

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

KASU JA CHO	)	AB-7379
dba Kuang Ya)	
847 South Union Avenue	)	File: 47-248600
Los Angeles, CA 90017,	)	Reg: 98045313
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 2, 2000
	)	Los Angeles, CA

Kasu Ja Cho, doing business as Kuang Ya (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied her petition for modification of Condition 7 on her license to allow karaoke music and for removal of Condition 10, which prohibits the installation of dividers or partitions higher than 40 inches tall between booths.

¹The decision of the Department, dated April 8, 1999, is set forth in the appendix.

Appearances on appeal include appellant Kasu Ja Cho, appearing through her counsel, Timothy J. Salyer, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on June 19, 1990. Appellant was previously licensed at the same premises as co-licensee with Sin Chang Cho, her husband, from October 4, 1989, to June 18, 1990. The present license was issued to appellant as sole licensee upon her husband's death. When appellant and her husband first applied for the license in 1989, they agreed to the imposition of conditions on that license; those conditions carried over to the license issued to appellant in 1990.

Condition 7 states:

“There shall be no dancing permitted on the premises at any time. Entertainment is restricted to no more than three (3) persons consisting of one (1) vocalist and two (2) instrumentalist[s]. Instruments are limited to a piano and guitar.”

Condition 10 states: “No booths shall be installed with any dividers or partitions between them that are higher than 40 inches tall.”

Appellant filed a Petition to Modify Conditions, requesting that Condition 7 be modified to allow karaoke music and that Condition 10 be deleted. The Department denied the petition and appellant requested a hearing.

An administrative hearing was held on February 19, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented in support of the petition by appellant. Will Salao, a Department

investigator, and Phillip Chan, an LAPD officer assigned to the Vice Unit of the Rampart Division, testified regarding the process of and reasons for denying the petition.

Subsequent to the hearing, the Department issued its decision which determined that modification of the conditions as requested would be contrary to the public welfare and morals provisions of the California Constitution (Cal. Const. art. XX, §22).

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant contends the decision was an abuse of discretion because it ignored the original reasons for imposition of the conditions.

DISCUSSION

The Petition for Conditional License filed by appellant and her husband in 1989 recited the following as the reasons for imposition of the conditions:

“WHEREAS, the Los Angeles Police Department filed a valid protest against the issuance of the proposed license; and,
 “WHEREAS, Councilwoman Gloria Molina filed a valid protest against the issuance of the proposed license; and,
 “WHEREAS, transfer of this license without a hearing on said protest would be contrary to Section 24013 of the Business and Professions Code; . . .”

Determination of Issues II of the Department’s decision states:

“Pursuant to Business and Professions Code Section 23803, the conditions imposed on a license may be removed provided the grounds which caused the imposition of the conditions no longer exist. However, the Petitioner has the burden of establishing by a preponderance of the evidence that the Petition be granted and the conditions removed from the license. In the instant case, the Petitioner has failed to meet her burden in establishing that the grounds which caused the imposition of the conditions no longer exist and that she is entitled to the requested modification of conditions especially in light of the fact that the Police Department objects to the proposed modification of conditions, the fact that prior violations have occurred at the

premises as indicated above and the fact that the premises has not been operating as a bona fide restaurant for several months. See Findings II through VII.”

Investigator Salao testified that he reviewed the Department’s file on this license. Noting the original protestants on the conditional license, he wrote to the Los Angeles City Council; telephoned the office of Gloria Molina, who was then no longer a city councilperson, but a Los Angeles County Supervisor; and spoke to Rampart Division vice officer Phillip Chan, notifying all of the request to modify conditions on the license. The city council did not respond to Salao’s notice, but Salao testified, over an objection to his testimony as double hearsay, that a person in Supervisor Molina’s office told him that Supervisor Molina said she was opposed to any modification. Salao received a verbal response from officer Chan that the Los Angeles Police Department was opposed to modification of the conditions.

Officer Chan testified about the “high crime area” in which the premises is located, the presence of gang activity near the premises, the drain on police services occasioned by the area around the premises, and the interference with an officer’s ability to perform regular checks posed by enclosed rooms. Chan also testified that the premises was not operating as a bona fide restaurant for three months.

This Board has said it will not go back and invalidate conditions that were not objected to when they were first imposed; however, the Board will look at the conditional license to see the reasons for imposition of the conditions. The reasons

are crucial when a modification is requested, since the licensee must show that the grounds for imposition of the conditions no longer exist.²

In the present case, the “grounds” stated for imposition of the conditions in the first place are not grounds at all. The mere fact that protests were filed by the police and a city councilwoman does not justify imposition of the conditions, and it is patently unreasonable to require a licensee to show that protestants were no longer objecting to issuance of the license where there is no indication of the basis for the protests. There is no mention in the conditional license preamble of high crime, law enforcement problems, or gang activity. Chan’s testimony regarding the existence of these circumstances in the area in which the premises is located does not make them the reasons for the original imposition of conditions. The licensee is left with the impossible burden of showing a change in circumstances, when the circumstances that caused the imposition of the conditions in the first place are not specified. (See Crenshaw (1996) AB-6580.)

Since any attempt by appellant to show a change in the circumstances that caused imposition of the conditions is an impossibility, the Department’s decision must be reversed as arbitrary, capricious, and an abuse of discretion.

² Business & Professions Code §23803 provides:

"The department, upon its own motion or upon the petition of a licensee or a transferee who has filed an application for the transfer of the license, if it is satisfied that the grounds which caused the imposition of the conditions no longer exist, shall order their removal.

"Any petition for the removal or modification of a condition pursuant to this section shall be accompanied by a fee of one hundred dollars (\$100)."

ORDER

The decision of the Department is reversed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This 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.