

ISSUED APRIL 2, 1998

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

| | | |
|---|---|--------------------------|
| JUAN HEREDIA |) | AB-6848 |
| dba Uan Family Billiards |) | |
| 1009 Baker Street |) | File: 40-321634 |
| Bakersfield, California 93305, |) | Reg: 96038054 |
| Appellant/Applicant, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | Rodolfo Echeverria |
| SCOTT CARVEL |) | |
| City of Bakersfield Police Department, et al.,) |) | Date and Place of |
| Respondents/Protestants |) | Appeals Board Hearing: |
| |) | January 7, 1998 |
| and |) | Los Angeles, CA |
| |) | |
| DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | |
| Respondent. |) | |
| _____ |) | |

Juan Heredia, doing business as Uan Family Billiards (appellant/applicant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied his application for an on-sale beer license on the ground that its issuance would add to an undue concentration of licenses and would create a law enforcement problem in the

¹ The decision of the Department, dated March 13, 1997, is set forth in the appendix.

area, contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §23958.

Appearances on appeal include appellant Juan Heredia, representing himself; protestants Scott Carvel, Bakersfield Police Department, Willadean Lovell, Jack saba, and Nancy Snider; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon M. Logan.

FACTS AND PROCEDURAL HISTORY

In 1996, appellant filed an application with the Department for the issuance of an on-sale beer license. This application was followed on January 14, 1997, by his filing a petition for issuance of a conditional license.² The application was denied. The Statement of Issues (included within Exhibit 1) which accompanied the Notice of Denial recited that issuance of the license would be contrary to welfare and morals, specifically alleging that issuance would tend to aggravate an existing law enforcement problem for the Bakersfield Police Department,³ would result in or add to an undue

² The petition is in the form of a letter (Exhibit B) to Larry Wogoman, a District Supervisor of the Department, dated January 14, 1997.

³ The law enforcement problem was described as follows: "Past law enforcement responses to the area immediately surrounding the premises include, but are not limited to, fights, assaults, assaults with a deadly weapon, narcotics activity, vandalism, liquor violations, drunk in public violations, burglaries and robberies, all of which requires an inordinate amount of police services by Officers of the Bakersfield Police Department."

The Statement of Issues also listed nine existing alcoholic beverage licensees located in the immediate vicinity of the proposed premises, ranging from 390 feet

concentration of licenses in the immediate vicinity of the proposed premises, and stating that the applicant failed to show that public convenience and necessity would be served by its issuance.

An administrative hearing was held on January 23, 1997, at which time oral and documentary evidence was received in opposition to and in support of the application. Subsequent to the hearing, the Department issued its decision reaffirming its original denial, basing its determination on the same grounds as those set forth in the original Notice of Denial.

Appellant thereafter filed a timely notice of appeal. Appellant has not filed a brief.

Written notice of the opportunity to file briefs in support of the appellant's position was given on September 17, 1997. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.⁴

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the

to 1100 feet away.

⁴ The notice of appeal is in the form of a letter dated April 23, 1997, in which appellant states only that he is attempting to retain an attorney and needs the license for his business. The Board's letter of May 2, 1997, requesting that appellant specify the grounds of his appeal, did not evoke a response.

Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

However, the Board has reviewed the record, and is satisfied that the evidence produced during the administrative hearing amply supported the result.

A similar application filed by appellant was denied on March 9, 1995, in a decision by Administrative Law Judge Reyes (see Exhibit 5), who found then, as well, that issuance of the license would aggravate an existing crime problem.

Appellant appeared at the hearing and stated that the area where his business was located was in a state of transition, and that several of the protestants against issuance of the license had since altered their position. Appellant was accompanied at the hearing by Jim Snyder, who, although not a named protestant, owned an adjacent business, a bicycle shop. Snyder stated that he did not object to issuance of the license, although he acknowledged concerns about the impact on his business from conduct of patrons of the pool hall in the late night hours when his business was closed. Snyder's concerns, although not included in the record that accompanied the appeal, only emphasized the legitimacy of the reasons for the denial of the license in the first instance.

CONCLUSION

The decision of the Department is affirmed.⁵

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

⁵This 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 decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate 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.