

IN THE COURT OF APPEALS OF IOWA

No. 8-793 / 08-0415
Filed October 15, 2008

SUGAR LOAF AMUSEMENT,
Petitioner-Appellee,

vs.

**IOWA DEPARTMENT OF INSPECTIONS
AND APPEALS, SOCIAL AND CHARITABLE
GAMING DIVISION,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

The State appeals from the district court's order on judicial review that reversed the agency's revocation of registrations of electrical amusement devices. **REVERSED.**

Thomas J. Miller, Attorney General, and John Lundquist, Assistant Attorney General, for appellant.

David Brown and Alexander Wonio of Hansen, McClintock & Riley, Des Moines, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

SACKETT, C.J.

The Iowa Department of Inspections and Appeals (agency) appeals from the district court's order on judicial review that reversed the agency's revocation of the Sugar Loaf Amusement's distributor registration and individual registrations of Sugar Loaf's electrical amusement devices. The agency contends the court erred (1) in finding Sugar Loaf exercised due diligence to comply with device reporting requirements, and (2) in concluding justice does not mandate the severe penalty of revocation in this case. We reverse the district court decision and affirm the agency's order.

I. Background.

Sugar Loaf is the owner and distributor of twenty amusement devices registered under the provisions of Iowa Code chapter 99B. A semi-annual report of the volume of business activity for each device was due on July 31, 2006. On October 25, 2006, the agency sent Sugar Loaf notices of revocation of Sugar Loaf's distributor registration and of the registration of each device for failure to file the required report. On November 2, the agency contacted Sugar Loaf about the report. On November 6, the agency received a document from Sugar Loaf that listed all twenty devices, provided beginning and ending counter readings for seven of the twenty devices and a dollar amount for those seven, provided no information about six of the devices, and made notations such as "lost account" or "business closed" for the remaining seven devices.

On November 8, Sugar Loaf appealed the revocation of its registrations. Following a contested hearing on January 25, 2007, the agency issued its

proposed decision on February 26. It found, in pertinent part, that Sugar Loaf “did not timely file the required semi-annual report, nor was the report that he filed three months late a sufficient substitute therefor” and affirmed the revocations. Sugar Loaf sought agency review of the proposed decision.

Following review of the February 26 proposed decision, the agency issued a final order on May 22. It incorporated the findings of the administrative law judge. In affirming the proposed decision, the order provided:

Based upon the failure of the Appellant to timely submit its semiannual report of the volume of its business activity, the Department properly revoked the distributorship and registrations on the Appellant’s registered devices. The Appellant admitted to not adhering to the reporting requirements. It was the Appellant’s obligation to ensure that the devices were operated and used in accordance with the laws and rules. The revocation action taken by the Department is clearly authorized under both the statute and the rules, and the Appellant failed to comply.

Sugar Loaf sought judicial review, contending the agency findings were not supported by substantial evidence, the agency’s application of the law to the facts was “flawed on a number of legal bases,” Sugar Loaf would suffer “irreparable injury” if the revocations were affirmed, and there was “no public interest sufficient to justify the agency’s action in the circumstances.”

On October 16, 2007, the district court stayed the revocations pending judicial review. On February 20, 2008, the district court issued its findings of fact, conclusions of law, and order. The court found Sugar Loaf “worked diligently to comply” with the reporting requirements, experienced “considerable difficulties” in filing the report, worked closely with agency personnel, and “received confirmation that the timing and content of the semi-annual report that was ultimately filed prior to hearing was satisfactory.” The court concluded the

agency's determination to revoke Sugar Loaf's registrations was "unreasonable, arbitrary, and capricious." The court further concluded:

In light of the Appellant's satisfaction of the due diligence standard, justice in the present case does not mandate a severe penalty in the form of registration revocation for the tardy and/or incomplete filing.

Although it is not the Department's job to file the Appellant's paperwork, it is certainly contemplated that under these circumstances that some difficulties would arise. The Appellant worked with the Department and satisfied the due diligence requirement.

The court reversed the agency's decision to revoke the registration.

II. Scope and Standards of Review.

We review district court decisions on judicial review of agency action under the standards of the Administrative Procedure Act, Iowa Code chapter 17A. Applying these standards, we determine whether our conclusions are the same as those reached by the district court. The agency decision itself is reviewed under the standards set forth in section 17A.19(10).

Mosher v. Dep't of Inspections & Appeals, 671 N.W.2d 501, 508 (Iowa 2003)

(citations omitted).

This court may reverse, modify, affirm, or remand to the agency for further proceedings if the agency's action is erroneous under a ground specified in the Act and a party's substantial rights have been prejudiced. This court broadly and liberally construes the commissioner's findings to uphold, rather than defeat the commissioner's decision. Evidence should not be considered insubstantial merely because the court may draw different conclusions from the record.

Second Injury Fund v. George, 737 N.W.2d 141, 145 (Iowa 2007) (citations and internal quotations omitted).

III. Discussion.

The agency contends it properly revoked the registrations and the district court erred in concluding the decision was not supported by substantial evidence.

We agree. The agency determined the report submitted by Sugar Loaf did not comply with requirements for the report. Sugar Loaf argues, and the district court found, that Sugar Loaf “received confirmation that the timing and content of the semi-annual report that was ultimately filed prior to hearing was satisfactory.” If this finding refers to the incomplete report submitted on November 6, 2006, it is not supported by evidence in the record. If it refers to the next required semiannual report that Sugar Loaf claims it filed in January of 2007 before the hearing, it does not resolve the issue addressed at the hearing, which was Sugar Loaf’s failure to comply with reporting requirements for the report due in mid-2006.¹ The November 6, 2006 report Sugar Loaf filed did not provide any way for the agency to determine the business volume for thirteen of the twenty devices listed. It also indicated seven of the twenty devices were located in violation of the requirements that they only be located in a business that had a certain class of liquor license, although this was not cited as a specific reason for revocation of the registration. We find substantial evidence supports the agency’s findings that Sugar Loaf did not comply with reporting requirements. *See Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995) (broadly and liberally construing the agency findings to uphold, rather than defeat, the agency’s decision).

The district court concluded the agency’s decision to revoke the registrations was unreasonable, arbitrary, and capricious. See Iowa Code § 17A.19(10)(n). A decision is “arbitrary” or “capricious” when it is made without

¹ The record on review from the agency does not contain a January 2007 report.

regard to the law or underlying facts. *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 912 (Iowa 1987). A decision is “unreasonable” if it is against reason and evidence “as to which there is no room for difference of opinion among reasonable minds.” *Id.*

The agency’s findings of the underlying facts support the conclusion Sugar Loaf did not comply with reporting requirements. The legislature gave the agency only two options in dealing with companies that violate or permit violations of the applicable statutes or rules concerning electrical amusement devices—revoke the registration or do nothing. See Iowa Code § 99B.10B(1) (2005) (providing the agency “may revoke” registrations for violations). Although the court’s ultimate responsibility is to decide issues of law, “when a case calls for the exercise of judgment on a matter within the expertise of the agency, we generally leave such decisions to the informed judgment of the agency.” *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). Applying the law to the facts before it, the agency’s decision to revoke the registrations was neither against reason and evidence as to which there is no room for difference of opinion among reasonable minds nor without regard to the law or underlying facts. Our conclusions are not the same as those of the district court.

IV. Conclusion.

The agency findings are supported by substantial evidence. The agency decision to revoke Sugar Loaf’s registrations was a proper application of the law to the facts. We reverse the decision of the district court on judicial review and affirm the agency’s final decision.

REVERSED.