

ISSUED JANUARY 14, 1997

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

V.F.W. SOUTHEAST POST #5179	)	AB-6623
1116 South 43rd Street	)	
San Diego, CA 92113,	)	File: 52-37452
Appellant/Licensee,	)	Reg: 95032017
	)	
v.	)	Administrative Law Judge
	)	at the Dept. Hearing:
DEPARTMENT OF ALCOHOLIC	)	Greer D. Knopf
BEVERAGE CONTROL,	)	
Respondent.	)	Date and Place of the
	)	Appeals Board Hearing:
	)	August 7, 1996
	)	Los Angeles, CA

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V.F.W. Southeast Post #5179 (appellant, hereinafter "Post") appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which revoked appellant's on-sale general veterans' club license, for violating the authority of its club-type license by serving an alcoholic beverage to a member of the public who was not a club member or a bona fide guest, being contrary to the universal and

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<sup>1</sup>The decision of the Department dated December 8, 1995, is set forth in the appendix.

generic public welfare and morals provisions of the California Constitution, article XX, § 22, arising from a violation of Business and Professions Code §23453.<sup>2</sup>

Appearances on appeal include appellant V.F.W. Southeast Post #5179, appearing through its counsel, Wesley H. Mathews and Linda C. Mackey; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

#### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general veterans' club license was issued on October 10, 1968. Thereafter, the Department instituted an accusation against appellant on January 10, 1995, alleging that the veterans' club licensee served an alcoholic beverage to a non-member, who was not a bona fide guest, in violation of Business and Professions Code §23453.

An administrative hearing was held on June 7, 1995, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision, which revoked appellant's club license. Appellant filed a timely notice of appeal.

In the appeal, appellant raises the following issues: (1) the Department exceeded its jurisdiction in determining that Investigator Cravens was not a bona fide guest of a Post member; (2) there was not substantial evidence to support the finding that the Post opened its doors to the public; and (3) it was an abuse of

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<sup>2</sup>The full text of the cited statute appears in the appendix.

discretion to revoke the license as the use of the premises was not contrary to public welfare or morals.

#### DISCUSSION

##### I

Business and Professions Code §23453 provides that only "bona fide members" of a veterans' organization and their "bona fide guests" may be served alcoholic beverages in the licensed premises of the veterans' organization. Appellant contends that the Department exceeded its jurisdiction by making the erroneous legal determination that Investigator Cravens was not a "bona fide guest" of a club member.

In this instance, Investigator Cravens (who was in plainclothes), arrived at the Post about 4:30 on a Friday afternoon. He was accompanied by four other officers and investigators, who waited in a car parked near the premises. Cravens went up to the door of the Post and tried to open it, but was unable to because the door was locked. While Cravens was standing there, Post Quartermaster Aaron Granderson, who was outside the premises getting the mail, saw him at the door of the premises. Granderson asked Cravens if he was a member or a veteran. Although Cravens told Granderson during the course of a short conversation that he was not a member, a veteran, a brother of a veteran, or from the area, Granderson unlocked the door with his key and invited Cravens to enter with him "as his guest" [RT 14-15, 28-29, 35, 43, 46]. When asked at the administrative hearing why he

had let Cravens in as his guest, Granderson replied: "I guess I can't answer that question. I don't know what told me to invite him in as my guest. His appearance. His demeanor. . . ." [RT 63].

Granderson and Cravens entered the Post, and Granderson walked off toward the office, while Cravens headed toward the domino table and the bar [RT 30, 46-47, 60-61, 71, 79-80]. The Post bartender observed Cravens enter with Granderson and assumed that Cravens was Granderson's guest, so she served Cravens without "carding" him when he ordered a beer [RT 71-72, 76, 84-86]. After tasting and taking a sample of the beer that he was served, Cravens went out and brought in the other officers [RT 19, 33-34].

The Post kept its doors locked and only members had keys [RT 44, 56-57]. Anyone without a key had to be admitted by someone from inside the Post and identified as a member or the guest of a member [RT 45, 50, 57, 70]. It is standard practice of the Post that no drinks are served to a guest unless the host is present in the building [RT 44-46, 85]. The guest does not, however, have to be attended at all times by the host-member [RT 19, 36, 85, 102]. Further, any member may bring in a guest and there is no requirement as to how long the member must have known the guest [RT 50, 62]. By bringing in a guest, the host is responsible for the conduct or actions of the guest while the guest is on the Post premises.

The Department's concern in this matter is that "bona fide guest" not be interpreted to allow an invitation to the public at large. If the interpretation of "guest" encompasses a general public invitation to passers-by, the distinction between public licenses and private licenses for specific narrow groups falls. The distinction between the two types of licenses is important because, in practical effect, a club license allows the establishment to operate with minimal oversight by the Department, precisely because only members and their bona fide guests may be served and, presumably, a more restricted clientele will create fewer problems than would the general public. For this reason, Business and Professions Code §23455 states the Department may revoke the license if a club ceases to act as a "bona fide club."

Business and Professions Code § 23037<sup>3</sup> defines "guest" as "a person whose presence . . . is in response to a specific invitation for the special occasion." According to Webster's New World Dictionary, College Edition (1964), "bona fide" means "in good faith; without dishonesty, fraud or deceit." The Department concluded, in Determination of Issues II of its decision, that "Cravens was not Granderson's guest under these clear guidelines."<sup>4</sup> The Department argued in its

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<sup>3</sup>The full text of the cited statute appears in the appendix.

<sup>4</sup>The Department's "Instructions, Interpretations, and Procedures Manual," at page L21, provides four circumstances (none of which are relevant to the present situation) which the Department considers to constitute "bona fide guests." These "guidelines" of the Department were unknown to appellant and counsel for the Department and were not produced by the Department until after the administrative hearing [RT 106-107, 113, 117-118].

brief that Cravens could not be Granderson's guest because Cravens had no connection with the Post or with Granderson, and Granderson did not stay with Cravens when Cravens went to the bar and ordered a drink. However, there is nothing in the statute, case law, or even the Department guidelines that supports such an interpretation. We find both the Department's Determination and its argument faulty.

The term "bona fide guest" as used in §23037 has not been examined and defined by case law in California. However, the Court of Appeals of Minnesota, in Rogers v. Ponti-Peterson Post No. 1720, 495 N.W.2d 897 (Minn.App. 1993), defined the term in a case involving the dram-shop liability of a V.F.W. Post for selling alcoholic beverages to a non-member who then caused a serious car accident. The V.F.W. Post in Minnesota alleged that the Minnesota statute restricting sales of alcohol by club licensees to persons who are members of the club or their "bona fide guests" was unconstitutionally vague because the term "bona fide guest" was not defined in the statute. The court examined the terms "bona fide" and "guest" and found that the legislature had "used the phrase 'bona fide guests' in accordance with its standard dictionary definition to describe persons specifically welcomed to a club by its members." The court noted that its position was

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“consistent with definitions of ‘bona fide guest’ in other states’ statutes. See, e.g., Cal.Bus. & Prof. Code § 23037 (West 1985) (a ‘bona fide guest’ is ‘a person whose presence as a guest is in response to a specific invitation for the special occasion’); . . .”

(Rogers v. Ponti-Peterson Post No. 1720, supra, 495 N.W.2d at 901.)

The Minnesota court was specifically addressing the same concern that the Department has in the present case about the distinction between club licenses and public licenses, since the V.F.W. Post in Minnesota allowed anyone to come into the club and be served. The court said, after defining “bona fide guest” as noted above, that: “It is inconsistent with the common usage of that phrase and the purpose of the restricted license statute to interpret the phrase to include everyone.” (Ibid.)

We agree with the Minnesota Court of Appeals that the commonly accepted definition of “bona fide guest” is the proper one and that this definition clearly does not encompass “everyone” or “the general public” as the Department fears.

The statute says that a “guest” is someone who is in the premises because he or she had a “specific invitation for the special occasion.” Properly applying this definition to the facts of this case, we find that Granderson invited Cravens into the Post for that particular afternoon. The invitation was issued after a very cursory conversation, but Granderson testified that he made a conscious decision to invite Cravens in because of his appearance, demeanor, and personality, and because he spoke well. Cravens did not solicit the invitation. Cravens was served an alcoholic beverage by the bartender based on her observation of Cravens entering with

Granderson and her legitimate assumption that Cravens was a bona fide guest of Granderson. Although there could be other situations in which the member/guest relationship might be even clearer, the instant situation falls squarely within the language of the statute.

In requiring some sort of prior acquaintance between host and guest, the Department has not used the commonly accepted definition of "bona fide guest," but some other "standard" made up out of thin air, with no support in law or logic, that was unavailable to the licensee. Even counsel for the Department at the hearing before the Administrative Law Judge (ALJ) was unable to provide the Department's definition of a "guest" when so requested by the ALJ. After the hearing, the Department's counsel finally produced guidelines from a Department IIP Manual of 1975, but these do not address the issue considered here. Therefore, the Department's interpretation in this case is not only unsupported, it is unwritten. It is patently unfair to require a licensee to guess at what the requirements are for a guest. An interpretation like the Department's in this case is too vague and too unavailable to be consistent with due process.

The Department has a legitimate concern about a club having restricted access. Another concern here, however, is whether the standards about who is a "guest" are clear and available so that alleged violations are not charged arbitrarily.

We conclude that Cravens was a "bona fide guest" within the commonly

accepted definition of that term as used in the statute and, therefore, there was no violation in this instance.

## II

Appellant contends that there was insufficient evidence to substantiate the Department's finding that the Post opened its doors to serve members of the public. The Department argues that the finding is supported by the other Findings of Fact relative to the single incident alleged in the Accusation and by eight prior similar violations occurring during the 28 years that appellant has held its license. (Dept. Brief 4-5.)

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

This is really a non-issue. While the prior violations may be considered in connection with the penalty, they really have nothing to do with whether or not a violation occurred in this instance. There was no violation in this instance, and the violations that were charged over the last 28 years, even if based on a valid standard, could not reasonably establish that the Post "was opening its doors to the public."

## III

Appellant argues that the Department's Findings of Fact VI--"Respondent [appellant here] does serve an important function in the minority community where it is located"--precludes an ultimate finding that appellant is operating contrary to public welfare or morals and that its license should be revoked.

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

We conclude that there was no violation in this case, and therefore, there can be no discipline imposed.

#### CONCLUSION

The decision of the Department is reversed.<sup>5</sup>

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<sup>5</sup>This 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.

ISSUED JANUARY 14, 1997

AB-6623

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