

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

BONG OK LEE	)	AB-6798
dba 8 OK Liquor)	
749 South Western Avenue	)	File: 21-275389
Los Angeles, CA 90005,	)	Reg: 95032914
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 2, 1997
	)	Los Angeles, CA
)	

Bong Ok Lee, doing business as 8 OK Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her off-sale general license for a violation of a condition on her license which prohibited Young Ok Lee from working at the premises, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article

¹The decision of the Department dated December 26, 1996, is set forth in the appendix.

XX, §22, arising from a violation of Business and Professions Code §23804.

Appearances on appeal include appellant Bong Ok Lee, appearing through her counsel, Andreas Birgel, Jr.; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

On May 26, 1993, at or about the time of the transfer of the license to appellant from Young Ok Lee, appellant's older sister, appellant signed a conditional license petition which stated:

"That said Young Ok Lee have no interest directly or indirectly in the ownership, management, operation or control of the licensed premises; shall not be employed thereon and shall not render any services in the licensed premises in any capacity whatsoever."

Apparently, according to the petition, Young Ok Lee had been arrested for the possession for sale of cocaine [exhibit 2]. Appellant's off-sale general license was thereafter issued on June 7, 1993.

Subsequently, on December 9, 1994, appellant signed a stipulation and waiver form and thereafter a Department decision was entered dated March 2, 1995, based upon the waiver form, that appellant's license was revoked, but execution was stayed for a period of 180 days to allow the transfer of the license to another. The waiver and decision concerned appellant allowing Young Ok Lee to work at the premises on August 16, 1994. On September 29, 1995, the Department entered its Order vacating the stay, and reimposed revocation as appellant apparently had not transferred the license according to the terms of her

probation (within 180 days). Appellant filed a notice of appeal.

The Appeals Board issued its decision dated June 24, 1996 (AB-6573), denying the motion of the Department to dismiss the appeal. The Board determined that the Department had essentially prohibited appellant from transferring the license and fulfilling her obligation to transfer within the 180 days. The conduct of the Department which the Board found improper, was that during the pending 180-day period, the Department filed another accusation dated May 16, 1995, alleging another instance where the older sister of appellant was allowed to work within the premises -- this new accusation prohibited appellant from consummating any transfer she might have negotiated with a buyer, as no transfer of a license may be accomplished if an accusation is pending against the transferring license.

That May 16, 1995, accusation, which is the subject of the present appeal, was considered in an administrative hearing held on November 19, 1996. After that hearing, the Department entered its decision revoking the license. Appellant then filed a timely notice of appeal.

In her appeal, appellant raises the issue that the penalty is excessive, arguing that there was insufficient cause to find that the violation was contrary to public welfare and morals, and that the medical emergency of appellant on the day of the violation should have mitigated the penalty.

DISCUSSION

Appellant contends the penalty is excessive, arguing that there was insufficient cause to find that the violation was contrary to public welfare and morals.

Article XX, §22, of the California Constitution confers on the Department the exclusive power to revoke or suspend any license to sell alcoholic beverages, if the Department shall determine for good cause, that the continuance of the license would be contrary to public welfare and morals. The Department "need not define by law or rule all the things that will put that license into jeopardy." (Cornell v. Reilly (1954) 127 Cal.App.2d 178 [273 P.2d 572, 577].) The case of Nelson v. Department of Alcoholic Beverage Control (1959) 166 Cal.App.2d 783 [333 P.2d 771, 773] stated that " ... conduct constituting a violation of any of the sections of the Alcoholic Beverage Control Act is a ground for the suspension or revocation of a license." There are at least two categories where public welfare and morals would be involved: violations which occur on the licensed premises and affect the business conducted therein, and violations that reveal a lack of personal fitness of the licensee to control the premises. (H. D. Wallace v. Department of Alcoholic Beverage Control (1969) 271 Cal.App.2d 589 [76 Cal.Rptr. 749].) The Wallace court went on to state that : "Properly construed, the public welfare and morals clause permits license termination for law violations not involving moral turpitude but having a rational relationship with the operation of the licensed business in a manner consistent with public welfare and morals.

The court in Boreta Enterprises, Inc. v. Department of Alcoholic Beverage

Control (1970) 2 Cal.3d 85, 99 [84 Cal.Rptr. 113], a matter of dissimilar circumstances, defined the concept of "public welfare and morals" which would allow for a universal understanding of that term. The court stated:

"It seems apparent that the 'public welfare' is not a single platonic archetypal idea, as it were, but a construct of political philosophy embracing a wide range of goals including the enhancement of majority interest in safety, health, education, the economy, and the political process, to name just a few. In order to intelligently conclude that a course of conduct is 'contrary to public welfare,' its effects must be canvassed, considered and evaluated as being harmful or undesirable."

The history of this case shows that the excluded-from-the-premises sister was a person the Department concluded was not fit as a licensee -- hence the transfer of the license to appellant. It is evident appellant has little respect for the condition imposed on her license and the concerns of the Department.

We conclude that there is no abuse of the Department's discretion under the peculiar facts of this case, and under such circumstances, revocation of the license is most likely the only realistic resolution of the matter.

II

Appellant contends the penalty was excessive, arguing that the medical emergency of appellant on the day of the violation should have mitigated the penalty.

Appellant has not shown a medical emergency other than merely raising the specter of a dire problem. It appears from the record the "emergency" was more a continuation of a chronic medical problem rather than an emergency condition.

Appellant has little to complain about given the prior violation for the same neglect of respecting the specific terms of the condition. Appellant should have arrived at a more proper solution to the problem of needing to leave the premises (such as closing the premises during the medical treatment period). Under the circumstances, we cannot say that the Department has abused its discretion in revoking the license.

CONCLUSION

The decision of the Department is affirmed.²

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

²This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.