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

AB-7888
File: 42-289770 Reg: 01050375

JEFFREY LAWSON and CHERYL LAWSON dba The Saddletramp Saloon
209-11 West Big Bear Boulevard, Big Bear City, CA 92314,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: August 15, 2002
Los Angeles, CA

ISSUED OCTOBER 9, 2002

Jeffrey Lawson and Cheryl Lawson, doing business as The Saddletramp Saloon (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which revoked their license for their bartenders having engaged in negotiations for sale, and sale of, methamphetamine, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, section 22, arising from violations of Business and Professions Code section 24200.5, subdivision (a), and Health and Safety Code section 11379.

Appearances on appeal include appellants Jeffrey Lawson and Cheryl Lawson, appearing through their counsel, David Philipson, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

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[1]The decision of the Department, dated September 13, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine public premises license was issued on December 6, 1993. Thereafter, the Department instituted an accusation against appellants charging that their employees, Karen Bowerman and Anthony Arkley,[2] sold, furnished, and negotiated for the sale of, methamphetamine in the licensed premises on seven occasions during a seven-day period in May, 2000.

An administrative hearing was held on June 13, 2001, at which time oral and documentary evidence was received. At that hearing, the parties stipulated to the submission of the Department's case through the police reports, lab analyses, and court documents, and to the fact that appellants' license history was free of discipline. Appellant Jeffrey Lawson and Bruce Ramm, a security consultant, testified on behalf of appellants, to the effect that appellants had taken action to discourage such conduct in the future.

On the basis of the police reports and court documents, Administrative Law Judge Echeverria sustained all seven counts of the accusation. He found that actual sales or furnishings of methamphetamine had taken place on May 18, 2000, May 20, 2000, and May 25, 2000. The transactions were conducted between appellants' bartenders, Bowerman and Arkley,[3] and undercover investigators from the San Bernardino County Sheriff's Department.

Appellants thereafter filed a timely appeal in which they raise the following issues: (1) appellants lacked actual or constructive knowledge of the transactions; and (2) the

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[2] Bowman and Arkley were employed as bartenders.

[3] Bowerman and Arkley were arrested, plead guilty to charges they violated Health and Safety Code section 11379, subdivision (a), and were incarcerated.

penalty is excessive and disproportionate when compared to other penalties for similar violations.

DISCUSSION

I

Appellants contend that all of the transactions charged in the accusation occurred when neither of the co-licensees was present. Jeffrey Lawson works as a bartender from 7:00 a.m. until 2:00 p.m., and then manages an adjacent restaurant until 7:00 p.m., when the restaurant closes. Cheryl Lawson, his wife, suffers from a chronic medical condition and does not work at the premises. Lawson testified that neither he nor his wife had any reason to suspect that their employees were selling methamphetamine, and fired both of them when he learned about it. He further testified that he had consulted a security expert, installed four surveillance cameras with recording capability in order to deter similar conduct in the future, and instituted a policy of conducting background checks on new employees.

The Administrative Law Judge (ALJ) found, in accordance with settled law, that constructive knowledge of the on-premises conduct of Arkley and Bowerman was imputed to appellants. (See *Harris* v. *Alcoholic Beverage Control Appeals Board* (1962) 197 Cal.App.2d 172 (17 Cal.Rptr. 315); *Mack* v. *Department of Alcoholic Beverage Control* (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629].)

That the licensees may not have actually known of the conduct may well have been something for the Department to consider in deciding what degree of discipline to impose, but is not a defense to the violation.

The ALJ took specific note (see Finding of Fact VII) of the fact that appellants left the premises in the control of the bartenders, with little or no supervision: “Had the

Respondents taken a more active role in the operation of the premises during the evening hours, they would have been in a position to either prevent any illegal activities in the premises or to at least discover the illegal activities of their employees."

II

Appellants challenge the penalty, asserting that it is not in accordance with the gravity of the offense, and that consideration to other factors should have been given. Appellants acknowledge the general rule that, in the absence of an abuse of discretion, the Appeals Board will not disturb the Department's penalty orders (see *Martin* v. *Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 287 [341 P.2d 296]), but assert that since revocation was not invoked as a penalty in the only two instances of disciplinary proceedings against licensees in Big Bear over the past 20 years, it cannot be ordered against appellant. Appellants also cite a number of other Board appeals in cases where the penalty was something less than outright revocation.

It is difficult to say that the Department abused its discretion in its determination that appellants' license should be revoked, simply because the penalty differed from that imposed on a different licensee in Big Bear several years earlier.

The attempt by appellants to equate the conduct in this case with what occurred in other cases which have come before the Board falls short. So far as we know, there is no requirement that identical penalties be ordered for violations that by their very nature are not identical.

Certainly, the Department has an obligation to act evenhandedly in its enforcement program, but that is not to say that a penalty otherwise proper becomes improper when it is more or less severe than a penalty imposed against a different licensee for generally similar conduct. The mere fact that reasonable minds might differ

as to the propriety of the penalty is not grounds to overturn the penalty; rather, it serves to fortify the conclusion that the Department acted within the area of its discretion. (See *Harris* v. *Alcoholic Beverage Control Appeals Board* (1965) 62 Cal.2d 589 [43 Cal.Rptr. 633].)

The methamphetamine transactions in the case were particularly blatant. Not only were there multiple sales and negotiations for the sale of methamphetamine, appellants' bartenders even offered free samples in the premises' bathrooms (see Finding of Fact IV-A), and Bowerman may have used the drug herself while operating the bar (see Finding of Fact IV-E).

The new security measures undertaken by appellants have the potential of preventing or at least discouraging similar misconduct in the future. But, based on the inattention displayed by appellants in the past, the Department could reasonably have doubted that public welfare would be adequately protected with any penalty short of revocation.

Whether or not, as the Department contends and appellants dispute, the bar had a reputation as a source of methamphetamine, it is clear from the evidence that appellants' key employees were actively engaged in the sale and furnishing of a dangerous and illegal controlled substance on multiple occasions. Even were we inclined to disagree with he Department, which we are not, we would be unwilling to substitute our judgment for that of the Department with respect to the measure of discipline appropriate for the protection of public welfare and morals.

ORDER

The decision of the Department is affirmed.[4]

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

[4] 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.