoked by defendant before he filed this complaint on December 17, 2003. Plaintiff implied his registration was wrongfully revoked by defendant and he is consequently entitled to recover damages which include work loss, traveling expenses, copying costs, filing fees, mental anguish, and physical pain. Plaintiff has claimed total damages of \$2,500.00, the maximum amount recoverable under 2743.10.

{¶4} Defendant denied any liability in this matter. Defendant acknowledged plaintiff was issued a security guard registration identified card. However, defendant asserted the card was erroneously issued, in light of plaintiff's January 6, 1999, felony conviction for theft in the Union County Court of Common Pleas.

{¶5} Defendant contended plaintiff was indeed convicted of a felony, notwithstanding the document introduced from the Union

County Sheriff's office which seemingly indicates plaintiff had no prior criminal record from Union County. Defendant explained this document, "was issued in error." Defendant related the document, "should have reflected a 1999 Union County conviction for theft in violation of R.C. Section 2913.02, a felony of the fifth degree." Defendant submitted a statement from the Union County Sheriff's office acknowledging plaintiff has a prior felony conviction from Union County and blaming any discrepancy about plaintiff's record on "new computer software." Supporting documentation was submitted to establish the plaintiff, in the instant claim, was convicted of felony theft in the Union County Court of Common Pleas on January 6, 1999.

{¶6} Defendant professed plaintiff's action is based on the fact he was erroneously issued a security guard registration and faced revocation of the registration which prevented him from continuing work in that particular capacity. Defendant also related, plaintiff seemingly claimed he was warranted in making false representations about his criminal past to obtain a security guard registration. Primarily, defendant represented plaintiff's allegations as a claim founded on estoppel.

{¶7} Defendant argued plaintiff is barred from any recovery based in estoppel.

{¶8} As a general authority, promissory estoppel cannot be utilized as a basis for recovery against the state. *Sun Refining & Marketing Co. v. Brennan* (1987), 31 Ohio St. 3d 306. However, exceptions to this general principle do apply. Defendant has asserted any exception applies on a limited basis under rare circumstances. The Tenth District Court of Appeals in *Pilot Oil Corp. v. Ohio Dept. of Transp.* (1995), 102 Ohio App. 3d 278, at 283, cited such circumstances exist for applying promissory estoppel against the state where:

{¶9} "(1) the state uses its discretion in the interpretation of a law or rule, (2) the state's interpretation is not violative of legislation passed by the General Assembly of Ohio, and (3) the elements of promissory estoppel are otherwise met." Under the conditions described, "promissory estoppel may be employed to bar the state from asserting a contrary interpretation where the state had full opportunity to make an informed decision and, in fact, did make an informed decision."

{¶10} Furthermore, "the party claiming the estoppel must have relied on conduct of an adversary in such a manner as to change his position for the worse and that the reliance must have been reasonable in that the party claiming estoppel did not know and could not have known that its adversary's conduct was misleading."

Ohio State Bd. of Pharmacy v. Frantz (1990), 51 Ohio St. 3d 143, at 145. In claims founded on estoppel the party claiming estoppel must exhibit reasonable reliance on the actions of defendant's agents. *Burke v. Ohio Dept. of Human Serv.* (1994), 74 Ohio Misc. 2d 50. The facts of the present claim do not establish plaintiff's reasonable reliance on the act of defendant in issuing an erroneous registration. Plaintiff was not only aware of the error, but promoted the error by knowingly supplying false information to obtain a registration which was void on its face. Whether or not any exception to invoking estoppel applies, estoppel under the facts of the instant action is not available to plaintiff based on his conduct.

{¶11} Under the provisions of R.C. 4749.04, defendant has the authority, among other things, to revoke or suspend the security guard registration of applicants such as plaintiff. The actual revocation proceedings and appeals are governed by the provisions of R.C. 119. This court's jurisdiction is limited by the provisions of R.C. 2743.02, wherein the state waives its immunity

from liability and consents to be sued and to have its liability determined in the Court of Claims. The waiver, however, exists only as to causes of action that were cognizable prior to the enactment of the Court of Claims Act, effective January 1, 1975. As stated by the court in *Racing Guild of Ohio, Local 304 v. State Racing Comm.* (1986), 28 Ohio St. 3d 317, 319: "* * * any type of action against the state which the courts entertained prior to the Act may still be maintained outside the Court of Claims." Based on plaintiff's claims involving registration issuance and revocation, this court lacks subject matter jurisdiction to hear such claims, inasmuch as they are governed by administrative procedures which existed prior to the Court of Claims Act.

{¶12} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant.

Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

6/15

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