

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

AB-8681

File: 21-375891 Reg: 06063516

PENELOPE BAIZ, et al., Appellants/Protestants

v.

AVTAR SINGH ATWAL
4769 Hazel Avenue, Fair Oaks, CA
95628, Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: July 10, 2008

San Francisco, CA

ISSUED: OCTOBER 8, 2008

Penelope Baiz, Margaret Prior, Irene Woods, and Charles Ernst

(appellants/protestants) appeal from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Avtar Atwal Singh for the issuance of an off-sale general license.

Appearances on appeal include appellants/protestants Penelope Baiz, Margaret Prior, Irene Woods, and Charles Ernst, appearing In propria persona; respondent/applicant Avtar Singh Atwal, appearing through his consultant, Lee Sanders; and the Department of Alcoholic Beverage Control, appearing through its

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The decision of the Department, dated January 11, 2007, is set forth in the appendix.

counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

On October 26, 2004, applicant, holder of an off-sale beer and wine license, petitioned for issuance of an off-sale general license. If issued the off-sale general license, applicant would cancel his existing off-sale beer and wine license. Protests were filed by appellants (and others), and an administrative hearing was held on December 1, 2006. At that hearing, oral and documentary evidence was presented concerning the application and the protests.

Subsequent to the hearing, the Department issued its decision which denied the remaining protestants' protests and allowed the license to issue.

Protestants thereafter filed an appeal making the following contentions: (1) The Department was negligent in failing to require a condition regarding the sale of liquor in any container smaller than 375 milliliters, and erred in granting the application.

DISCUSSION

Appellants/protestants contend the Department was negligent in failing to require a condition prohibiting the sale of distilled spirits in containers smaller than 375 milliliters. They assert that there is a "potential that small containers [of distilled spirits] can be taken to our adjacent parks, lakes and river and consumed around children."

(App./Pro. Br., page 3.)²

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At the administrative hearing, appellants/protestants placed greater emphasis on their concerns that the sale of distilled spirits in small containers would result in an unacceptable increase in drunken drivers.

Department investigator Mike Guter testified that he conducted the investigation which followed the filing of the application for the upgraded license. He testified that he was advised by Detective Sanchez of the Sacramento County Sheriff's office that it did not protest the application, but would like to have a condition imposed on the license prohibiting the sale of distilled spirits in containers smaller than 375 milliliters. When Guter advised the applicant of this request, the applicant stated in a letter that he would agree to such a condition if the Sheriff's Office had reports stating that would be a problem to the community. Guter did not relay that information to the Sheriff's office, nor did he recall talking to Detective Sanchez about the applicant's position.

Investigator Guter addressed several issues raised by the appellants/protestants: issuance of the license would create undue concentration; issuance of the license would cause a police problem; the premises would draw criminal activity to the area; the licensee had a disqualifying disciplinary history; and the sale of single containers of beer or malt liquor and miniature or half-pint containers of distilled spirits would encourage patrons to drink and drive while on Hazel Avenue. He concluded that none of these were reason to deny the application, and he recommended issuance of the license.

Guter testified that he examined the files for the location and for other type 21 (off-sale general) licenses in the census tract, and found none that had any restriction with respect to distilled spirit container size. He did find one location where beer sales were prohibited and wine sales limited to containers no smaller than 750 milliliters, and wine coolers to the factory four-packs. Based on his experience,³ he concluded that a

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Guter had been an investigator for the Department for more than 30 years.

restriction on container size was not necessary to protect the public.

To support their concerns about the relationship between the sale of distilled spirits in small containers and the hazards from impaired drivers, appellants/protestants offered only anecdotal evidence based on their personal experience. We do not believe any of the incidents referred to by appellants/protestants were of a magnitude sufficient to warrant the conclusion that the Department abused its discretion when it declined to deny the license application or to impose a condition affecting small containers. The vague "potential" that distilled spirits will be consumed around children or at the area's parks, lakes, and rivers, is simply too speculative.

ORDER

The decision of the Department is affirmed.⁴

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

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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.