

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

AB-8998

File: 47-415387 Reg: 08069254

PINE AVENUE S&G LLC, dba Smooth
144-46 Pine Avenue, Long Beach, CA 90802,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: May 6, 2010
Los Angeles, CA

ISSUED JULY 23, 2010

Pine Avenue S&G LLC, doing business as Smooth (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for having loaned its catering permit/license to a third party, a violation of Business and Professions Code sections 119, subdivision (b)² and 24200, subdivision (a) .

Appearances on appeal include appellant Pine Avenue S&G LLC, appearing through its counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control,

¹The decision of the Department, dated January 15, 2009, is set forth in the appendix.

² Section 119, subdivision (b) provides: "Any person who does any of the following is guilty of a misdemeanor:

[¶]

(b) lends his or her license to any other person or knowingly permits the use thereof by another.

appearing through its counsel, Kerry K. Winters.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general bona-fide public eating place license was issued on October 18, 2004. A caterer's permit under that license was issued (or renewed) for the period October 1, 2006, through September 30, 2007. On July 18, 2008, the Department instituted an accusation against appellant charging in count 2 that it loaned its caterer's permit to Syndi Dalton (hereinafter "Dalton"), operator of Moondance Catering. Moondance Catering did not hold an alcoholic beverage license, but used appellant's caterer's permit to buy beer from wholesaler Harbor Distributing. Moondance Catering was unable to obtain a caterer's permit, which Dalton had sought on the strength of appellant's license, for the event it was catering on clothing manufacturer Quicksilver's behalf.

An administrative hearing was held on October 29, 2008, at which time documentary evidence was received and testimony was presented concerning the violation charged.

Subsequent to the hearing, the Department issued its decision which determined that there had been a loan of the permit/license in violation of the statute.

Appellant filed a timely notice of appeal in which it contends that the decision and its findings are not supported by substantial evidence. Appellant contends that there was no loan, but that the caterer's permit was entrusted to Dalton for the specific purpose of assisting her in obtaining Department approval of a catering event the two would partner, with appellant to be the provider of the beer. Upon learning that Dalton was unable to gain Department approval within the short time available before the intended event, appellant assumed that the matter was moot. Dalton, however, used

the copy of the caterer's permit to induce a wholesaler to sell her the quantities of beer she needed to cater the event. Appellant denied knowing, until after the fact, that Dalton had used the permit for the purpose of buying beer.

Administrative law judge (ALJ) McCarthy concluded (Conclusion of Law 9) that section 119, subdivision (b) was violated when Dalton was provided a facsimile copy of appellant's permit:

Cause for suspension or revocation ... exists ... in that in or about July 2007, Respondent's Operations Manager, Janice Peck, provided Syndi Dalton with a facsimile copy of Respondent's Caterer's Permit. (Findings of Fact, ¶ 9.) That act was tantamount to "lending" the permit to Dalton. All that was required was for Dalton to find a purveyor that would act in reliance on the permit. Harbor Distributing, LLC, did so. (Findings of Fact, ¶ 12.) Continuous of Respondent's license without imposition of discipline would be contrary to public welfare or morals. It was not established that Peck, Respondent's John Morris, or anyone else connected with Respondent intended for Dalton to use the permit by herself and without also obtaining all the necessary authorizations. Morris established that when he learned Dalton had not been able to obtain the required authorizations, he believed the event and specifically any connection Respondent might have had with the Quicksilver event had ceased. (Findings of Fact, ¶ 11.) Due, however, to Respondent's failure to protect/guard its Catering Permit Dalton was permitted to make unlawful use of it.

Appellant's suggestion that the permit was "entrusted" to Dalton is but a play on words. A facsimile copy of the permit was placed in her possession with absolutely no restrictions or controls against potential misuse, other than a trust based on friendship. While it may be unfortunate that appellant must undergo a suspension without having consciously done something wrong, the underlying facts do contravene the express terms of the statute.

Appellant will do well in heeding the advice offered by the ALJ:

The Court is not convinced that Respondent, or any of its employees or members, engaged in intentional wrongful conduct. What it did, while technically a violation of Section 119(b), would not have resulted in harm without the

assistance of others. By the same token, without having made a copy of its permit available to Dalton, no harm could have occurred. What occurred in this case should serve to impress upon Respondent that there can be serious consequences in providing copies of its licenses to unauthorized persons, friend or foe.

ORDER

The decision of the Department is affirmed.³

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

³ 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.