

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

LA SIRENITA RESTAURANT	)	AB-7381
CORPORATION)	
dba La Sirenita	)	File: 47-332722
14032 Oxnard Street	)	Reg: 98045198
Van Nuys, CA 91401,)	
Appellant/Licensee,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Sonny Lo
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	April 6, 2000
Respondent.	)	Los Angeles, CA
)	

La Sirenita Restaurant Corporation, doing business as La Sirenita (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 25 days, with 15 days thereof conditionally stayed, for appellant, through its agent, Ruben Gomez, having permitted entertainment to be audible beyond the area under its control, in violation of a condition on its license, and contrary to the universal and generic public welfare and morals provisions of

¹The decision of the Department, dated March 11, 1999, is set forth in the appendix.

the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

Appearances on appeal include appellant La Sirenita Restaurant Corporation, appearing through its counsel, Armando H. Chavira, 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 August 14, 1997. Thereafter, the Department instituted an accusation against appellant charging that, on October 31, 1998, appellant's manager permitted entertainment provided within the premises to be audible beyond the area under the control of the licensee, and in violation of a condition on its license.

An administrative hearing was held on January 26, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Department investigator Dan Shoham concerning the audibility in a neighboring apartment complex of live entertainment emanating from appellant's restaurant, and by Francisco Ybanez and Alfredo Gonzales, principals in appellant corporation, who testified about remedial measures taken to ensure against any future violation.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged. Appellant thereafter filed a timely notice of appeal. In its appeal, appellant does not challenge the finding of a violation, and contends only that the Department abused its discretion in imposing

a penalty without evidence of a Department guideline, rule, or statute.

DISCUSSION

Appellant contends that the Department failed to present any evidence that the “standard” penalty recommended by Department counsel, a 25-day suspension, was authorized by any Department guideline, rule, or statute, and that the Administrative Law Judge (ALJ) felt he had no discretion but to impose that “standard” penalty.

Appellant’s contention misses the mark.

The mere fact that no guideline, rule, or statute was cited to the ALJ was no bar to his ability to impose the penalty recommended by Department counsel. The test, of course, is whether the penalty is within the bounds of the discretion vested in the Department under the Alcoholic Beverage Control Act and the California Constitution. As to that, the California Supreme Court has acknowledged that the Department has a broad discretion that is not to be disturbed in the absence of any abuse thereof. (See Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].)

Moreover, the ALJ did not, contrary to appellant’s contention, order a “standard penalty which was too harsh for the facts and circumstances of this case.” (App.Br., page 6.) When the investigator toured the apartment complex where the entertainment could be heard, it was after midnight. [RT 29.] The potential for disturbing a large number of residents at such a late hour is enough to support a penalty sufficient to attract the attention of appellant’s management, as

it did here.

In any event, the ALJ did not impose a true 25-day suspension. He imposed a 25-day suspension with 15 of those days conditionally stayed. If the representations of appellant's representatives are true, that the steps they have taken will ensure that there are no future noise problems in the year to follow, then the suspension will have been only 10 days, well below the recommendation of Department counsel.²

ORDER

The decision of the Department is affirmed.³

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

² We should note that the Department's general guidelines for penalties, as announced December 4, 1996, prescribe a penalty of 25 days, with only 10 days thereof stayed. (See Department Procedures Manual, Guidelines, page L227.1.)

³ This 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.