

ISSUED MARCH 30, 1999

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

KDM ENTERTAINMENT, INC.	)	AB-6587a
dba Kokomo's)	
17927 McArthur Boulevard	)	File: 47-185953
Irvine, California 92714,	)	Reg: 94029668
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	None
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	February 3, 1999
	)	Los Angeles, CA
)	

This is the second appeal to this Board in this case by appellant KDM Entertainment, Inc. ("KDM"). KDM is represented on this appeal by its counsel, Rick A. Blake. Kenton P. Byers, Chief Counsel, and Jonathon E. Logan appeared on behalf of the Department.¹

In KDM's original appeal, this Board affirmed an order of revocation of KDM's on-sale general public eating place license for violations of Business and

¹ A copy of the Department's Decision Following Appeals Board Decision, dated August 28, 1998, is set forth in the Appendix.

Professions Code §25601 (keeping a disorderly house), and §24200, subdivisions (a) and (e) (permitting premises to be used in a manner which created a law enforcement problem and failure to take reasonable steps to correct objectionable conditions). KDM was partially successful in seeking review in the Second District Court of Appeal, which, in an unpublished opinion, reversed the Department's finding of a disorderly house violation, but affirmed the law enforcement problem and failure to correct objectionable conditions violations.

Upon remand, the Department again ordered revocation, but stayed revocation, subject to a probationary period of two years, and an actual suspension of 15 days.

In its present appeal, KDM argues that the newly-imposed penalty defies logic and amounts to an abuse of discretion. KDM argues that, since more than five years have passed since the last alleged incident supporting the Department's findings, and since the purpose of a stayed penalty, in essence, probation, is to insure that the licensee does not commit the same violation again within the period of the stay, the penalty must be related in time to the offense. KDM states that, in the interim, other accusations and disciplinary actions have been filed against it, and an "outrageous and overly burdensome" stay period lacks any relationship to the offenses involved, and does not ensure that the same offenses will not occur again in close proximity to the original offense.

The Department has broad discretion with regard to the imposition of penalty. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52

Cal.2d 287 [341 P.2d 296].)

KDM's attack on the penalty is primarily directed at the length of the probationary period. Ordinarily, one would think, the grant of probation in lieu of revocation would seem to be an exercise in leniency. But here, KDM complains that two years is too long, especially since the offenses occurred long ago.

We disagree with a key aspect of KDM's main premise - that is, that the purpose of conditional probation is to deter a new violation in close proximity to the original violation. Its purpose is to deter new violations.

KDM argues that the two year stay "is certain death," citing the provisions of paragraph (e) of the order, which provides that should an accusation be filed against KDM alleging a violation to have occurred within two years of the effective date of the order, the stay shall be extended until such time as the accusation is final, and the Department shall retain jurisdiction over this matter until such time. KDM states that it is a virtual certainty that an accusation will be filed against it, given its history with the Irvine Police Department.

KDM may well be correct in its prediction that an accusation will be filed against it. However, the Department is not limited in the discipline it believes necessary simply because a licensee has chosen to pursue a high risk style of operation, one which has, on occasion, resulted, as KDM concedes, in close scrutiny by the police.

Finally, it may be unfortunate from KDM's point of view that the passage of time between the violations which occurred and the commencement of the stay

period is substantial. That is, however, no basis for a limitation on the Department's ability to employ the stay of revocation as a means to promote compliance with the law, especially when any delay has been that normally associated with an extended appellate process.

ORDER

The decision of the Department is affirmed.²

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

² This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §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 §23090 et seq.