ISSUED APRIL 28, 1997

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

R.L.G. SEA OTTER, INC. dba Seaside Saloon 233 Ocean Street Santa Cruz, CA 95060, Appellant/Licensee, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	))))))))))))	AB-6643 File No. 48-285565 Reg. No. 95034080 Administrative Law Judge at the Dept. Hearing: Jeevan S. Ahuja Date and Place of the Appeals Board Hearing February 5, 1996 Los Angeles, California

R.L.G. Sea Otter, Inc., doing business as Seaside Saloon (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which ordered appellant's on-sale general public premises license revoked, with revocation stayed for a period of 180 days, the license to be suspended during such period and subject to revocation without notice or hearing if not sold during such period of suspension, for having permitted the premises to be operated as a disorderly house, and having permitted the negotiation and sale of illegal narcotics on the premises,

[1] The decision of the Department, dated February 22, 1996, is set forth in the appendix.

being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§25601 and 24200.5, subdivision (a).

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued June 20, 1994. Thereafter, the Department instituted an accusation against appellant's license on October 10, 1995. An administrative hearing was held on January 8 and 9, 1996. At that time, oral and documentary evidence was presented to the effect that appellant's premises had been the subject of numerous requests for police response, most of which did not result in a formal report, that a number of illegal transactions had taken place on or adjacent to the premises, and that a search of the premises disclosed numerous bindles of controlled substances on the patron side of the bar on a date after appellant's sole shareholder had been advised of drug activity on the premises.

The Administrative Law Judge (ALJ) issued his proposed decision which revoked appellant's license, but stayed the order of revocation for a 180-day period, during which time the license was to be suspended. The proposed order permitted appellant to sell or transfer the license, and provided that if the license was not sold or transferred during such period, the Department could, without further notice or hearing, order it revoked. The Department adopted the ALJ's proposed decision on February 22, 1996. Appellant filed a timely notice of appeal.

In her appeal, appellant challenges the sufficiency of the evidence to support the decision, contending that there is no evidence that she knew about or permitted

the conduct alleged. Appellant also challenges the penalty as excessive.

DISCUSSION

I

Appellant challenges the sufficiency of the evidence to support the decision. She contends that while much of the conduct alleged may have taken place, there is no evidence that she knew about it or permitted it to happen. However, given the number of incidents of violence and drug activity shown by the evidence, it seems almost inescapable that, despite her claimed lack of knowledge, appellant "permitted" her premises to be operated as a disorderly house, in violation of Business and Professions Code §25601.

In the case of McFaddin San Diego 1130, Inc. v. Stroh (1989) 208 Cal.App.3d 1384 [257 Cal.Rptr. 8], several transactions occurred on the premises involving patrons selling or proposing to sell controlled substances to undercover agents. While the licensee and its employees did not know of the specific occurrences, they knew generally of contraband problems and had taken numerous preventive steps to control such problems. The McFaddin court held that since (1) the licensee had done everything it reasonably could to control contraband problems, and (2) the licensee did not know of the specific transactions charged in the accusation, the licensee could not be held accountable for the incidents charged.

Appellant contends that she, too, had done all she could to prevent narcotics transactions on the premises. Appellant cites an instance where she found drugs

hidden in the bathroom, and, after flushing them down the drain, left a note warning the person who left them there that they were unwelcome. She also cites an instance where she found suspected heroin in the parking lot, and notified police. These actions may be commendable, but, nonetheless, it is clear from this record that the premises were a hub of drug activity, with a high volume of traffic in and out of the premises engaged in drug and narcotic transactions.

Counsel for appellant stipulated at the hearing (RT 7) that the conduct alleged in the accusation had taken place, but did not stipulate that appellant knew of or permitted it. Appellant contends that all or most of the objectionable conduct had not taken place inside appellant's premises or within the knowledge of its employees. Certain of the evidence offered at the hearing tended to support appellant's contention. However, there was little doubt that the bar was located in an area where drug activity was extensive, and the police search conducted on May 2, 1995 [II RT 160], turned up convincing evidence that drug activity was on-going inside the premises. Additionally, testimony from nine witnesses offered by way of affidavit, pursuant to Government Code §11514, subdivision (b), tended to depict appellant's premises as a gathering place for narcotics dealers, users and prostitutes.

Appellant's counsel paints a picture of an inexperienced first-time owner unable to cope with what was constantly going on in an admittedly "tough" neighborhood. There may be something to counsel's argument, but it does not excuse appellant from her responsibilities. It is true that appellant took steps

which, arguably, were intended to deter drug activity, but it is clear that building a fence, removing shrubbery and brush, removing bathroom door locks, leaving the front door open, or installing lights in the parking lot, were little more than cosmetic, and ineffective overall. Knowing what appellant knew, that she was in a neighborhood notorious for drug activity and prostitution, she should have taken more aggressive actions, such as hiring security, or excluding patrons whose frequent trips into and from the premises with other patrons should have aroused suspicion.

II

Appellant contends that the penalty of revocation is excessive.

As mentioned above, appellant did take steps, albeit ineffectual,[2] to discourage drug activity on the premises. In addition, she was cooperative with the police, encouraging their presence, and constantly seeking advice from them.

However, as appellant acknowledges in her brief, Business and Professions Code §24200.5, subdivision (a), mandates license revocation where a licensee knowingly permits the illegal sale or negotiation for sale of controlled substances or dangerous drugs, and provides that successive sales, or negotiations for such sales, over any continuous period of time, shall be deemed evidence of such permission.

The rather harsh penalty of revocation, in light of appellant's acknowledged

[2] Appellant admits that "[i]n spite of her best efforts [she] couldn't prevent the neighborhood drug problem from spilling over into her bar" (App.Br., page 2).

efforts to monitor and prevent any drug activity on the premises and cooperation with the police, was probably required once the ALJ found the violation of Business and Professions Code §24200.5, subdivision (a). It may also have been invited by appellant's counsel's statement in response to the Department recommendation of outright revocation, that if the ALJ found against his client:

> "... My client desires at this point and has offered to agree to a sale within a six-month period of time. And that was our position because it's too big a load for her. And she doesn't have the resources necessary to fight it, apparently. No matter how hard she tries or how hard she wants it. If the court does make a finding against us, we would be supporting a decision of a six-month stay of any suspension or eradication allowing her to transfer." [RT 188].

The penalty imposed by the ALJ reflected counsel's request.

As observed in People v. Paulson (1990) 216 Cal.App.3d 1480, 1488-1489 [265 Cal.Rptr.579], permitting the sale of controlled substances or dangerous drugs on licensed premises is the only public offense not itself involving alcoholic beverages requiring license revocation. The court went on to say:

> "Subdivision (a) of section 24200.5 therefore reflects a legislative judgment that the use of the licensed premises for this purpose poses a unique threat to "the safety, welfare, health, peace and morals of the people of the State" (§23001) that must be dealt with more vigorously than almost all other illegal acts that may take place on licensed premises. Drugs and alcohol are both intensively regulated mind-altering substances; are both subject to abuse and addictive; are both attractive to many young persons and others who frequent licensed premises; and their adverse effects are often exacerbated when they are used at or about the same time. In other words, trafficking in dangerous drugs is a particularized criminal act warranting special attention by those charged with enforcement of laws regulating the sale of alcoholic beverages. Absent the threat of mandatory revocation, the Legislature apparently reasoned such premises would provide a tempting venue for the sale of dangerous drugs."
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> Quite obviously, there is no claim or suggestion that appellant herself

engaged in this kind of activity. Equally obvious, however, is that her patrons did so with frequency and regularity, and that her bar became notorious as a drug hangout.

That her's was the only bar in a drug-ridden area was undoubtedly a factor in appellant's inability to control the situation, but her own failure to take more aggressive activity to control what went on in and immediately outside her premises was also a major contributing factor, and can not be ignored.

CONCLUSION

Despite counsel's eloquence on appellant's behalf, we have not been persuaded that the action taken by the Department is incorrect. Therefore, we affirm the decision of the Department.[3]

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

[3] This final order is filed as provided in 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.