

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

4623 MONICA CORP.	)	AB-6919a
dba Detour)	
1087 Manzanita Street	)	File: 48-10740
Los Angeles, CA 90029,	)	Reg: 96038143
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John A. Willd
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	February 3, 1999
	)	Los Angeles, CA

4623 Monica Corp., doing business as Detour (appellant), appeals from a decision of the Department of Alcoholic Beverage Control,¹ entered following a decision of the Appeals Board, which, in turn, reversed an earlier decision of the Department which had revoked appellant's on-sale general public premises license.²

¹The decision of the Department following Appeals Board decision, entered October 23, 1998, is set forth in the appendix.

² In that decision, the Department found that appellant's bartenders had served alcoholic beverages (beer) to two patrons who were at the time obviously intoxicated, and that a series of incidents involving simulated sexual intercourse between a male entertainer and one of appellant's bartenders had taken place, including the exposure of the penis of the male entertainer, and the fondling of the genitals of the male entertainer by the male entertainer himself, by two of appellant's bartenders, and by an unidentified patron.

The Department's new decision again ordered revocation, but stayed its order for a two-year probationary period, and ordered an actual 20-day suspension.

Appearances on appeal include appellant 4623 Monica Corp., appearing through its counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on November 4, 1977. Thereafter, the Department instituted an accusation against appellant charging that appellant's bartenders had served alcoholic beverages to two obviously intoxicated patrons, and that a series of incidents involving a male dancer, two of appellant's bartenders, and an unidentified patron violated various subdivisions of Rules 143.2 and 143.3.

An administrative hearing was held on March 12, 1997. Subsequent to the hearing, the Department issued its decision which sustained the allegations in the accusation. Appellant thereafter filed a timely notice of appeal. The Appeals Board affirmed the Department's findings with regard to the violations alleged in the accusation, but held that the penalty was an abuse of discretion. Upon remand, the Department entered the order from which appellant has now appealed, contending that the penalty is, once again, excessive.

The decision on remand again ordered appellant's license revoked, but stayed revocation, the stay being conditioned upon a two-year probationary period and an actual suspension of 20 days. Appellant claims the penalty continues to be

excessive.

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].)

The Board stated in its earlier decision that the violations involving the two sales of alcoholic beverages to obviously intoxicated patrons, both of which occurred on the same night, would not, by themselves, warrant revocation. The Board also said the series of violations of Rule 143, all of which arose in one performance of one independent contractor entertainer, albeit involving, in part, conduct of two employees, by themselves also did not seem to warrant revocation.

On the other hand, the purpose of a stayed revocation is to induce law-abiding behavior through the fear of greater punishment if it is not forthcoming. While the Board indicated in its earlier decision that a lesser penalty was in order, it did not, nor could it, tie the Department's hands with respect to the exact penalty to be imposed - that is, unless the new penalty again transcended the bounds of reasonableness.

We see a considerable difference between a penalty of revocation, and one of stayed revocation. Appellant need only stay within the law for the probationary period, and the stayed revocation falls of its own weight. In the meantime, it has

been given a strong inducement to behave. Thus, we are not prepared to say that a stayed revocation is excessive, on the facts of this case, or that the Department has abused its discretion in ordering such a penalty.

ORDER

The decision of the Department is affirmed.³

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

³ This 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 order as provided by §23090.7 of said code.

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