

ISSUED MARCH 2, 2001

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

GUADALUPE G. LOPEZ	)	AB-7373
dba California 2001)	
914 South Long Beach Boulevard	)	File: 41-236081
Compton, CA 90221,	)	Reg: 98044893
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	December 12, 2000
	)	Los Angeles, CA

Guadalupe G. Lopez, doing business as California 2001 (appellant),¹ appeals from a decision of the Department of Alcoholic Beverage Control² which suspended her license for 25 days, with 10 days thereof stayed during a one-year probationary period, for having violated a condition on the license requiring that entertainment provided shall not be audible beyond the area under the control of the licensee,

¹ The license was issued in the names of appellant and her spouse, Miguel Lopez. According to appellant's brief, Miguel Lopez is deceased.

²The decision of the Department, dated March 25, 1999, is set forth in the appendix.

contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

Appearances on appeal include appellant Guadalupe G. Lopez, appearing through her counsel, Greg T. Lenahan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public eating place license was issued on September 7, 1989. Thereafter, the Department instituted an accusation charging the violation of a condition on the license that entertainment provided not be audible beyond the area under the control of the licensee.

An administrative hearing was held on January 21, 1999, at which time oral and documentary evidence was received. At that hearing, Department investigators Dawn Jean and Peter Parszik testified that, in the course of an inspection of the premises, they were, upon arrival, able to hear music coming from the premises. Jean testified that the front entrance door was propped open, as was a side door, and that music could be heard as they exited their vehicle. Parszik testified that the music was audible as far as four residences away.

Appellant presented the testimony of her manager, Jose Lopez, and that of two neighbors. Lopez testified that the side exit door Jean had said was propped open was always closed, and denied music could be heard outside it when closed. He admitted that the front door was always kept open, but testified that neighboring structures were, with one exception, commercial establishments.

Subsequent to the hearing, the Department issued its decision which determined that the condition had been violated as a consequence of an exit door having been propped open.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant concedes “the inescapable conclusion” that the record on appeal supports a finding of substantial evidence³, but suggests that, in the absence of any complaints from nearby residents or businesses, there was no violation of the license condition sufficient to justify the sanction imposed.⁴

DISCUSSION

When appellant and her spouse acquired their license by way of transfer, they agreed to be bound by conditions imposed upon the previous license, one of which was that “entertainment provided shall not be audible beyond the area under the control of the licensee.” The condition, and one other, had been imposed because, according to a recital in the petition for conditional license, the premises were in close proximity to residences, a ground for denial under Rule 61.4.

Appellant’s concession that the condition in question was violated eliminates the need for any discussion of the evidence. Suffice it to say that the mere absence of complaint is no defense.

Underlying appellant’s position is the notion that, since the premises are

³ “Lopez concedes that it is probable that the sound of music emanating from the California 2001 ... was audible.” (App.Br., at page 5.)

⁴ Appellant offers to dismiss the appeal upon condition the Department accept an offer of compromise under Business and Professions Code §23095. We do not consider this a proper subject for the Board’s consideration.

located in what she says is essentially a mixed commercial/residential neighborhood, public policy is not served by enforcement of the condition where there is no showing anyone has been disturbed.

Appellant's argument misses the point.

The purpose of the condition is to protect residents and others from being disturbed by entertainment noise coming from the premises. It cannot be assumed that those who are disturbed will complain. They should not have to complain. The very purpose of the condition is to ensure that there will be no reason for anyone to have to complain.

If appellant truly believes that the condition is superfluous, her remedy would be to seek its removal - not flout it. To accomplish removal, of course, appellant would have to show that the circumstances which gave rise to the need for the condition no longer exist, something the current record indicates is an improbability.

Be that as it may, we cannot conclude that the Department lacked the power to suspend appellant's license for the condition violation. Nor can it be said that the penalty is excessive, given the fact that appellant was shown to have committed an earlier, similar violation of that same condition.

ORDER

The decision of the Department is affirmed .⁵

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

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