

ISSUED JANUARY 22, 2001

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

COUNTY CORK ENTERPRISES, LLC	)	AB-7584
dba Paddy O's)	
20320 S. Western Avenue	)	File: 41-333794
Los Angeles, CA 90501,	)	Reg: 99046963
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 3, 2000
	)	Los Angeles, CA

County Cork Enterprises, LLC, doing business as Paddy O's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied its application for modification of conditions on its license.

Appearances on appeal include appellant County Cork Enterprises, LLC, appearing through its counsel, Benjamin Wasserman, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated January 27, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

By letter dated October 8, 1998, appellant requested the modification of conditions imposed upon its license at the time of issuance restricting the hours during which alcoholic beverages may be sold, and prohibiting live entertainment.² The Department denied the request, stating in its notice of denial, dated July 28, 1999, that the grounds which caused the imposition of the conditions continue to exist.³ Appellant then petitioned for a hearing on its request. This appeal is from the decision of the Department following that hearing, which again denied appellant's request.

The existing conditions on the license limit the sale, service, and consumption of alcoholic beverages to the hours of 11:00 a.m. to 11:00 p.m. Monday through Thursday, and 11:00 a.m. to 12:00 midnight on Friday, Saturday, and Sunday,⁴ and further limit the sale, service, and consumption of alcoholic beverages on the patio of the premises to the hours of 11:00 a.m. to 10:00 p.m.

² Business and Professions Code §23803 provides, in pertinent part

"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 or modification. ... The department may not remove or modify any condition to which an objection is filed without holding a hearing"

³ The petition for conditional license recites that the proposed premises and/or parking lot are located within 100 feet of residences, and that issuance of the license without the conditions would interfere with the quiet enjoyment of the property of nearby residents and constitute grounds for denial of the license.

⁴ Condition 01.

each day of the week.⁵ In addition, there is a blanket prohibition of live entertainment of any type.

Appellant's request seeks to increase the hours during which alcoholic beverages may be sold to 8:00 a.m. to 1:00 a.m. Sunday through Thursday, and 8:00 a.m. to 2:00 a.m. Friday and Saturday, and to enlarge the patio hours to 8:00 a.m. to 1:00 a.m. each day of the week. In addition, appellant seeks to provide live entertainment, other than topless entertainment, until midnight each night of the week.

A hearing on appellant's request was held on December 8, 1999. Testimony was presented by Stephen Rose, the Department investigator who conducted an investigation in response to appellant's request; by Maricela Ayala and Elizabeth Dominguez, both of whom reside within 100 feet of the premises; by Brandy Morita, who testified that, in January 1999, she was served an alcoholic beverage on the patio, and observed the consumption of alcoholic beverages by other patrons on the patio, after the 10:00 p.m. restriction on the license.⁶

Appellant presented the testimony of Ernesto Basset concerning other establishments which have patios but are permitted to offer live entertainment; Patrick McGeady, employed as a bartender and manager when the premises were operated by a predecessor licensee; and Vicky Williams, one of the owners of

⁵ Condition 02.

⁶ This incident resulted in the filing of an accusation by the Department, a hearing, a decision ordering a suspension, an appeal to this Board, and a decision of this Board affirming the decision of the Department. (See County Cork Enterprises, LLC (July 14, 2000) AB-7446.)

appellant.

Following the hearing, the Department entered its order denying appellant's request, concluding that appellant had failed to establish its entitlement to the condition modifications:

"The evidence failed to establish that the grounds which caused the imposition of the conditions no longer exist. Indeed, the evidence is that the situation that existed when the conditions were added is exactly the same today as when the conditional license issued.

"The only change is that the subject conditions appear to be having a salutary effect in that the noise disturbances associated with the operation of Looney's, the previous licensee, are no longer extant, thanks most likely to the conditions which the Petitioner now seeks to modify."

In its decision, the Department noted that while there had been a substantial turnover of residents in the nine residences located within 100 feet of the premises, all of the dwellings continue to be occupied. The decision also noted that the current operation of the premises does not interfere with the quiet enjoyment of their property by nearby residents, in contrast with the operation of the premises under the former licensee, which had operated, presumably, without conditions. In addition, the decision cited the testimony of two residents of their concerns if the hours for sales and consumption were extended, as well as the concerns of the local police officials that later hours would result in increased service calls. The decision also cited the occurrence of a prior condition violation which took place in the presence of one of the owners of the premises, who did nothing to prevent it.

Appellant has filed a timely appeal, and raises the following issues: (1) the decision failed to address the modification request to the extent appellant had requested extended morning hours on Sunday to permit the serving of a Sunday

brunch; and (2) the decision is biased and contradictory because it failed to consider the fact that the nearby residents “ maintained the right to have parties and play music in their homes or in the street, at any hour, regardless of the effect on appellant’s enjoyment of her establishment.”

DISCUSSION

I

Appellant contends that, although the ALJ expressly acknowledged that it was seeking an enlargement of the morning hours, to accommodate patrons for brunch and television sporting events, the decision totally ignored that part of the request. Appellant further contends that the record is devoid of any evidence that such enlargement would have an adverse effect on nearby residents.

Appellant’s position is not well taken. It was appellant’s burden to show that the grounds which led to the imposition of the conditions no longer existed. The grounds which led to the imposition of the conditions, including the hours of operation on the patio, were the proximity of residences within 100 feet. Since the facts demonstrate that there has been no change with respect to the proximity of residences, appellant clearly has not met its burden. It is immaterial that the ALJ did not discuss that part of appellant’s request relating to the morning hours.

II

Appellant contends that the decision is biased and contradictory because it failed to consider the fact that the nearby residents “ maintained the right to have parties and play music in their homes or in the street, at any hour, regardless of the effect on appellant’s enjoyment of her establishment.”

We find it difficult to take this contention seriously. In a nutshell, appellant complains of the ALJ's "reverse logic," and his application of a "double standard," because the residents will be permitted to hold parties, including "block parties" that extend well beyond 10:00 p.m., while appellant may not.

There is no "double standard." There are, instead, different standards.

The Department is charged with the protection of public welfare and morals in connection with the sale of alcoholic beverages. Consistent with that charge, it has adopted rules designed to protect the public - specifically, with respect to rule 61.4, that part of the public which resides within 100 feet of a licensed premises. It does so when it decides that the imposition of conditions on a license will sufficiently protect such residents. Those conditions enable a licensee to receive a license that otherwise would be denied. In return for that license, the licensee must comply with the standard of conduct delineated by those conditions, as well as with its general obligation to run a lawful business.

It is fair to say that the Department has no jurisdiction over the general public.⁷ It cannot dictate when residents may or may not have a "block party," or some other late night function. Presumably, any such activity would have to be carried out in compliance with such noise or other ordinances which might be applicable - ordinances enforced by local authorities and not by the Department of Alcoholic Beverage Control.

⁷ This broad statement must be qualified to the extent that the Department's investigators, who are sworn peace officers, do have the authority to cite members of the public for certain violations of the Business and Professions and Penal Codes relating to the sale of alcoholic beverages.

ORDER

The decision of the Department is affirmed.⁸

TED HUNT, CHAIRMAN
E. LYNN BROWN, 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.