

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

AB-7638

BASILE QOZI dba Harbor Liquor
707 North Coast Highway, Oceanside, CA 92054,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 21-307057 Reg: 99047991

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: March 1, 2001
Los Angeles, CA

ISSUED APRIL 27, 2001

Basile Qozi, doing business as Harbor Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which sustained in part and denied in part his application for the removal and/or modification of certain conditions on his license, pursuant to Business and Professions Code §23803.

Appearances on appeal include appellant Basile Qozi, appearing through his counsel, Freddy Garmo, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

When appellant was issued his license in 1995, he agreed to accept fourteen conditions, five of which were the subject of his December 3, 1999, petition for removal

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

and/or modification, the partial denial of which has given rise to this appeal.

The conditions which are involved in this appeal are the following:

“A. Sale of alcoholic beverages shall be permitted only between the hours of 9:00 A.M. and 12:00 Midnight, Sunday through Thursday and 8:00 A.M. to 1:00 A.M. Friday and Saturday.

“B. Malt beverage products, including beer of 22 oz. or less, shall not be sold in less than 6 pack units.

“D. No distilled spirits shall be sold in bottles or containers smaller than 375 ml.

“K. There shall be no cups, glasses, or similar receptacles commonly used for the drinking of beverages, whether constructed of glass, Styrofoam, or other material, sold, furnished, or given away at the petitioner’s premises in quantities of less than twenty four (24).

“L. No public payphones shall be permitted on the licensed premises nor in the outside area adjacent to the licensed premises over which licensee has control as depicted on ABC-253 Supplemental Diagram dated 7-17-95.”

Appellant requested: an enlargement of the time during which alcoholic beverages could be sold to 1:00 A.M. on Monday through Thursday, and 2:00 A.M. on Friday, Saturday and Sunday (condition A); modification of condition B to permit the

sale of imported beers and expensive microbrewery beers in single quantities; modification of condition D to permit the sale of distilled spirits the price of which is not less than \$2.90 in bottles or containers not less than 200 ml.; reduction of the minimum number of cups, glasses and other containers which may be sold, to eighteen (condition K); and the elimination of condition L so that he be permitted to install a public telephone.

The Administrative Law Judge denied appellant's petition in all respects except as to condition K, which the Department did not oppose. The most significant findings upon which he based his decision are the following:

"The Petitioner's license was originally conditioned primarily due to the fact that the premises are located in a high crime area and due to the fact that the Oceanside Police Department protested the unconditional transfer of the existing license on the ground that unconditional re-licensing of the premises would aggravate existing law enforcement problems. The fact that the premises are located in the immediate vicinity of residences and that the re-licensing of the premise without restrictions could be detrimental to the peace and quiet of the residences in the immediate area where the premises are located was also considered by the Department in the imposition of conditions on the Petitioner's license.

...

"Officer Julian Hutzler of the San Diego Police Department's vice section testified that he is aware of the type of crimes associated with the area where the premises are located. He routinely sets up sting operations in the area regarding prostitutes and drug sales because there is a high level of prostitution and narcotics activity in that area. Hutzler also testified that one of their minor decoys was solicited for drugs and prostitution in the Petitioner's parking lot. The Police Department also receives numerous complaints from nearby businesses and residents regarding the solicitation of prostitutes in the area and the fact that women walking in that area are harassed by 'Johns' looking for prostitutes. Other problems in the area where the premises are located include the presence of transients who loiter in the area, throw bottles and cans on the ground and who urinate and/or defecate in public areas.

"Dwight Ayers, a detective from the Oceanside Police Department, testified that he is assigned to the gang unit, that he is familiar with the gang problems in the

area where the premises are located, that gangs have set up shop in the motels located in the area near the premises, that the gang members use the transients and the prostitutes in the area to sell illegal drugs and that the motels are used by the gangs as a base of operation to store drugs. Ayers opposed adding pay phones inside or outside the premises because pay phones are used to assist in drug sales. Ayers has observed gang graffiti on electrical boxes and telephone poles near the premises which indicates the presence of gangs in the area.

“Robin Van Dyke, the Department investigator assigned to investigate the Petitioner’s request for modification of conditions, testified that the Department considered the reasons why the conditions were originally imposed, the crime rate and the type of crime problems in the area where the premises are located and the fact that three residences are located within one hundred feet of the premises in evaluating Petitioner’s request for modification of the conditions on his license.

“The closest residence to the premises is located at 410 Windward Way approximately twenty feet from the premises and only ten feet from the premises parking lot. Additionally, the residence located at 710 Tremont Street is about fifty feet from the premises and the residence located at 716 Tremont Street is about seventy feet from the premises.

“Investigator Van Dyke contacted Lieutenant Reginald Grigsby of the Oceanside Police Department and obtained the crime statistics for the area where the premises are located. Van Dyke testified that the 1994 crime statistics were used when Petitioner obtained his license in 1995 and that the crime rate for the reporting district where the premises are located was 320 percent for 1994. Van Dyke also testified that the crime statistics which she obtained from the Oceanside Police Department indicate that the crime rate for the reporting district where the premises are located was 451.9 percent for 1998, that the crime rate was 490 percent for 1999 and that alcohol related crimes in the reporting district where the premises are located include driving under the influence, drunk in public, sale to minors, minors in possession of alcoholic beverages and drinking in public.”

(Findings of Fact II, IV- A and -B, and V-A through C.)

DISCUSSION

Appellant contends that he met his burden of establishing that the grounds which caused the imposition of the conditions no longer exist, that public convenience would be met by the removal or modification of the conditions, and that appellant has been

treated differently than other business owners in the area.

The insurmountable problem confronting appellant's contentions is that they are not supported by any record evidence. Appellant represented himself at the administrative hearing, and offered no evidence to refute that presented in the testimony of police officers Hutzler and Ayers and Department investigator Van Dyke. Appellant did present a series of form letters supplied to patrons in which they requested the removal of the conditions. These documents were admitted as administrative hearsay, but did little or nothing to overcome the evidence offered by the Department.

The testimony reflected in the findings quoted above demonstrates that the need for the conditions was just as great in 1999 as in 1995, when they were imposed.

Business and Professions Code §23803 provides that conditions may be removed or modified if the Department is satisfied that the grounds which caused the imposition of the conditions no longer exist.

The Petition for Conditional License recites that the premises are located in a high crime rate area and a policing problem; that the Oceanside Police Department believes that the issuance of a license without conditions would aggravate an existing police problem; and that the premises are located within the immediate vicinity of residences.

Based upon the evidence and the findings, it would appear that little if anything has changed, other than appellant's initial willingness to operate with conditions on his license.

Only if the Department is satisfied that the grounds which gave rise to conditions no longer exist is it obligated to remove or modify them. Appellant has clearly failed to

meet his burden of proof, having shown only a desire to be free of the conditions while failing totally to show that the grounds which gave rise to the conditions no longer exist.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² 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.