Cite as 2011 Ark. App. 259

# ARKANSAS COURT OF APPEALS

DIVISION I
**No.** CA 10-823

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| ARKANSAS BEVERAGE RETAILERS ASSOCIATION, INC., DOW DOLLAR, PRESIDENT, AND ALBERT YOUNG<br>APPELLANTS<br><br>V.<br><br>MICHAEL LANGLEY, DIRECTOR, ALCOHOLIC BEVERAGE CONTROL DIVISION AND ALCOHOLIC BEVERAGE CONTROL BOARD; TYLER T. AUSTIN<br>APPELLEES | **Opinion Delivered** April 6, 2011<br><br>APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTEENTH DIVISION [NO. CV-09-5823]<br><br>HONORABLE ELLEN B. BRANTLEY, JUDGE<br><br>AFFIRMED |

**ROBIN F. WYNNE, Judge**

Arkansas Beverage Retailers Association, Inc., Dow Dollar, President, and Albert Young (collectively referred to as ABRA) appeal following an order of the circuit court affirming the decision of the Alcoholic Beverage Control Board (Board) granting Tyler T. Austin's applications for transfer of a retail liquor and beer permit. We also affirm the Board's decision.

Tyler Austin, doing business as TLJ Properties, submitted to the Alcoholic Beverage Control Division applications for the transfer of a retail liquor and beer permit in May 2009. Mr. Austin hoped to open a package store and a separate fueling station in Springdale, Arkansas, to be operated under the name "Macadoodles." Due to opposition from

Senator Sue Madison and former Senator Jim Holt and letters of opposition submitted by area residents, the applications were initially denied. Mr. Austin appealed to the Board, which held a hearing on July 16, 2009. At the hearing, several local officials testified in support of the applications, including the local mayor, city council members, the director of planning and community development, the police chief, the city attorney, the president of the local firefighters union, and members of the Springdale Chamber of Commerce.

Mr. Austin testified that he was in discussions with the owners of Macadoodles regarding use of the name but that no written agreement had been made at that time. He had a contract for the purchase of the real property on which the stores would be located, but the financing and ultimate purchase hinged on the transfer of the liquor and beer permits. Mr. Austin testified that he was the sole owner of TLJ Properties. He also stated that he had agreed to pay $180,000 to the person from whom the licenses were to be transferred.

In opposition to the applications, the executive director of Mothers Against Drunk Driving for Arkansas, a representative of ABRA, and former State Senator Jim Holt testified regarding their concerns about combining a liquor store with a fueling station. Additionally, ABRA's counsel argued in closing that Arkansas Code Annotated section 3-4-217 patently prohibited the transfer or sale of a liquor permit.

After considering all of the evidence presented, the Board unanimously voted to grant Mr. Austin's applications, conditional upon construction of the outlet and re-inspection by the Alcoholic Beverage Control Enforcement Division. ABRA then filed its petition for

judicial review, and Mr. Austin intervened. ABRA also filed a motion for remand, arguing that the Board failed to make specific findings of fact and conclusions of law regarding the legality of the "sale" of a retail liquor permit. It also argued that facts discovered after the Board hearing indicated that Mr. Austin failed to disclose business partners and that the matter should be remanded for the Board to consider that evidence. The circuit court denied the motion for remand, reasoning that the additional evidence mentioned in the motion could have been presented at the Board hearing by use of subpoena duces tecum.

After reviewing written briefs and hearing oral arguments on the petition, the circuit court affirmed the Board's decision in an order dated February 11, 2010. Specifically, the court found that the Board's decision was supported by substantial evidence of record and was not arbitrary, capricious, or characterized by abuse of discretion. ABRA filed a timely notice of appeal.

On appeal, ABRA argues that the circuit court erred in affirming the Board's decision because Mr. Austin violated Arkansas law by entering into an agreement for the sale of a liquor permit. ABRA also contends that the circuit court erred in denying its motion to remand. Although ABRA frames its arguments as an appeal of the circuit court's orders, it is actually appealing the decision of the Board. *See Ark. Beverage Retailers Ass'n v. Langley* (*Sam's West*), 2009 Ark. 187, at 2, 305 S.W.3d 427, 429. In administrative matters, appellate review is directed not to the decision of the circuit court but to the decision of the administrative agency. *Id.* Our review is limited to determining whether there is substantial evidence in the

record to support the agency's decision. *Id.* Substantial evidence is that which is valid, legal, and persuasive and that a reasonable mind might accept to support a conclusion without resorting to speculation and conjecture. *Id.* In reviewing the evidence, we ask ourselves not whether the evidence would have supported a contrary finding but whether it could support the finding that was made. *Id.*, 305 S.W.3d at 430.

The number of permits issued by the Board is restricted. Ark. Code Ann. § 3-4-201(b)(2) (Repl. 2008). The Board is authorized to determine whether public convenience and advantage will be promoted by issuing the permits and by increasing or decreasing the number thereof. Ark. Code Ann. § 3-4-201(b)(1). In this case, ABRA does not contest that substantial evidence supported the Board's finding that the granting of the applications promoted public convenience and advantage. Instead, ABRA argues that allowing Mr. Austin to "purchase" the permits from the existing permit holder was a violation of law, which required the Board to deny his applications.

Arkansas Code Annotated section 3-4-217(a) states that no permit shall be transferable or assignable. Section 1.79 of the Board's rules and regulations likewise provides that a permit shall not be transferred "by any procedure other than that established by these Regulations and the laws of the State." The regulations set forth the proper procedure for transferring permits. Again, ABRA does not argue that Mr. Austin failed to follow these procedures. Rather, the arguments contained in ABRA's opening brief seem to imply that Arkansas Code Annotated section 3-4-217(a) acts as a complete bar to any transfer of permit, regardless of the

approved procedure set forth in the administrative regulations. As appellees point out in their briefs, our supreme court has stated the contrary by clarifying that section 3-4-217 is merely "a restriction on the permittee and not to any subsequent actions by the Board." *Blann v. Alcoholic Beverage Control Bd.*, 317 Ark. 97, 100, 876 S.W.2d 258, 259 (1994) (quoting *Smith v. Estes*, 259 Ark. 337, 343, 533 S.W.2d 190, 193 (1976)).

ABRA retorts in its reply brief that it does not challenge the Board's authority to transfer a permit, but it contends that this particular transfer was a violation of law because consideration was involved. However, ABRA fails to cite any authority to support this contention, nor does it offer any persuasive argument beyond the mere assertion that the anticipated payment of $180,000 to the existing permit holder violates section 3-4-217. We do not consider the merits of an argument on appeal when the appellant presents no citation to authority or convincing argument in its support. *Harrison v. State*, 371 Ark. 652, 657–58, 269 S.W.3d 321, 325 (2007).

ABRA goes on to argue that Mr. Austin further violated the law by attempting to obtain financing for his business venture contingent upon acquiring the necessary permits and by waiting to close on the real estate contract until the transfer had been approved. ABRA cites Arkansas Code Annotated section 3-4-217(b), which prohibits a permit from being "pledged or deposited as collateral security for any loan or upon any other condition," in support of this argument. However, the record in this case contains no evidence that the permit was pledged as collateral for the loan or the real estate. Mr. Austin testified that he was

making plans to obtain a loan and purchase property for the business but that he—and the bank—did not want to finalize those plans until he knew he would be able to operate the business under the required permits. There was no evidence that the bank or mortgage holder would take the permits if Mr. Austin breached his obligations. Therefore, ABRA's arguments in this regard are unpersuasive.

ABRA's final argument is that the Board failed to consider additional evidence or make certain findings of fact and conclusions of law regarding the "sale" of the permits. Administrative decisions must be in writing or stated in the record and must include findings of fact and conclusions of law, separately stated. Ark. Code Ann. § 25-15-210(b) (Repl. 2002). Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. *Id.* If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. *Id.* The agency is not required to make findings of fact upon all items of evidence or issues—nor even necessarily to answer each and every contention raised by the parties—but the findings should be sufficient to resolve the material issues or those raised by the evidence which are relevant to the decision. *Bryant v. Ark. Pub. Serv. Comm'n*, 54 Ark. App. 157, 182, 924 S.W.2d 472, 486 (1996).

The primary issue raised before the Board in this case was the proximity of Mr. Austin's proposed package store and fueling station, an argument it abandoned following the Board hearing. The "sale" of the permits was not a central issue. Although ABRA's

counsel elicited some testimony regarding payment for the permits, at no time did ABRA request that the hearing be continued to allow it to further explore the issue and present additional evidence. Instead, counsel simply moved on to his next line of questioning. Furthermore, although ABRA argued in closing that the "sale" of a liquor permit was illegal, it never requested or offered any proposed findings on that issue. We hold that the findings the Board ultimately made in its decision were sufficient to resolve the material issues.

Affirmed.

GLADWIN and GLOVER, JJ., agree.