

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAX MARKOVITZ AND SHARRON  
MARKOVITZ,  
Appellants,

vs.

COUNTY OF CLARK; CLARK COUNTY  
COMMISSIONERS IN THEIR  
CAPACITY AS CLARK COUNTY  
LIQUOR AND GAMING LICENSING  
BOARD, AND BRUCE L. WOODBURY,  
MARY KINCAID, CHIP MAXFIELD,  
YVONNE ATKINSON GATES, MYRNA  
WILLIAMS, ERIN KENNY, AND DARIO  
HERRERA, IN THEIR CAPACITY AS  
CLARK COUNTY COMMISSIONERS  
AND IN THEIR CAPACITY AS LIQUOR  
AND GAMING LICENSING BOARD  
MEMBERS; AND SHIRLEY B.  
PARRAGUIRRE, IN HER CAPACITY AS  
CLARK COUNTY CLERK,  
Respondents.

No. 37899

FILED

JUL 10 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Max and Sharron Markovitz appeal the district court's denial of their petition for a writ of mandamus. The Markovitzes petitioned for a writ of mandamus after the Clark County Liquor and Gaming Board denied their application for a liquor license. The Markovitzes argue that substantial evidence does not support the Clark County Liquor and Gaming Board's decision to deny their application for a liquor license. We disagree, and accordingly, we affirm the order denying writ relief.

Max and Sharron Markovitz applied for a liquor license for a topless lounge they planned to open in Las Vegas. The Las Vegas Metropolitan Police Department conducted an investigation pursuant to the application and discovered that Max had either owned or loaned money to adult entertainment clubs owned by his son, Alan Markovitz,

who had violated Michigan laws substantially similar to those in Clark County. In particular, the Michigan clubs violated nuisance abatement and corporate ownership laws and had accumulated numerous citations, fines and suspensions. Based on the police report and testimony from adjoining business owners in opposition to the Las Vegas club, the board denied the Markovitzes' application for a liquor license.

Obtaining a liquor license is a privilege.<sup>1</sup> The Clark County Liquor and Gaming Board's power to grant or deny a liquor license is a delegation of the State's police power to protect the "public health, safety, morals, good order and general welfare of the inhabitants of the county."<sup>2</sup> Accordingly, the Board has wide discretion when determining whether to grant or deny a liquor license.<sup>3</sup> "When reviewing an agency's decision, the court is limited to a determination of whether the decision was arbitrary, capricious, or an abuse of discretion."<sup>4</sup> In reviewing a decision for an abuse of discretion, this court must determine whether substantial evidence supports the agency's decision.<sup>5</sup>

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<sup>1</sup>Clark County Code 8.20.010.

<sup>2</sup>Id.; see also State v. District Court, 101 Nev. 658, 663, 708 P.2d 1022, 1025 (1985).


<sup>3</sup>See State v. Rosenthal, 93 Nev. 36, 43, 559 P.2d 830, 835 (1977) (providing that "[i]t is entirely appropriate to lodge such wide discretion in the controlling administrative agency when a privileged enterprise is the subject of the legislative scheme"); see also Grimes, 53 Nev. at 372, 1 P.2d at 572 (stating that "for the carrying on of a business of a character regarded as tending to be injurious, such as dealing in intoxicating liquor, a wide discretion may be given to licensing officers").

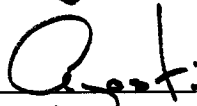
<sup>4</sup>Clark Co. Liquor & Gaming v. Simon & Tucker, 106 Nev. 96, 97, 787 P.2d 782, 783 (1990).

<sup>5</sup>Id.

The Las Vegas Metropolitan Police Department's report stated that Max Markovitz was either a minority owner of or a lender to clubs in Michigan that entered into consent judgments in reference to numerous violations of Michigan nuisance abatement laws. This constitutes substantial evidence that the granting of a license may tend to cause a public nuisance. The police report also indicated that Max's son, Alan, has a lengthy history of continually breaching Michigan law, including unauthorized transfers of corporate ownership, in operating his adult clubs in Michigan. Alan had a significant role in securing and renovating the Las Vegas site for the club. Accordingly, there is sufficient evidence to justify the board's concerns that Alan may someday become an owner of the Las Vegas property through his relationship with his father. Finally, the petition and testimony from the business owners surrounding the proposed club supplied substantial evidence that the granting of a license may adversely affect the valuation of adjoining and contiguous property.

Accordingly, we conclude that substantial evidence exists in the record to support the Clark County Liquor and Gaming Board's denial of a liquor license. Therefore, we AFFIRM the order of the district court denying writ relief.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Eighth Judicial District Court Department 12, District Judge  
Callister & Reynolds  
Clark County District Attorney  
Clark County District Attorney/Civil Division  
Clark County Clerk