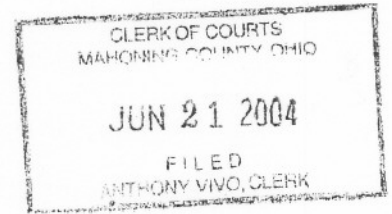


IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO



TIPPECANOE COUNTRY CLUB)	CASE NO. 01 CV 3069
)	
Plaintiff/Appellant)	JUDGE MAUREEN A. CRONIN
)	
vs.)	JUDGMENT ENTRY
)	
OHIO CIVIL RIGHTS COMMISSION)	
<i>et al.</i>)	
)	
Defendants/Appellees)	

Plaintiff/Appellant Tippecanoe Country Club (“Tippecanoe”) appeals the Cease and Desist Order of the Defendant/Appellee Ohio Civil Rights Commission (“Commission”) issued October 28, 2002. The Order, attached to Tippecanoe’s Brief as Ex. E., finds Tippecanoe is a place of public accommodation that has engaged in sex discrimination, in violation of R.C. 4112.02(G). R.C. 4112.02(G) makes it an unlawful discriminatory practice “[f]or ... a place of public accommodation to deny any person ... regardless of ... sex ... the full enjoyment of the accommodations, advantages, facilities or privileges of the place of public accommodation.”

A Magistrate’s Decision was filed on April 9, 2004, affirming the Order of the Commission. Tippecanoe filed its Objections to the Magistrate’s Decision on April 23, 2004. On April 27, 2004, Tippecanoe moved to supplement the evidence in this case with two affidavits and certain U.S. Census Bureau statistics for Mahoning County, Ohio, which motion is sustained. After hearing arguments on June 10, 2004, and after independent review of Affidavits and U.S. Census Bureau information attached to Tippecanoe’s motion to supplement the record, the Magistrate’s Decision, legal arguments of Counsel, including Objections, transcripts of proceedings herein and Record before the Ohio Civil Rights Commission, the Court overrules the Objections of Tippecanoe Country Club. The Court further finds that there is no error of law or other defect on the face of the Magistrate’s Decision and therefore adopts the Decision of the Magistrate.

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Pursuant to R.C. 4112.06(E), a trial court must affirm a finding of discrimination under R.C. §4112 if the Commission's findings are supported by reliable, probative and substantial evidence on the entire record. *Ohio Civ. Rights Comm. v. Case W. Res. Univ.*(1996), 76 Ohio St.3d 168, 177. "Reliable" evidence is dependable or trustworthy; "probative" evidence tends to prove the issue in question and is relevant to the issue presented; and "substantial" evidence carries some weight or value. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571. The Act itself provides that "[t]his chapter shall be construed liberally for the accomplishment of its purposes..." ORC §4112.08; See also *Ohio Civil Rights Commission v. Lysyj*, 38 Ohio St. 2d 217 (1974).

The instant proceeding is not a trial *de novo*, but rather a trial court must base its decision on the record that was before the Commission. *May v. Ohio Civ. Rights Comm.*, (1st Dist. 1989), 58 Ohio App.3d 56, 57. A reviewing court cannot substitute its judgment for a board's factual finding, but only can determine if the board's decision is supported by the weight of the evidence. *King v. State Farm Mut. Auto Ins. Co.* (6th Dist. 1996), 112 Ohio App. 3d 664, 665. If the findings of the Commission are supported by reliable, probative and substantial evidence (albeit disputed evidence), the Court is not free to set the findings aside, although the reviewing court could have drawn different inferences. This is so even when the agency's decision differed from that contained in the recommendation of the agency's hearing examiner. *T. Marzetti Co. v. Doyle* (10th Dist. 1978), 37 Ohio App. 3d 25, 29.

The Court finds the Commission's Cease and Desist Order is supported by reliable, probative and substantial evidence with regard to the determination of its jurisdiction based on the absence of selectivity in the approval of applicants for membership and in the availability of its facilities and privileges to a substantial public.

There is reliable, probative and substantial evidence to support the determination that Tippecanoe, by its Code of Regulations, its handbook of rules, its calendar of events and its promotion of tradition, limits access to its facilities based on sex.

The remedial actions incorporated in its Cease and Desist Order are designed to remove the vestiges of past discrimination and make its victims whole.

Having found by reliable, probative and substantial evidence that Tippecanoe Country Club is a place of public accommodation and that the Ohio Civil Rights Commission has jurisdiction; and having further found by reliable, probative and substantial evidence Tippecanoe Country Club denies persons by reasons of gender the full enjoyment of the accommodations, advantages, facilities or privileges of that place of public accommodation; and having further found reliable, probative and substantial evidence for the remedial Order of the Commission; IT IS THEREFORE ORDERED that the Cease and Desist Order, issued October 28, 2002, by the Ohio Civil Rights Commission is affirmed.

IT IS FURTHER ORDERED that Tippecanoe Country Club shall henceforth and forever Cease and Desist from all practices in violation of Chapter 4112 of the Revised Code. Specifically, the Commission order Respondent to cease and desist from engaging in sex discrimination and all other practices that violate R.C. Chapter 4112 as alleged in Complaint #7923, #7924, #7937, and #7939;

IT IS FURTHER ORDERED that Tippecanoe Country Club eliminate all practices and policies that limit access to its golf course and other facilities (other than restrooms and locker rooms) on the basis of sex;

IT IS FURTHER ORDERED that Tippecanoe Country Club provide all members the same access to golf outings and other events regardless of sex;

IT IS FURTHER ORDERED that Tippecanoe Country Club shall, within 60 days, for all wives of current Class 1 Regular Members whose families became affiliated with the Club prior to the 1996 amendments, assign a Certificate For One Shares (sic) Of The Capital Stock of Tippecanoe Country Club, Inc. ("Certificate") and establish a status equal to the current Class 1 Regular Members. These women shall not pay any amount of money for the Certificate. Nor shall they pay an additional initiation fee, higher monthly dues.¹ All wives who acquire a stock shall enjoy the same rights, privileges, and access to the Club's facilities as all other Certificate-holders;

¹ This would require Respondent to revert back to memberships based on familial status. Respondent should offer different family memberships including one giving both spouses the option to purchase stock. Respondent may charge new members who purchase a family membership with two Certificates a higher initiation fee and higher monthly dues than new single members. Respondent may also charge current families who became affiliated with the Club after the 1996 amendments the difference in the initiation fee

IT IS FURTHER ORDERED that Tippecanoe Country Club, within 60 days, offer to widows whose families purchased a Class 1 Family Membership prior to the 1996 amendments the opportunity to acquire a Certificate at no cost. All widows who acquire a Certificate shall enjoy the same rights, privileges, and access to the Club's facilities as all other Certificate-holders;

IT IS FURTHER ORDERED that Respondent amend its Code of Regulations to comply with the Commission's Final Order. Tippecanoe Country Club shall distribute a new Code to all members prior to October 1, 2004.

IT IS FURTHER ORDERED that Tippecanoe Country Club prepare a membership handbook that complies with the Commission's Final Order. Respondent shall distribute the 2004 handbook to all members prior to October 1, 2004;

IT IS FURTHER ORDERED that Tippecanoe Country Club provide a copy of its new Code and the 2004 handbook to the Commission's Office of Special Investigations ("OSI") at 1111 East Broad Street, Suite 301, in Columbus, Ohio. Respondent shall provide copies of these documents to the OSI prior to October 1, 2004.

IT IS FURTHER ORDERED that Tippecanoe Country Club provide the OSI copies of any changes in its Code over a four-year period beginning October 1, 2004. Respondent shall also provide the OSI yearly copies of its handbooks through 2008; and

IT IS FURTHER ORDERED that Tippecanoe Country Club provide the OSI a yearly report which includes, but is not limited to, the following:

- A current membership list along with the type of membership held;
- The names of all prospective applicants for membership who were considered during the pre-screening process and the type of membership sought;
- Copies of all applications for membership;
- Separate lists of all applicants for membership who were rejected and accepted. These lists shall include the type of membership applied for;
- A current list of the names of all stockholding members;

they paid and the initiation fee established for a family membership with two Certificates, if they seek to convert to the latter.