

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

CARRENA BARRERA	)	AB-7059
dba The Place	)	
7020 Foothill Blvd.	)	File: 42-328701
Tujunga, CA 91042,	)	Reg: 97040142
Appellant/Applicant,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 7, 1998
	)	Los Angeles, CA
	)	

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Carrena Barrera, petitioning the Department to be able to do business as The Place (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which denied her application for a person-to-person transfer of an on-sale beer and wine public premises license, on the ground that appellant is not qualified to hold a license, pursuant 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 Carrena Barrera, appearing through

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<sup>1</sup>The decision of the Department, dated February 11, 1998, is set forth in the appendix.

her counsel, James R. Hawkins, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

#### FACTS AND PROCEDURAL HISTORY

Appellant has worked at the presently licensed premises for approximately three years, in the capacity of a bartender for one year, and as manager for two years [RT 9].

On February 26, 1997, appellant filed an application with the Department requesting the transfer of her employer's license to her. Acceptance and investigation of the application would be made pursuant to Business and Professions Code §23958, which states in pertinent part as follows:

"Upon receipt of an application for ... a transfer of a license ... the department shall make a thorough investigation to determine whether the applicant ... qualif[ies] 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 transfer of a license if the applicant ... do[es] not qualify for a license ...."

On May 29, 1998, the Department denied the application on the sole ground that appellant had been arrested on January 16, 1992, for the offense of possession for sale of a controlled substance, in violation of Health and Safety Code §11351, and thereafter on April 7, 1992, was convicted of the offense, by the entry of her plea to the charge [Exhibit 4]. Appellant was sentenced to three years formal (supervised) probation, but on January 14, 1994, that sentence was modified to an informal (unsupervised) probation status. Appellant is not on probation at the present time [RT 12], and, by extrapolation, the probation would

have ended in 1995.

An administrative hearing in the present matter, was held on January 6, 1998, at which time oral and documentary evidence was received. At that hearing, the Department did not offer testimony concerning its investigation, but submitted certified copies of the conviction and other documentation. Appellant explained her illegal actions and subsequent conviction as an outgrowth of a bad marriage [RT 11].

Subsequent to the hearing, the Department issued its decision which determined that, within the discretion of the Department, the application was denied. Appellant thereafter filed a timely notice of appeal. In her appeal, appellant raises the issue that the Department acted arbitrarily and without good cause in denying the application.

### DISCUSSION

Appellant contends the Department acted arbitrarily and without good cause in denying the application, arguing that there was no indication of a proper investigation concerning the rehabilitation of appellant.

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

The scope of duties and obligations of the Appeals Board are quite different from those of the Department. The scope of the Appeals Board's review is limited

by the California Constitution, by statute, and by case law. In reviewing the 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, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.<sup>2</sup>

The Department found in Finding II that the conviction concerned a crime involving moral turpitude. Determination of Issues III and IV provides that a crime involving moral turpitude is sufficient for the Department to deny the license. Determination of Issues III cited the statute upon which the authority to deny a license was predicated.

Determination of Issues V states that the issue is whether the Department acted within its discretion to deny the license. We must agree that that is the issue before the Appeals Board.

We determine that whether an applicant is fit to hold a license, burdened with the conviction as set forth in this matter, is a matter which is vested solely in the Department and the Appeals Board may not interfere with that discretionary decision,

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<sup>2</sup>The 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].

unless it can be shown that no reasonable basis in law or fact can substantiate the Department's decision. We conclude that the Department's discretion to deny the application is reasonable.

ORDER

The decision of the Department is affirmed.<sup>3</sup>

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

JOHN B. TSU, MEMBER, did not participate in the oral argument or decision in this matter.

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<sup>3</sup>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.