

ISSUED APRIL 7, 1997

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

BASEM M. HAWAMDEH	)	AB-6518a
dba 99 Cent Store)	
1050 East Palmdale Blvd., #207A	)	File: 21-281797
Palmdale, CA 93550,	)	Reg: 94030576
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jaime Rene Roman
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	August 7, 1996
	)	Los Angeles, CA
)	

BASEM M. HAWAMDEH, doing business as 99 Cent Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which conditionally revoked his off-sale general license but stayed the revocation for a probationary period of three years on terms which included the imposition of a new condition and an actual suspension of the license for 20 days, for appellant allowing the placing of a sign which advertised the availability of alcoholic beverages, and the sales of single cans of beer, both violations being contrary to conditions on his license, being contrary to the

¹The decision of the Department dated March 15, 1996, is set forth in the appendix.

universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

Appearances on appeal include appellant BASEM M. HAWAMDAH, appearing through his counsel, Ralph Barat Saltsman; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on September 3, 1991, subject to conditions being placed on the license. Thereafter, the Department instituted an accusation on August 19, 1994, alleging two violations of those conditions.

An administrative hearing was held on March 22, 1995, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the two conditions had been violated. Appellant then filed an appeal with the Appeals Board which on January 3, 1996, sustained a portion of the Department's decision and reversed a portion of the decision and remanded the matter to the Department for a reconsideration of the penalty.

The Department on March 15, 1996, issued its decision after the Appeals Board's decision which again conditionally revoked the license, added an additional condition to the license pursuant to Business and Professions Code §23800, subdivision (b), and suspended the license for 20 days. Appellant thereafter filed a

timely notice of appeal.

In his appeal, appellant raises the issue that the addition of the new condition was not reasonable and therefore, the Department proceeded in an unlawful manner.

DISCUSSION

The Appeals Board defined the need for "reasonableness" in the imposition of a condition in its original decision. We restate a portion of those views.

The authority of the Department to impose conditions on a license is set forth in Business and Professions Code §23800, which allows reasonable conditions. The test of reasonableness as set forth in §23800, subdivision (b), is that "Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings," or in other words, the imposition of the condition is reasonably related to the correction of the problems presented by the findings. Thus, there must be a nexus, defined as a "connection, tie, link,"² in other words, a reasonable connection between the problem sought to be eliminated as set forth in the findings, and the condition designed to eliminate that problem or problems.

The condition in question states: "There shall be no sales of malt beverages in containers 20 ounces or larger except for kegs as defined in Business and Professions

²See Webster's Third New International Dictionary, 1986, page 1524.

Code §25659.5."³ This condition is sought to be imposed even though there were no findings in HAWAMDEH (1996) AB-6518, or in this case, that the sale of 20-ounce or higher volume was violated by appellant, thus not coming within the authority granted by §23800, subdivision (b), to impose a new condition.

The Board accepts, in the abstract, the Department's concerns. That is, there may be areas, licensees, or situations where sales of single containers of malt beverages in sizes larger than 16 ounces, and smaller than kegs, do contribute to, or aggravate, problems of loitering, litter, drunkenness in public, and other neighborhood problems. There are other ways the Department may guard against this real and, unfortunately in many areas, clear and present evil.⁴

The Department's attempt to add another condition to the license which essentially prohibits the sales of containers in volume over 16-ounces up to six gallons, is without foundation or legal authority, and disregards the provisions of §23800, subdivision (b). The applicable findings of the Department, 4, 5, and 6, concern only the sales of 12-ounce and 16-ounce containers. There are no findings which address the sale of above 16-ounce containers.

It would appear that the Department's concerns as to the higher volume

³A keg pursuant to the statute is a "brewery-sealed, individual container of beer having a liquid capacity of six gallons or more."

⁴See Business and Professions Code §24200, subdivision (f). Violations can invoke the application of §23800, subdivision (b).

containers are due to the evil of immediate consumption of such beverages. However, the record is silent as to any transient or public drinking evil, in the area of the premises. The original case's record shows that the original conditions were imposed due to the applicability of rule 61.3 (California Code of Regulations, Title IV, §61.3), which has to do with an undue concentration of licenses in the area. Additionally, the prior 1993 violation of sales of a single container, while not described by volume in the 1993 accusation, apparently was a 12-ounce container violation [RT 46].

CONCLUSION

The decision of the Department is reversed with respect to that portion of the order which directs appellant to petition for the addition of a new condition to his license, but in all other particulars, the decision of the Department is affirmed.⁵

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.