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

AB-9160
File: 47-482621 Reg: 10073665
THEODORE NEUBAUER, Appellant/Protestant

v.

HEI GC HOLLYWOOD & VINE HOTEL LLC, et al., dba W Hollywood
6250 Hollywood Boulevard, W. Hotel, Los Angeles, CA 90028-5309,
Respondents/Applicants

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: May 31, 2012
Los Angeles, CA

ISSUED JUNE 15, 2012

Theodore Neubauer (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control[1] which granted the application of HEI GC Hollywood & Vine Hotel LLC, Hollywood & Vine Bar Venues LLC and Hollywood & Vine Restaurant Owner LLC, doing business as W Hollywood (respondents/applicants), for an on-sale general eating place license.

Appearances on appeal include appellant/protestant Theodore Neubauer, appearing in propria persona; respondents/applicants HEI GC Hollywood & Vine Hotel LLC, Hollywood & Vine Bar Venues LLC and Hollywood & Vine Restaurant Owner,

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[1]The decision of the Department, dated February 15, 2011, is set forth in the appendix.

LLC, appearing through their counsel, Daniel Kramer; and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

FACTS AND PROCEDURAL HISTORY

On September 8, 2009, applicants petitioned for issuance of an on-sale general eating place license. A protest was filed by appellant, and an administrative hearing was held on January 4, 2011. At that hearing, oral and documentary evidence was presented concerning the application and the protest.

Subsequent to the hearing, the Department issued its decision which denied appellant's protest and allowed the license to issue with conditions.

Appellant thereafter filed an appeal making the following contentions: (1) The application was not properly posted with the court; (2) protestant did not receive a color copy of the 1000-foot map; (3) testimony regarding the premises' noninterference with the quiet enjoyment of nearby residences was unsubstantiated; (4) the Department failed to contact the congregants of the Little Country Church; (5) the administrative law judge (ALJ) improperly excluded evidence regarding hearings before the Redevelopment Agency and Building and Safety Commission; (6) the court abandoned impartiality and argued against financial determination; and (7) the Department has refused to do its due diligence regarding noise abatement.

DISCUSSION

I

Appellant contends the application was not properly posted with the court. (App.Br., p. 2.)

Although appellant does not elaborate on what he means by this assertion, it would appear from his references to the reporter's transcript, that he is referring to the

fact that some documents received by the ALJ had only two of the applicants' names on them, when in fact the application was made by three applicants.

> "No judgment shall be set aside . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.)
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> This provision "is amplified by Code of Civil Procedure section 475, which states that trial court error is reversible only where it affects '. . . the substantial rights of the parties . . .,' and the appellant 'sustained and suffered substantial injury, and that a different result would have been probable if such error . . . had not occurred or existed.' . . . [Citations.]

(*Waller v. TJD, Inc*. (1993) 12 Cal.App.4th 830, 833 [16 Cal.Rptr.2d 38].)

Appellant has not explained how he was adversely affected by the failure to list all three applicants on the Notice of Hearing (Exh. 1), when all three were listed on the Report on Application for License (Exh. 2), all three agreed to the conditions imposed on the license [RT 33], and all three entities' names appear on the ALJ's proposed decision. Appellant does not maintain that he was unaware that a third entity was involved in this matter, but simply maintains that the omission on the Notice of Hearing, apparently due to space constraints, constitutes reversible error.

"An appellate court is not required to examine undeveloped claims, nor to make arguments for parties. [Citation omitted.]" (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 104,106 [87 Cal.Rptr.2d 754].) Appellant has not carried his burden on this point, to explain why he feels a miscarriage of justice has occurred.

II

Appellant contends that it was error that he did not receive a color copy of the map showing the area within a 1000-foot radius of the premises. Instead, he received a black and white copy, while the court received a color copy which appellant was invited

to view during the administrative hearing. Appellant maintains this omission constitutes improperly excluded evidence. (App.Br., p. 2.)

At the administrative hearing, appellant was offered an opportunity to review the court's color copy of the 1000-foot map. Prior to the hearing, no discovery was requested by appellant (Dept. Reply Br., p. 9), and the Department maintains that had discovery been requested, appellant would have had ample opportunity to review the document prior to the hearing.

The Board is not required to search the record to find support for an appellant's contentions or to develop an appellant's legal arguments. (See *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 [35 Cal.Rptr.2d 574].) We have reviewed the pages cited by appellant [RT 16-17] in his opening brief, and fail to find support for the argument that the receipt of a black and white map rather than a color one constitutes error.

III

Appellant contends testimony regarding the premises' noninterference with the quiet enjoyment of nearby residences was unsubstantiated because there was no evidence of the number of condominiums inside the hotel, versus outside the premises, nor how many were occupied.

At the administrative hearing, testimony was given by the supervising investigator, Jo Ann Aguilar, that the only residences within 100 feet of the premises are residences inside the 11-story hotel which houses the premises. [RT 24-25.] No complaints about noise have been received from these condominium owners according to the general manager of the hotel, Jim McPartlin. [RT 60-61.]

Appellant asserts that the testimony regarding noninterference with the quiet

enjoyment of nearby residences is unsubstantiated, but his bare assertion is not persuasive. With no developed argument in support of his assertion, appellant cannot hope to persuade the Board to consider his assertion, much less to agree with it.

IV

Appellant contends the Department failed to contact the congregants of the Little Country Church.

Appellant has failed to advance any argument in support of his position that the congregants of a church, which burned down three years prior to the administrative hearing, should have been contacted.

This argument is frivolous.

V

Appellant contends the ALJ improperly excluded evidence regarding hearings before the Redevelopment Agency and the Building and Safety Commission for the City of Los Angeles.

At the administrative hearing, appellant expressed concern that the public was not given sufficient notice to participate in the hearings of these other agencies. The ALJ excluded this line of questioning as irrelevant, and explained that he did not have jurisdiction over such agencies. [RT 44.] Appellant maintains it was error to exclude such evidence.

The trier of fact is accorded broad discretion in ruling on the admissibility of evidence, and the ruling will be reversed only if there is a clear showing of an abuse of discretion. (*Aguayo v. Crompton & Knowles Corp*. (1986) 183 Cal.App.3d 1032, 1038 [228 Cal.Rptr. 768].) Appellant has supplied no support for his assertion that error occurred.

VI

Appellant contends "the court abandoned impartiality and argued against financial determination." (App.Br. at p. 2.) We have no idea what appellant's argument is, or what error is being alleged by this statement.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It is appellant's duty to show the Board that error existed. Without such assistance by appellant, the Appeals Board may deem general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

VII

Appellant contends the Department has refused to do its due diligence regarding noise abatement.

Following the administrative hearing, appellant sent emails to the Department requesting an investigation of appellant's claim of noise coming from the property. This issue was not raised at the administrative hearing, and appellant cannot raise it for the first time on appeal.

Numerous cases have held that the failure to raise an issue or assert a defense at the administrative hearing level bars its consideration when raised or asserted for the first time on appeal. (*Hooks v. California Personnel Board* (1980) 111 Cal.App.3d 572, 577 [168 Cal.Rptr. 822]; *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,576 [146 Cal.Rptr. 653]; *Reimel v. House* (1968) 259 Cal.App.2d 511, 515 [66 Cal.Rptr. 434]; *Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control*

(1966) 65 Cal.2d 349, 377 [55 Cal.Rptr. 23]; *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 182, 187 [17 Cal.Rptr. 167].)

Since appellant did not raise this issue at the hearing, the Board is entitled to consider it waived. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §400, p. 458.)

ORDER

The decision of the Department is affirmed.[2]

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[2]This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq.