

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

AB-9182

File: 47-464576 Reg: 10073461

CALEB LINS, INC., dba Lobster Trap
128 Catalina Avenue, Avalon, CA 90704,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 3, 2012
Los Angeles, CA

ISSUED JUNE 12, 2012

Caleb Lins, Inc., doing business as Lobster Trap (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for ten days, five of which were stayed, for having violated a condition on its license, a violation of Business and Professions Code section 23804.

Appearances on appeal include appellant Caleb Lins, Inc., appearing through its counsel, Ralph B. Saltsman and Andrew Quigley, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on April 16, 2008. Thereafter, the Department instituted a three-count accusation against appellant

¹The decision of the Department, dated August 2, 2011, is set forth in the appendix.

charging that, on October 23, October 24, and October 25, 2009, appellant violated a condition on its license requiring the presence of security personnel to patrol the exterior of the premises at certain times. The condition provides:

Between the hours of 12:00 Midnight and ½ hour after closing, the petitioner(s) shall provide one (1) security personnel to patrol the exterior of the premises. Said personnel shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of the nearby residents. Said personnel shall be clothed in such a manner as to be readily identifiable as security.

An administrative hearing was held on February 9, 2011, and June 1, 2011, at which time documentary evidence was received and testimony concerning the violation charged was presented by Los Angeles County Deputy Sheriff Robert Domin. Justin Martin, also a Los Angeles County Deputy Sheriff, William Bold III, a bartender employed by appellant, and Caleb Lins, appellant's owner, presented testimony on behalf of appellant.

Subsequent to the hearing, the Department issued its decision which determined that the charges in the counts of the accusation relating to October 23, 2009, and October 24, 2009, were sustained, in that security personnel on duty on those dates were not clothed in such a manner as to be readily identifiable as security. The count relating to October 25, 2009, was dismissed.

Appellant filed a timely notice of appeal in which it raises the following issues: (1) the condition is unenforceable because it fails to provide a standard for determining what is "readily identifiable;" and (2) even without a clear standard appellant's security personnel were identifiable as security personnel. Appellant's brief also contends that

the agency is barred by laches from proceeding against it.²

DISCUSSION

I

Appellant contends that the requirement of the condition that security personnel "shall be clothed in such a manner as to be readily identifiable as security" is vague and unenforceable because the Department has failed to provide a standard or explanation of what constitutes "readily identifiable." The Department's decision does not attempt to explain what is meant by "readily identifiable." However, its decision does indicate, at least inferentially, what the Department will not accept as compliance with the condition. It states:

The evidence clearly established that security personnel were on duty in the early morning hours of October 23, 2009 and October 24, 2009. The evidence also clearly established that, despite specifically searching for such personnel, Dep. Domin was unable to locate them. Although the blue and white pin-on tag was not introduced into evidence, it was described in the testimony. Simply putting a small tag on the same shirt that employees wear when performing other duties is insufficient to meet the requirements of the condition.

(Conclusion of Law 6)

Caleb Lins described the pin-on tag as an acrylic, blue and white two by four [inch] badge with the words "Lobster Trap Security" on it. [RT 76]. His testimony suggests there was only one such badge, stating, with respect to the October 23 incident:

Throughout the night, I switched between Shawn Powell, Sergio Moreno, and myself, and whether I was wearing the pin or Sergio or Shawn was wearing the pin, I cannot tell you at that exact time, but somebody was.

² We discern from appellant's argument that it intended to refer to itself in the caption to the discussion of the laches issue, but mistakenly named some other entity.

Domin, in rebuttal, testified he had never seen anyone wearing a badge indicating security [RT 102], and the administrative law judge (ALJ) found that Lins was not wearing the badge during the October 23 incident. (Finding of Fact 7).

Business and Professions Code section 23800 empowers the Department to place reasonable conditions on retail licenses in certain situations. A violation of a condition is grounds for suspension or revocation.

It is apparent from the language of the condition in question in this case that it is aimed at keeping order during the late and closing hours of operation of the premises, where noise and other disruptive activities involving patrons leaving the premises can be particularly disturbing to nearby residents should it occur. Quick action by security can often defuse conduct which, if left unattended, could result in injury or death to patrons and others.

Each of the nights in question involved altercations between departing patrons and/or others, and required the intervention of security personnel and law enforcement. Apparently the incidents were quelled without serious consequence, despite a deputy's difficulty in locating anyone he was able to identify as security.

We find no ambiguity in the term "readily identifiable," or any failure of the Department to supplement the plain language of the condition with some additional standard of interpretation. We read the words in their ordinary sense, as meant to put someone on notice quickly and easily.³

³ Webster's Third New International Dictionary (Unabridged) (2002 ed.) (p. 1889) defines "readily" in these ways:

:in a ready manner: with readiness: as, **a** : with prompt willingness : without hesitating, quibbling or delaying : with alacrity : WILLINGLY ... **b** : with fairly quick efficiency : without needless loss of time : reasonably fast : SPEEDILY ... **c** : with a fair
(continued...)

Appellant neither offered the pin-on badge in evidence nor did it explain why it did not. With nothing known about the badge other than it had the words "Lobster Trap Security" in a small, two inch by four inch, space, and was pinned on a T-shirt bearing appellant's logo, it is impossible to determine whether it could be said that its wearer was "readily identifiable" as security however such phrase might be construed.

For these reasons, we cannot accept appellant's argument that the condition is unreasonably vague or ambiguous, or lacks a standard of interpretation different from what plain English supplies.

Appellant's remaining argument is that the reason Deputy Domin may not have noticed anyone wearing the pin-on badge on the two days in question was because he was preoccupied with dealing with the disturbance taking place on October 23, and did not enter the premises on October 24, where the disturbance was taking place, so could only speculate as to the lack of security personnel.

The ALJ accepted Deputy Domin's testimony that he searched for security personnel but was unable to locate any. Even if there may have been someone patrolling the area around the premises, with only a small badge to distinguish them from other employees, it is understandable that he or she might have gone unnoticed because they were not wearing *clothing* that made them readily identifiable.

We agree with the Department that security personnel who are readily identifiable as security personnel serve as a clear visual deterrent to potential wrongdoers; a small badge with three words crammed into its four inch width that is not likely to stand out in the middle of the night when more than a few feet away from an

³(...continued)
degree of ease : without much difficulty : with facility : EASILY.

observer is not likely to be the kind of deterrent the language of the condition intended.⁴

II

Appellant argues that the Department is barred from proceeding with the accusation because of the doctrine of laches. Laches is a defense which may be asserted where there has been undue delay in the assertion of a claim and the delay caused prejudice to the party against whom the claim is made. (See *Chemical Specialities Mfrs. Ass'n v. Deukmajian* (1991) 227 Cal.App.3d 663, 672 [278 Cal.Rptr. 128, 134].) Appellant contends that the slightly less than 11-month delay between the events giving rise to the accusation and its filing, and service of a notice of hearing two months after the filing of the accusation, prevented any meaningful cross-examination of Deputy Domin. Appellant asserts that Domin's testimony was "littered" with answers such as "I don't recall," and that Domin had retired by the time of the hearing.

This issue was not raised at the hearing, so we are not required even to consider it.

Nonetheless, we have reviewed Deputy Domin's testimony. To say that Domin exhibited any significant inability to recall the events in question is a gross exaggeration. Like any typical witness, Deputy Domin was unable at times to recall minor details that appear to have no particular importance. Appellant has not cited any particular area of questioning in the 37 transcript pages of Domin's testimony where an inability to recall might have prejudiced appellant's ability to defend. Nor has appellant explained how the deputy's retirement related to his ability to recall.

⁴ One can only speculate that had the badge carried only the word security in the font size suggested by the ball cap depicted in Exhibit B, Deputy Domin might have found it possible to notice someone wearing that badge. The word "SECURITY" printed in 36 point Arial type face would fit very nicely within a four inch space.

According to the Department, appellant itself contributed to the delay, referring to a two-month delay relating to a "Pitchess" motion filed by appellant, and a continuance requested by appellant because of the unavailability of one of its witnesses.

We are satisfied there is no merit to the laches defense appellant has asserted.

ORDER

The decision of the Department is affirmed.⁵

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

⁵ 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.