

ISSUED JUNE 1, 2000

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

GURBACHAN SINGH SANDHU	)	AB-7410
dba Ron Arco	)	
Rancho Cucamonga, CA 91730,	)	File: 20-200577
Appellant/Licensee,	)	Reg: 97042011
	)	
v.	)	
	)	
DEPARTMENT OF ALCOHOLIC	)	
BEVERAGE CONTROL,	)	
Respondent.	)	
	)	
GURBACHAN SINGH SANDHU	)	AB-7411
dba Arco AM/PM	)	
Hesperia, CA 92345	)	File: 20-250120
Appellant/Licensee,	)	Reg: 97042012
	)	
v.	)	
	)	
DEPARTMENT OF ALCOHOLIC	)	
BEVERAGE CONTROL,	)	
Respondent.	)	
	)	
GURBACHAN SINGH SANDHU	)	AB-7413
dba Arco AM/PM	)	
Fontana, CA 92335,	)	File: 20-288219
Appellant/Licensee,	)	Reg: 97042010
	)	
v.	)	Administrative Law Judge
	)	at Dept. Hearing:
DEPARTMENT OF ALCOHOLIC	)	Sonny Lo
BEVERAGE CONTROL,	)	
Respondent.	)	Date and Place of the
	)	Appeals Board Hearing:
	)	April 6, 2000
	)	Los Angeles, CA

In these three appeals, Gurbachan Singh Sandhu (appellant) seeks to

overturn decisions of the Department of Alcoholic Beverage Control¹ which revoked three off-sale beer and wine licenses held by him, in Rancho Cucamonga, Fontana, and Hesperia, California.² The Department's orders were based upon its determination that Business and Professions Code §§23300 and 23355 were violated as a result of Joe Sandhu's control and "at the very least partial ownership of the licensed premises." (Determination of Issues III.) Joe Sandhu is appellant's older brother. The decision which follows is applicable to each of the three appeals.

FACTS AND PROCEDURAL HISTORY

The matters addressed in these combined appeals were commenced on December 9, 1997, by the Department's filing of separate accusations charging, in each case, that appellant was not the true owner of the premises in question, but that Joe Sandhu had been and was the owner or part owner thereof, and had exercised the privileges of a licensee without being so licensed by the Department,

¹ The decision of the Department, issued pursuant to Government Code §11517(c), dated May 3, 1999, is set forth in the appendix hereto, together with the proposed decision of Administrative Law Judge Sonny Lo, dated September 24, 1998.

² Appellant has pursued an additional appeal (AB-7280) seeking review of an order revoking a license issued for another premises located in Rancho Cucamonga, California. Although appellant has filed a single brief addressing the issues in all four appeals, the appeal in AB-7280 involves different issues, and is the subject of a separate Appeals Board decision.

in violation of Sections 23300 and 23355 of the Business and Professions Code.³

An administrative hearing was conducted on August 15 and 16, 1998, following which the ALJ issued proposed decisions in which, among other things, he concluded that the evidence did not support a finding that Joe Sandhu was an owner in any of appellant's businesses. Following notice to appellant and his counsel of its intention not to adopt certain of the proposed decisions, the Department issued its own decision and order revoking the three licenses now involved in this appeal. In so doing, the Department made its own Findings of Fact and Determinations of Issues, and concluded (in Determination of Issues III):

"The evidence supports a determination that Business and Professions Code §§23300 and 23355 were violated. The Sandhu's [sic] assertion that only Gurbachan Sandhu was the owner of the premises is contrary to the reality of the evidence presented by the Department. And despite the documentary evidence presented by the [appellant], the totality of the circumstances provides substantial evidence consistent with Joe Sandhu's control and, at the very least, partial ownership of the licensed premises."

³ Business & Professions Code §23300 provides:

"No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."

Business & Professions Code §23355 provides:

"Except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued."

The Department based its decision on documents submitted to the State Board of Equalization and the City of Fontana in which Joe Sandhu represented himself as owner of the businesses; his possession of a California driver's license with his picture and the name and birth date of appellant; documents he submitted to the Riverside District office of the Department in which, in appellant's presence, he held himself out as appellant in license application forms; his testimony in a civil deposition that he owned the license for the Red Hill Liquor store in Rancho Cucamonga (the subject of the appeal in AB-7280); and his testimony that he is the controller of appellant's business, that he prepares the paperwork for all appellant's businesses, files forms with governmental agencies over his own name, has the power to order supplies, including beer, hire and fire employees, and prepare tax filings and the payroll - to the extent that he worked harder at the business than the licensee and felt like a "part owner."

Appellant has filed a timely appeal from the Department's orders. In his brief, appellant contends that the Department's findings are not supported by substantial evidence, and that its orders of revocation are irreconcilably inconsistent with its action in adopting the proposed decision in the proceeding involving Red Hill Liquor, where, on the same evidence, the ALJ found that Joe Sandhu had no ownership interest in that store.

DISCUSSION

I

Appellant challenges the sufficiency of the evidence supporting the Department's orders. He contends that he never authorized Joe Sandhu to hold himself out either as appellant or as an owner of any of appellant's businesses, and when he found out after the fact that Joe Sandhu had done so, he ordered him to stop. Joe Sandhu, in turn, claimed that he had signed documents with his brother's name, and other documents purporting to show himself as an owner, solely for purposes of convenience, since he handled all his brother's paperwork, and it made his job easier. Joe Sandhu denied having any ownership in any of appellant's businesses.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without

jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.⁴

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The principal issue before the Board is whether the Department's decisions and orders can be said to be supported by substantial evidence.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between

⁴ California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

The quantity and quality of the evidence relied upon by the Department, when that relating to each separate premises is viewed in isolation, varies considerably in strength, the contentions of Department counsel and appellant's counsel to the contrary notwithstanding.

The Department's strongest case, viewed in isolation, concerns the license for the Fontana premises. There, Joe Sandhu, using a California driver's license bearing his picture but his brother's name, address and date of birth, and using his brother's name, submitted an application to the Department for a person to person transfer of the license, which eventually was approved by the Department. Joe Sandhu also completed personal and financial affidavits in connection with the application, and signed them, under penalty of perjury, with his brother's name. In addition, Joe Sandhu submitted an application for a City of Fontana business license in which he stated he, himself, was the owner, executed escrow documents in connection with the purchase of the existing business, again using his brother's name, and, finally, submitted an application to the Board of Equalization for a seller's permit, in which he held himself out as the owner of the business. (See Exhibits 2 (consisting of 37 pages), 3, 4, and 5.)

The Hesperia premises was the subject of an application for a seller's permit

(Exhibit 2) submitted to the Board of Equalization by Joe Sandhu, purporting to show Joe Sandhu as owner, and stating that the former owner, Gary Sandhu,⁵ was being dropped from the business.

The Department did not produce any documentation relating specifically to the Ron Arco premises in Rancho Cucamonga.

The parties stipulated that Vernon Jolley, one of appellant's attorneys, would be deemed to have been called as a witness, and to have testified that, during his involvement in a civil litigation matter on behalf of Gurbachan Sandhu, he had reviewed documents relating to all four premises involved in the litigation and found that Gurbachan Sandhu was exclusively listed as owner. The documents included invoices for the purchase of supplies for each business, leases for each of the businesses with the owner of the properties on which the businesses were located, the Arco franchise agreements, various purchase documents for the businesses, and the ABC application documents for the licenses, excluding therefrom only the application package for the Fontana location.

Counsel for appellant also stipulated that the Department was in possession of documents in which, as to each of the four locations, Joe Sandhu represented himself as the owner. The stipulation did not describe what these documents were.

⁵ Gurbachan is also called "Gary."

Both of the Sandhu brothers testified at the hearing. Joe Sandhu denied having any ownership interest in any of the premises, and Gurbachan Sandhu claimed he was the sole owner of the businesses. In addition to his reliance upon the documents referred to as having been reviewed by his attorney which purportedly showed him as owner, appellant produced W-2 forms purporting to show Joe Sandhu as an employee for each of the premises. The W-2 forms covered only tax years which post-dated the filing of the accusations.

Finally, the Department offered three exhibits obtained from the Department of Motor Vehicles (Exhibits 19, 20, and 21) by Department investigator Michael Lodge. According to Lodge, one of these (Exhibit 21) showed that a driver's license had issued with Joe Sandhu's picture but purporting to be issued to Gurbachan Sandhu, and bearing the purported signature of Gurbachan Sandhu, and another issued with Gurbachan Sandhu's picture but purporting to be issued to Joe Sandhu. Gurbachan Sandhu asserted his Fifth Amendment privilege against self-incrimination when questioned about these documents.

Additionally, the testimony of both Joe Sandhu and Gurbachan Sandhu revealed that Gurbachan's asserted ownership of the premises in question was obtained, in whole or in part, with the assistance of loans from Joe Sandhu, apparently documented only by the check for the loan proceeds.

The Department viewed the same evidence as had the ALJ, and obviously

found that the evidence, and inferences which it believed could reasonably be drawn from the evidence, warranted a different result from that reached by the ALJ. It accorded particular emphasis to the fact that Joe Sandhu had the power to hire and fire personnel at all the premises, to the fact that Gurbachan Sandhu did not object when Joe Sandhu passed himself off as Gurbachan Sandhu when applying to the Department for the Fontana license, to the "reality of the evidence," and "the totality of the circumstances" which provided substantial evidence "consistent with Joe Sandhu's control and, at the very least, partial ownership of the licensed premises."

The Department may have been mistaken in according undue importance to Joe Sandhu's ability to hire and fire personnel. Our reading of the transcript suggests that he held himself out as having that power only with respect to the Hesperia store.⁶ Nonetheless, we believe that its conclusion that Joe Sandhu had

⁶ "Q. Now, as far as the Hesperia Am/Pm, Arco Am/Pm, do you have any dealings with that premises?

A. I do a lot of work for my brother.

Q. What kind of work?

A. Ordering, hiring people, firing people, and prepare taxes, payrolls, et cetera.

...

Q. Do you have a title, as far as your position as it relates to this store.

some undefined ownership interest in certain of the premises purportedly owned by Gurbachan Sandhu is supported by substantial evidence.

We think the Department's proof falls short, however, with respect to the Ron Arco premises in Rancho Cucamonga. Other than the stipulation regarding Joe Sandhu's use of his brother's name, there was no evidence of any document in which Joe Sandhu asserted any ownership interest in this store. While there is, of course, evidence that Joe Sandhu did the paperwork and taxes for all stores, including this one, we do not believe it necessarily follows that he had an ownership interest in the store. These duties are consistent with the normal functions performed by a controller.

We do not think that the sweeping terms of the Department's decision - "reality of the evidence," and "the totality of the circumstances" - are a substitute for evidence not to be found somewhere in the record.

While the various functions Joe Sandhu performed were consistent with those customarily performed by a manager, as outlined in Department Rule 57.5, it is noteworthy that there was no claim that Joe Sandhu had been approved by the

A. I'm a controller.

Q. Controller.

A. Yes, I do, you know, prepare all paperwork for most of his stores."

[RT 10, September 15, 1996, afternoon session]

Department to act in that capacity. Pursuant to Department Rule 57.6, he would have to have first requested the Department to make a determination of his qualifications, which, in turn, would involve an investigation and fingerprinting. A person who considers himself an owner would not think it necessary to make such a request.

In AB-7280, which related to another store in Rancho Cucamonga, the Department adopted the ALJ's proposed opinion which, among other things, included a specific finding that Joe Sandhu had no ownership interest in that store. This tells us that the Department itself believes that Joe Sandhu's involvement in his brother's business affairs need not in all cases be that of an owner or co-owner. Were it otherwise, we would assume the Department would have rejected that portion of the proposed decision.⁷

We are, nonetheless, satisfied that there is substantial evidence, together with all reasonable inferences which the Department could have drawn from such evidence, that Joe Sandhu was, in some undefined capacity, an owner or part-owner of the Fontana (AB-7413) and Hesperia (AB-7411) premises, and as to those we believe the decision of the Department should be affirmed.

⁷ Department counsel suggested the Department did not need to consider the issue because there were two other grounds which by themselves supported the order of revocation in that case. Even if this were true, it would not be enough to alter our views as to the locations involved in this appeal.

That the Department is unable to define with any precision the ownership interest held by Joe Sandhu - that is, as a sole owner or in some kind of partnership with his brother - does not detract from the merit of its position. It is enough to show that one of the licenses (AB-7413) was obtained by Joe Sandhu through the use of false credentials, and, as to the other (AB-7411), Joe Sandhu held himself out as the owner while exercising all the privileges of the license as if he were the true owner, with, if not Gurbachan Sandhu's consent, then certainly with his knowing acquiescence.

For the reasons set forth above, we do not believe the Department presented substantial evidence of an ownership interest of Joe Sandhu in the Rancho Cucamonga premises, and believe the Department's decision as to that location must be reversed.

We think the ALJ's analysis, that the Department has no jurisdiction over Joe Sandhu, and that it is impossible for Gurbachan Sandhu to have violated Business and Professions Code §§23300 and 23355, is both erroneous and unrealistic. In every false ownership case, the license has been issued to a person or persons who are either not owners in any capacity, or are only co-owners with others unnamed. Unless the Department has the capacity to proceed against the licenses, by way of an accusation directed at the purported holder thereof, the Department will be prevented from performing one of its most vital functions - the protection of public

welfare and morals by ensuring that license privileges are exercised only by persons who have satisfied the Department that they have the requisite moral character and qualifications.

II

Appellant contends that the Department's adoption of the proposed decision in AB-7280, which includes a finding that Joe Sandhu did not hold an ownership interest in the Rancho Cucamonga premises known as Red Hill Liquor, and its decision in the remaining three cases are in an irreconcilable conflict of constitutional dimension. The thrust of appellant's argument is that the Department had the same evidence before it in all four cases, and, therefore, should have reached the same result, a result in appellant's favor, in all four cases. Appellant asserts that the finding in AB-7280 is a special finding of fact, which should prevail over the general findings to the contrary.

Appellant may be correct in describing the finding in AB-7280 as a special finding of fact. That it may be, however, does not mean the Department was bound by it as to the licenses and premises in the remaining three cases.

It does not follow that a false or secret ownership interest, if any, must extend to all four licenses involved in these four related matters. Indeed, the result we reach concludes that it does not, for reasons stated earlier herein. As we have determined, the Department produced substantial evidence from which an

ownership interest could be inferred as to certain of appellant's stores, and not others.

Indeed, many suspicions might be raised about the manner in which appellant's businesses are owned and operated, and the conduct of the brothers Sandhu, but suspicions are no substitute for hard evidence.

III

Appellant argues that the penalty - revocation - is so disproportionate to the offense as to constitute cruel and unusual punishment.

The penalty, to the extent it is upheld, is clearly not disproportionate to the offense.

Revocation seems particularly appropriate where a secret or false ownership of a license has been obtained by fraud, misrepresentation, or other means, and not having earned the Department's informed consent.

Moreover, appellant's argument regarding cruel and unusual punishment is simply misplaced in this administrative proceeding.

IV

Appellant contends that Business and Professions Code §24210, which authorizes the Director of the Department to appoint administrative law judges is unconstitutional.

The Alcoholic Beverage Control Appeals Board, along with other

AB-7410, AB-7411, and AB-7413

administrative bodies, is barred by the California Constitution from holding an act of the Legislature unconstitutional. (Cal. Const., art. 3, §3.5.) Therefore, the Board declines to consider this contention.

ORDER

The decision of the Department is affirmed in appeals AB-7411 and AB-7413, and reversed in appeal AB-7410.⁸

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

⁸ 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.