

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

AB-8343

File: 47-404630 Reg: 04057411

MILDRED CARLTON, Appellant/Protestant

v.

AMRITPAL SINGH BENEPAI dba The Ground Round Grill and Bar
3190 Klose Way, Richmond, CA 94806,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Robert R. Coffman

Appeals Board Hearing: July 7, 2005
San Francisco, CA

ISSUED SEPTEMBER 30, 2005

Mildred Carlton (appellant/protestant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Amritpal Singh Benepal, doing business as The Ground Round Grill and Bar (respondent/applicant), for an on-sale general public eating place license.

Appearances on appeal include appellant/protestant Mildred Carlton, representing herself; respondent/applicant Amritpal Singh Benepal, appearing through his counsel, Gregory S. Nerland; and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

¹The decision of the Department, dated September 9, 2004, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Applicant applied for an on-sale general public eating place license on October 31, 2003. Following the filing of a protest on December 8, 2003, applicant, on May 19, 2004, petitioned for issuance of a conditional on-sale general public eating place license. The petition set forth 13 conditions governing the proposed operation of the premises. The Department issued an interim operating permit on June 16, 2004, and the premises opened for business on July 12, 2004.

An administrative hearing on the protest was held on July 29, 2004, at which time oral and documentary evidence was received. At that hearing, Department investigator Brian Chan described the investigation he conducted before making his recommendation that the license issue. Fatima Matisol, a staff employee of the Health Services Department of Contra Costa County, called on behalf of protestant, described social problems and costs associated with the sale and consumption of alcohol. Protestant Carlton testified about the concerns that led her to protest the application, her primary concern being that of the level of criminal activity in the Richmond area. Simms Thompson, called on behalf of protestant, testified about difficulties he had encountered in observing the postings notifying the public of the pending license application. Applicant Benepal described the restaurant operation, including such things as the number of people he intended to employ, the postings of the notice of application, the patron capacity, and the operating hours.

Subsequent to the hearing, the Department issued a decision which overruled appellant's protest, and allowed the license to issue.

Appellant thereafter filed a timely notice of appeal. Written notice of the opportunity to file briefs in support of the appellant's position was given on March 23,

2005. No brief has been filed by appellant.

In her notice of appeal, protestant asserted that the evidence to establish undue concentration presented by the Department and cited in the decision was not that required by Business and Professions Code section 23958.4, subdivision (a)(1), and that the Department's finding that the applicant had shown public convenience or necessity was incorrect. The claim lacks merit.

The Department rested its finding that public convenience or necessity would be served on three findings (Findings 4, 13, and 14):

4. Since acquiring the property, a one-story stand alone building with adjacent parking area, the applicant has extensively remodeled the premises into a restaurant with four separate dining areas: a main dining area, an enclosed patio area, a banquet area, and a lounge area that includes a fixed bar as well as booths and tables and chairs for dining.

The Ground Round Grill & Bar is part of a chain or group of restaurants that bear the same name. It offers casual dining, with lunch and dinner menus that feature main courses such as chicken, pasta and meat dishes. Applicant anticipates that approximately 80% of gross sales will be from food items and 20% from alcoholic beverages.

Patron capacity is 249. Hours of operation are 11:00 a.m. to 10:00 p.m. except Friday and Saturday when hours are 11:00 a.m. to 11:00 p.m. Applicant plans an operation with approximately 125 employees.

The premises opened for business on July 12, 2004, under a temporary license (interim retail permit) issued by the Department on June 16, 2004.

13. The Department has determined that public convenience or necessity would be served by issuance of the license for the following reasons: the previous licensee operated a restaurant at the same location for approximately 14 years with no record of discipline; the location of the premises is in a predominantly commercial/retail business area; the premises is in a developing area of offices and retail establishments, creating a demand for a casual lunch and dinner restaurant to serve those working in the area as well as visitors to the area; meals offered by the applicant differ from those offered by other licensed premises in the census tract; the City of Richmond Police Department recommended the license be granted with conditions.

14. The nine on-sale premises within the same census tract as the premises

include a club license issued to a rod and gun club, a type 47 license issued to a country club, two type 47 licenses, and five beer and wine licenses issued to restaurants.

Excluding the clubs, the other seven businesses are predominantly ethnic food establishments that specialize in specific cuisine such as Mexican style food.

Appellant does not explain what it is about these findings that renders them erroneous, and in our review of them we do not see that they are flawed. Since appellant has not filed a brief, she has offered nothing to expand upon her unsupported and vague assertions.

We are satisfied that the Department's issuance of the license was well within the broad grant of discretion given the Department by the Legislature.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, Acting Chairman
SOPHIE WONG, 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.