

ISSUED MARCH 6, 1998

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

FATHIA SALAMA	)	AB-6849
dba Coloma Market)	
2225 McGregor Drive	)	File: 20-319212
Rancho Cordova, CA 95670,	)	Reg: 96038038
Appellant/Applicant,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	December 3, 1997
	)	San Francisco, CA
)	

Fathia Salama, doing business as Coloma Market (applicant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied her application for an off-sale beer and wine license on the grounds that she did not show that operation of the proposed premises would not interfere with the quiet enjoyment of their property by nearby residents, and, therefore, issuance of the license would be contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and

¹The decision of the Department, dated March 20, 1997, is set forth in the appendix.

Professions Code §23958.

Appearances on appeal include appellant Fathia Salama, representing herself, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's application for the person-to-person and premises-to-premises transfer of an off-sale beer and wine license was filed on April 19, 1996. Protests were filed and, after an investigation, the Department denied the application. Appellant requested a hearing, which was held on February 3, 1997. Eight protestants appeared.

Subsequent to the hearing, the Department issued its decision which determined that issuance of the license would be contrary to public welfare and morals and ordered that the application be denied.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant raises the following issues: 1) She had difficulty answering questions at the hearing because she does not have a complete understanding of English, and 2) she is willing to have a number of restrictions placed on her license to help ensure that nearby residents will not be disturbed.

DISCUSSION

I

Appellant contends that she had difficulty answering questions at the

administrative hearing because she does not completely understand English.

A review of the hearing transcript reveals one or two instances of misunderstanding by appellant, but none of them appear significant. Appellant was represented at the hearing by an attorney and neither she nor her attorney made any request for an interpreter or indicated that appellant was having difficulty understanding what was being said. Under the circumstances, to the extent that appellant may have had any difficulty understanding, we cannot say that she was unfairly prejudiced.

II

Appellant contends she would consent to having restrictions placed on the license to help ensure that nearby residents are not disturbed. She includes in her brief a list of 19 items that she is presumably proposing as conditions on the license.

These conditions were apparently not presented at the hearing nor to the Department during its investigation. While appellant may re-apply for a conditional license in the future and have these conditions considered, they are not appropriately presented for approval in this appeal.

The Department is given the discretion to decide if issuance of the license would be consistent with public welfare and morals. As long as that discretion is not abused, this Board must sustain the Department's determination. The appellant here appears to be willing to work hard to prevent and remedy problems. However,

this Board is cognizant of the difficulties the community in question has faced, and given the likelihood of recurring problems with quiet enjoyment there, we cannot say that the Department has abused its discretion in denying this application.

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

Any party may, before this final decision becomes effective, apply to the appropriate 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.