

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

99 CENTS ONLY STORES	)	AB-6547
dba Bargain Wholesaler)	
4000 Union Pacific Ave.	)	File: 17-297492
Commerce, CA 90023	)	Reg: 95031938
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Richard E. Ranger
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	April 3, 1996
	)	Los Angeles, CA

99 Cents Only Stores, doing business as Bargain Wholesaler (appellant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which denied appellant's application for a premises-to-premises transfer of its type 17 wholesaler's license to a new location, for appellant selling alcoholic beverages to unlicensed premises and for selling the majority of its wine to various wholly owned outlets, being contrary to the general public welfare and morals provisions of the California Constitution, Article XX, §22, and in violation of Business and Professions Code §§23301, 23378, 23779, and 23958.

¹The decision of the department dated June 22, 1995 is set forth in the appendix.

Parties of record on appeal included appellant 99 Cents Only Stores, appearing through its Vice President, Eric Schiffer, and its Assistant to the Vice President, Henry Miller; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant is a corporation which was formed in 1976. Appellant held a type 17 beer and wine wholesaler's license at its old location in Vernon, California. The corporation had over 30 retail stores which were, in most cases, licensed as type 20 off-sale beer and wine premises. These type 20 licenses of the retail stores are not a concern in this present matter. Appellant owns a number of business enterprises, such as export and import, doing business under various fictitious trade names.

On June 17, 1994, appellant applied for a premises-to-premises transfer of its wholesaler's license to its new location in the City of Commerce, California. On January 26, 1995, the department denied the transfer of the license upon the grounds that appellant violated certain Business and Professions Code sections.²

Notice of hearing was sent to appellant, which included an additional alleged

²All further references to code sections will be to the Business and Professions Code unless otherwise indicated. The statement of issues setting forth the grounds for the denial of the transfer is set forth in the appendix.

Section 23378, as referenced in the statement of issues, concerns sales by the wholesaler to persons holding alcoholic beverage licenses. Section 23779, as referenced in the statement of issues, concerns the duty of the wholesaler in good faith to act as a wholesaler and the power of the department to revoke a license if the wholesaler fails to act under the license.

violation of §23001 as general grounds of denial.³

A hearing was held on May 19, 1995, at which time oral and documentary evidence were submitted. Thereafter, the department issued its decision denying the transfer of the license. Appellant subsequently filed a timely notice of appeal.

In its appeal, appellant apparently raised questions of its denial, which can only be defined in the general terms of §23084 that the department has not proceeded according to law or has exceeded its jurisdiction.

DISCUSSION

Appellant contended that the department did not act in accordance with existing law or acted in excess of its jurisdiction in denying the license.

The department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the department shall reasonably determine for "good cause" that the granting or the continuance of such license, would be contrary to public welfare or morals.

Section 23958⁴ apparently combines applications for a new license and the transfer of an existing license in the investigative process detailed in the section. The section reads as follows, omitting the provisions for a new license:

"Upon receipt of an application for...a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the...premises...qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and

³A copy of the code section is set forth in the appendix.

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morals. The department shall deny an application...for a transfer of a license if...the premises for which a license is applied do not qualify for a license under this division."

The record shows that the application was for a premises-to-premises transfer of the license and the appropriate fees for this type of transfer were paid. The department's Instructions, Interpretations and Procedures Manual interprets section 23958 and lists investigative criteria and various grounds for denial of an application for the issuance of a new license wherein the applicant and the premises must qualify for the license (which is not applicable in this matter), and where, in a premises-to-premises transfer, the premises must qualify.

We determine that there is no substantial evidence in the record which shows the premises did not qualify under the statutes and the department's regulations. Our views were supported by the department's counsel's argument that the problem was appellant's misconduct, as the building in question appeared to qualify for the license. It is apparent that the department has not conformed to the statutes which set forth the criteria and means to determine if a premises qualifies under these criteria.

If the department has valid charges against appellant's conduct under its license, the department should use the means it has available to properly sanction misconduct. But using the denial of an application for the transfer of a valid license cannot be the means of a de facto revocation or suspension of appellant's license.

CONCLUSION

The decision of the department is reversed.⁵

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

Business & Professions Code §23001 provides:

"This division is an exercise of the police powers of the State for the protection of the safety, welfare, health, peace, and morals of the people of the State, to eliminate the evil manufacture, selling, and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages. It is hereby declared that the subject matter of this division involves in the highest degree the economic, social, and moral well-being and the safety of the State and of all its people. All provisions of this division shall be liberally construed for the accomplishment of these purposes."

Business and Professions Code §23958 provides:

"Upon receipt of an application for a license or for a transfer of a license and the applicable fee, the department shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the provisions of this division have been complied with, and shall investigate all matters connected therewith which may affect the public welfare and morals. The department shall deny an application for a license or for a transfer of a license if either the applicant or the premises for which a license is applied do not qualify for a license under this division.

"The department further may deny an application for a license if issuance of such license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4."

⁵This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.