

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: June 13, 2024)

MUTUAL PROPERTIES APPLE :
VALLEY, LLC :
Appellant, :

v. :

C.A. No. PC-2023-02357

STATE OF RHODE ISLAND :
DEPARTMENT OF BUSINESS :
REGULATION; ELIZABETH :
KELLEHER DWYER, in her capacity :
as Director; CATHERINE WARREN, :
in her capacity as hearing officer for :
the Department of Business :
Regulation; THE TOWN OF :
SMITHFIELD; by and through the :
Finance Director DANIELLE :
CAREY; in her capacity as Finance :
Director; and COPPERFIELD'S INC., :
Appellees. :

DECISION

PROCACCINI, J. Before this Court is the appeal of Appellant Mutual Properties Apple Valley, LLC against the State of Rhode Island Department of Business Regulation (Department); Elizabeth Kelleher Dwyer, in her capacity as Director of the Department; Catherine Warren, in her capacity as Hearing Officer for the Department; the Town of Smithfield (Smithfield); by and through Smithfield's Finance Director Danielle Carey, in her capacity as Finance Director; and Copperfield's, Inc. (Copperfield's). This Court has jurisdiction pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

This case stems from a conflict concerning Copperfield’s Class BV liquor license (liquor license) renewal and transfer. *See* Compl. Ex. B at 1. Appellant was Copperfield’s landlord, and Appellant filed an eviction proceeding against Copperfield’s. *See id.* at 2. On January 20, 2023, the hearing justice issued a stipulated judgment that stated:

“(1) Judgment for [Appellant] for possession and damages in the amount of \$18,652.00[.]

“(2) Execution shall be stayed until April 1, 2023[.]

“(3) Should [Copperfield’s] not vacate the premises by April 1, 2023, [Copperfield’s] shall owe liquidated damages in the amount of \$5,000 plus legal fees associated with any further possession action[.]

“(4) [Copperfield’s] shall pay rent for Feb[ruary] and March as due on or before the first of the month[.]

“(5) \$18,000 shall be released from court registry to be paid to [Appellant] towards this judgment[.]

“(6) \$652.00 will be paid by [Copperfield’s] to [Appellant] by April 1, 2023[.]” (R. at 23, 25 (Order, KD-2022-0655, Jan. 20, 2023 (Van Couyghen, J.).)

Subsequently, Copperfield’s sought to renew the liquor license for its establishment. *See* R. at 76 (Order of Dismissal). On February 21, 2023, the Smithfield Town Council voted 4-1 to approve the renewal of Copperfield’s liquor license. *Id.* at 5. On March 3, 2023, Appellant filed an appeal of Smithfield’s renewal of Copperfield’s liquor license to the Department. *Id.* at 2-3. On March 21, 2023, Smithfield Town Council voted 3-1 to approve the transfer of Copperfield’s liquor license to 375 Putnam Pike, Smithfield. *Id.* at 43, 46-47. On March 31, 2023, Appellant filed an appeal of the transfer

of Copperfield's liquor license. *Id.* at 12-14. Copperfield's filed an objection to Appellant's appeal. *Id.* at 28-31.

Subsequently, the appeals were consolidated, and Appellant filed a reply in support of the appeals. *See id.* at 64-67. Smithfield filed a response to Appellant's appeals seeking the denial and dismissal of the appeals. *Id.* at 69-71. Copperfield's filed a motion to dismiss. *See id.* at 74.

A

Department of Business Regulation Order of Dismissal of the Appeals

The Director of the Department is tasked with managing liquor license appeals. G.L. 1956 § 3-7-21. On May 2, 2023, the Department held a remote hearing on the motion to dismiss. (R. at 74-75.) For the appeal concerning the renewal of the liquor license, the Department concluded that Appellant lacked standing, and it was moot because the liquor license was transferred to a new location. *Id.* at 79-81.

For the appeal of the transfer of the liquor license, Appellant contended it possessed standing as a creditor pursuant to G.L. 1956 § 3-5-19. *Id.* at 82. At the hearing, the parties agreed Copperfield's paid Appellant \$18,652 along with the February and March rent for the space. *Id.* at 76. Smithfield conditioned the transfer of the liquor license on a payment by Copperfield's to Appellant of \$18,652, and the Department stated that the condition was satisfied. *Id.* at 82-83. As for any other alleged debts owed by Copperfield's, the Department references an affidavit that disputes as much. *Id.*; *see also id.* at 60. The Department concluded that given that the amount of debt owed was disputed, Smithfield maintains discretion to permit the transfer of the liquor license. *Id.* at 83; *see also* § 3-5-19.

While the Hearing Officer states there is ongoing litigation regarding whether Copperfield's owes Appellant liquidated damages, the Department finds that Appellant is no longer a creditor because there is no judgment for money owed. *Id.* at 83. In conclusion, the Department dismissed the second appeal because the Appellant lacked standing. *Id.* at 84. The Department adopted the Hearing Officer's recommendation for an order of dismissal. *Id.* at 85.

B

Appellant's Appeal to the Superior Court

On May 22, 2023, Appellant appealed the Hearing Officer's order dismissing Appellant's appeal for lack of standing. (Compl.) Appellant filed suit against the Department; Elizabeth Kelleher Dwyer, in her capacity as Director; Catherine Warren, in her capacity as hearing officer for the Department; Smithfield; and Danielle Carey, in her capacity as Finance Director. *Id.* at 1. The Complaint brings Count I (Appeal of Agency Decision), Count II (Declaratory Judgment as to the Legality of the Order of Dismissal), and Count III (Declaratory Judgment as against Defendant Smithfield). *Id.* at 4-7. On June 5, 2023, Smithfield and Danielle Carey filed an answer. (Smithfield and Carey's Answer.) On June 14, 2023, the Department, Elizabeth Kelleher Dwyer, and Catherine Warren filed an answer. (Dept., Kelleher, and Warren's Answer.)

On June 1, 2023, Appellant filed a Motion to Stay and a Motion for Injunctive Relief. (Mot. to Stay.) On June 13, 2023, the Department filed an Objection to Appellant's Motion to Stay. (Dept.'s Obj. to Appellant's Mot. to Stay.) On July 27, 2023, the hearing justice issued an order denying Appellant's Motion to Stay and Motion for Injunctive Relief. (Order, July 27, 2023 (Cruise, J.))

On June 26, 2023, Copperfield's filed a Motion to Intervene. (Mot. to Intervene.) On July 27, 2023, the hearing justice granted Copperfield's Motion to Intervene. (Order, July 27, 2023 (McHugh, J.)) On July 10, 2023, Copperfield's filed an Objection to Plaintiff's Motion to Stay and Motion for Injunctive Relief. (Copperfield's Obj. to Mot. to Stay.) On August 2, 2023, Copperfield's filed an Answer. (Copperfield's Answer.)

On August 8, 2023, Copperfield's filed a Motion for Judgment on the Pleadings with an accompanying memorandum of law. (Copperfield's Mot. for J. on the Pleadings.) On August 8, 2023, Appellant filed a Motion to Consolidate this case with *Mutual Properties Apple Valley, LLC v. Copperfield's* (PC-2023-01762). (Appellant's Mot. to Consolidate.) On August 16, 2023, Copperfield's filed an Objection to Appellant's Motion to Consolidate. (Copperfield's Obj. to Appellant's Mot. to Consolidate.) On August 17, 2023, the Department filed an Objection to Appellant's Motion to Consolidate. (Dept.'s Obj. to Appellant's Mot. to Consolidate.) On the same day, Smithfield filed an Objection to Appellant's Motion to Consolidate. (Smithfield's Obj. to Appellant's Mot. to Consolidate.) On September 11, 2023, the hearing justice issued an order denying Appellant's Motion to Consolidate. (Order, Sept. 11, 2023 (McHugh, J.))

On July 27, 2023, Smithfield filed a Motion to Dismiss with an accompanying memorandum of law. (Smithfield's Mot. to Dismiss.) On September 18, 2023, Appellant filed an Objection to Smithfield's Motion to Dismiss. (Appellant's Obj. to Smithfield's Mot. to Dismiss.) On September 28, 2023, Copperfield's filed a Reply to Appellant's Objection to Smithfield's Motion to Dismiss. (Copperfield's Reply to Mot. to Dismiss.) On October 16, 2023, the Department filed a Reply Memorandum in Response to

Appellant's Objection and in Support of the Motion to Dismiss. (Dept.'s Reply Mem. to Appellant's Obj.)

On December 6, 2023, Appellant filed a Memorandum of Law in Support of its Administrative Appeal. (Appellant's Mem. in Supp. of Appeal.) On January 9, 2024, Smithfield filed an Opposition to Appellant's Administrative Appeal. (Smithfield's Opp'n to Admin. Appeal.) On January 16, 2024, the Department filed a Reply to Appellant's Brief in Opposition to the Appeal. (Dept.'s Opp'n to Appeal.) On January 26, 2024, Appellant filed a Reply Memorandum of Law in Further Support of its Administrative Appeal. (Appellant's Reply Mem. in Supp. of Admin. Appeal.)

On April 2, 2024, the hearing justice entered an order assigning the case to Judge Procaccini for decision. (Order, Apr. 2, 2024 (Smith, J.)) On May 14, 2024, the parties appeared before Judge Procaccini for oral arguments.

II

Standard of Review

Under Rhode Island law, local licensing authorities, such as the Town of Smithfield, possess the right, power, and jurisdiction to issue, renew, suspend or revoke, and transfer liquor licenses. All decisions of the issuing authority are reviewable *de novo* by the Director of the Department. *See* § 3-7-21. On appeal, the Superior Court may review decisions of the Department under the Administrative Procedures Act, § 42-35-15. *See Sunny Day Restaurant, Inc. v. Beacon Restaurant, Inc.*, 103 R.I. 707, 708, 241 A.2d 295, 296 (1968) (tracing avenue of appeals for liquor license applications). In the course of its review:

“[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- “(1) In violation of constitutional or statutory provisions;
 - “(2) In excess of the statutory authority of the agency;
 - “(3) Made upon unlawful procedure;
 - “(4) Affected by other error of law;
 - “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”
- Section 42-35-15(g).

When reviewing a decision under this statute, the Superior Court may not substitute its judgment for that of the Department on questions of fact. *See Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). Rather, the review of the Superior Court is limited to a determination of whether there is any legally competent evidence to support the Department's decision. *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992). “Legally competent evidence is indicated by the presence of ‘some’ or ‘any’ evidence supporting the agency’s findings.” *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994) (internal quotation omitted). If such evidence is absent, the decision can be vacated if it is clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record. *See Costa v. Registrar of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I. 1988). Furthermore, questions of law are not binding upon this Court and thus “may be [freely] reviewed to determine what

the law is and its applicability to the facts.” *Carmody v. Rhode Island Conflict of Interest Commission*, 509 A.2d 453, 458 (R.I. 1986) (citations omitted).

III

Analysis

Appellant avers that it is trying to enforce its rights as a judgment creditor against Copperfield’s. (Compl. ¶ 21.) At oral arguments, Appellant argues that Copperfield’s owes it liquidated damages which makes it a creditor. In opposition, the Department argues that § 3-5-19 applies to liquor license transfers and this was a relocation of the liquor license instead of a traditional transfer. (Dept.’s Opp’n to Appeal at 12-13.) Alternatively, the transfer was proper because any debt owed by Copperfield’s to Appellant was disputed. *Id.* at 14-15.

Section 3-5-19(a) states:

“The board, body or official which has issued any license under this title may permit the license to be used at any other place within the limits of the town or city where the license was granted, or, in their discretion, permit the license to be transferred to another person In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license. . . . The holders of any retail Class A license within the city or town issuing or transferring a Class A license have standing to be heard before the board, body, or official granting or transferring the license.”

While typically debt to an objecting creditor should be paid by the licensee prior to the transfer of a liquor license, § 3-5-19(a) provides an exception when the amount of debt is disputed. In that case, the Department maintains discretion to conduct the transfer. Section 3-5-19(a). At the Smithfield Town Council meeting in which they discussed the transfer of the liquor license, counsel for Appellant objected based on the stipulated judgment. R. at 46; *see also id.* at 23, 25 (Order, Jan. 20, 2023 (Van Couyghen, J.)). The Smithfield Town Council voted 3-1 to approve the transfer of the liquor license on condition that the monies in the stipulated judgment be paid. *Id.* at 47.

Subsequently, the principal of Copperfield's provided an affidavit where he "disputes any claim of indebtedness to [Appellant]." *Id.* at 60. The Hearing Officer in the order of dismissal states that "[a]t [the] hearing, the parties agreed that [Copperfield's] paid the \$18,652.00 owed and the February and March rent to the Appellant." *Id.* at 76. Thus, the order of dismissal states that the condition placed upon the transfer of the liquor license was satisfied. *Id.* at 83. In summation, the Department finds that Appellant is no longer a creditor of Copperfield's because there is no outstanding judgment for any money owed, and, thus, Appellant lacks standing. *Id.*

The Hearing Officer acknowledges that Appellant avers in its appeal to this Court that it qualifies as a creditor based upon its allegation that it is owed liquidated damages. *Id.* at 82; *see also id.* at 23, 25 (Order, Jan. 20, 2023 (Van Couyghen, J.)). The Hearing Officer unequivocally states that Appellant's argument concerns separate litigation before this Court that "may or may not result in another judgment against [Copperfield's]." *Id.* at 83.

The Hearing Officer's analysis is appropriate because there is no judgment for money owed to Appellant. Thus, Appellant is not a creditor and cannot enforce those rights. *See id.* at 76. Therefore, the Hearing Officer properly found that Appellant lacks standing because it is no longer a judgment creditor. *Id.* at 84. Whether Copperfield's owes liquidated damages is at issue in another case in the Superior Court and cannot be decided in this case. *See Mutual Properties Apple Valley, LLC v. Copperfield's Inc.* (PC-2023-01762).

The parties in this case provided voluminous briefs with a myriad of arguments. For example, Appellant contends that it has standing over the liquor license renewal. (Appellant's Mem. in Supp. of Appeal at 9-12.) The Department properly found that this issue is moot because—as discussed *supra*—the liquor license was transferred to a new location. (R. at 81.) Additionally, the Department argues that the Hearing Officer correctly applied the standard for the motion to dismiss and the Department's argument that Smithfield's grant of the renewal of the liquor license did not violate Appellant's real property rights as a landlord. (Dept.'s Opp'n to Appeal at 15-20.) Considering that the issue of standing is dispositive, this Court will not address those tangential arguments.

In conclusion, this Court affirms the Hearing Officer's order of dismissal that was adopted by the Department which found that Appellant lacks standing because it is no longer a creditor of Copperfield's.

IV

Conclusion

For the reasons stated previously, this Court affirms the Order of Dismissal by the Department based upon its finding that Appellant lacks standing. Counsel shall prepare the appropriate order.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Mutual Properties Apple Valley, LLC v.
State of Rhode Island Department of Regulation,
et al.**

CASE NO: **PC-2023-02357**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **June 13, 2024**

JUSTICE/MAGISTRATE: **Procaccini, J.**

ATTORNEYS:

For Plaintiff: **John O. Mancini, Esq.**

For Defendant: **Sara Tindall-Woodman, Esq.
Patricia A. Buckley, Esq.**

For Intervenor: **Dennis T. Grieco, II, Esq.**