

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

PO OK PARK	)	AB-6581
dba Sam's Liquor & Market)	
533-35 Rampart Boulevard	)	File: 21-304794
Los Angeles, CA 90057	)	Reg: 95032989
Appellant/Applicant,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John A. Willd
THOMAS ADAMS, JR.)	
Respondent/Protestant, and	)	Date and Place of the
	)	Appeals Board Hearing:
THE DEPARTMENT OF ALCOHOLIC	)	May 1, 1996
BEVERAGE CONTROL,	)	Los Angeles, CA
Respondent.)	
_____)

Po Ok Park, doing business as Sam's Liquor & Market (appellant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which denied appellant's application for an off-sale general license on the grounds that issuance of the license would tend to aggravate an existing law enforcement problem and would interfere with the normal operations of a nearby park, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, Article XX, §22, and in violation of Business and Professions Code §23958.

¹The decision of the department dated October 19, 1995, is set forth in the appendix.

Appearances on appeal included appellant Po Ok Park; the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan; and protestant Thomas Adams, Jr.

FACTS AND PROCEDURAL HISTORY

Appellant filed an application with the department for the issuance of an off-sale general license on January 11, 1995. In early February 1995, approximately 39 citizens filed protests against the issuance of the license. Thereafter, on May 25, 1995, the department denied the issuance of the license.

An administrative hearing was held on August 22, 1995, at which time oral and documentary evidence was received. Subsequent to the hearing, the department issued its decision, which determined that issuance of the license would aggravate an existing police problem and adversely affect a nearby park. Appellant filed a timely notice of appeal.

In her appeal, appellant raised the issue that the findings of the department's decision were not supported by substantial evidence.

DISCUSSION

In reviewing the parties' arguments and contentions, there appears to be confusion concerning the department's authority and the appeals board's review process as authorized by law.

It is the department, and not the appeals board, which is authorized by the California Constitution to exercise its discretion whether to grant or deny an alcoholic beverage license, if the department shall reasonably determine for "good cause" that

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the granting or denial of the license would not, or would be, contrary to public welfare or morals.

Contrary to the constitutionally-mandated powers given the department, the appeals board acts only in an appellate review capacity. The scope of the appeals board's review is limited by the California Constitution, by statute, and by case law. In reviewing a department's decision, the appeals board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the department are supported by substantial evidence in light of the whole record, and whether the department's decision is supported by the findings. The appeals board is also authorized to determine whether the department has proceeded in the manner required by law or proceeded in excess of its jurisdiction (or without jurisdiction).²

The term "substantial evidence" is defined as relevant evidence which reasonable minds would accept as a reasonable support for a conclusion (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477, 95 L.Ed. 456, 71 S.Ct. 456, and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871, 269 Cal.Rptr. 647). When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the appeals board, after considering the entire record, must determine whether there is substantial

²The California Constitution, Article XX, §22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85, 84 Cal.Rptr. 113.

evidence, even if contradicted, to reasonably support the findings in dispute (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874, 197 Cal.Rptr. 925).

Appellate review does not "...resolve conflict[s] in the evidence, or between inferences reasonably deducible from the evidence..." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678, 13 Cal.Rptr. 658). But where there are conflicts in the evidence, the appeals board is bound to resolve conflicts of evidence in favor of the department's decision, and must accept all reasonable inferences which support the department's findings (Gore v. Harris (1964) 29 Cal.App.2d 821, 40 Cal.Rptr. 666. See also Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181, 67 Cal.Rptr. 734, 737; Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439, 102 Cal.Rptr. 857--a case where there was substantial evidence supporting the department's as well as the license-applicant's position; and Kruse v. Bank of America (1988) 202 Cal.App.3d 38, 248 Cal.Rptr. 271).

In the investigation process as to any application for a license, the department must obtain the true facts concerning the application and make certain determinations. The court in Koss v. Department of Alcoholic Beverage Control (1963) 215 Cal. App.2d 489, 30 Cal.Rptr. 219, 222, enumerated several considerations the department may review in determining if a license would endanger public welfare or morals: "...the integrity of the applicant as shown by his previous business experience; the kind of business to be conducted on the licensed premises; the probable manner in which it will be conducted; ...the nature of the protests made, which primarily were directed to

previously existing conditions attributed to an unlicensed premises...."

Kelly Griffith, the department investigator who processed the application, testified at the administrative hearing that the previous licensee had had his license revoked for various alcoholic beverage violations and federal food stamp violations. Griffith also testified as to area statistics for crimes and arrests which were obtained from the Los Angeles Police Department. Finding III, and the first paragraph of finding IV concerning the statistics for crimes and arrests, was hearsay. Therefore, such findings were not supported by substantial evidence.³

Bruce Spaulding of the Los Angeles Police Department's vice unit testified that prostitution was rampant in the area, and homeless people and vagrants walked the streets and used the nearby park. He has observed that vagrants purchase alcoholic beverages from the premises across the street from appellant's proposed premises. Thereafter, the vagrants would consume the beverages in public. There were high incidents of narcotic sales in the immediate area [R.T. 59-72].

Frank James Scurria, also of the Los Angeles Police Department, testified concerning gangs and their propensity for intimidating people in the area. The main problem was with the premises across the street, a local alcoholic beverage retailer,

³On page 20 of the transcript, the witness testified that the statistics were obtained from the city and were "...customarily reported to the Department...." There was no authentication for the investigator's testimony. Police representatives who collect and maintain the statistical information most often are the ones who can authenticate the statistics by explaining the processes of collection and internal control. The statistics do not come within any exception of the hearsay rule. The statistics forwarded to the department for its internal usage were not business records such that the statistics would be an exception to the hearsay limitation.

which was creating the "out of control" problems in the area [R.T. 73-97].

The nexus between the crimes as testified to and appellant's premises (appellant does serve the community as a small market employing a butcher to individually prepare meats), was that the premises would most likely become another source of community deterioration through alcohol abuse, as is evident by the premises across the street, which was a major source of the police problems. The problem caused by the owner of the premises across the street from appellant was not that he didn't cooperate with the police, but that he was powerless due to the large numbers of customers who would come to his premises and purchase alcohol (a legal purchase), but then illegally drink in the streets and in the nearby park, often to the point of intoxication.

Police Officer Spaulding stated that another outlet for alcohol would create an additional trouble spot besides the one located across the street from appellant's premises. The officer stated that when appellant's premises previously closed under a prior licensee, all the vagrants and streetwalkers moved across the street to the other premises and that location then became a police problem [R.T. 61].

Apparently, the Rampart area (where appellant's market is located) is one of the leading areas in the city for narcotic sales and usage, and is notorious for prostitution--all having a direct correlation to alcohol sales [R.T.72].

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We conclude that the findings were supported by substantial evidence and the decision was supported by the findings.

CONCLUSION

The decision of the department is affirmed.⁴

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

⁴This 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.