

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

SUPER CENTER CONCEPTS, INC. dba Superior Super Warehouse
3831 East Martin Luther King, Jr. Blvd., Lynwood, CA 90262,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent
AB-7620

File: 21-315382 Reg: 99047511

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: February 1, 2001
Los Angeles, CA

ISSUED: MARCH 23, 2001

Super Center Concepts, Inc., doing business as Superior Super Warehouse (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its off-sale general license for 15 days for permitting the violation of a condition on its license concerning maintaining litter free the area around the premises, and under the control of appellant, being 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 Super Center Concepts, Inc., appearing through its counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated March 16, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on March 28, 1996. Thereafter, the Department instituted an accusation against appellant charging that it had allowed the accumulation of trash and other debris around the outside of the premises and around the parking area.

An administrative hearing was held on January 27, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented that the premises is a large supermarket with a parking lot of such size that it has a 500-car capacity. The premises services about 3,000 customers daily, with a program of cleaning the alleys behind the premises and parking lot twice daily, in the morning and evening, with assignments to clerks to pick up trash whenever it is seen by them as they help customers to their cars [RT 31, 37-38]. The record shows there have been no violations charged against appellant since it received its license in 1996. Appellant operates nine such stores with another store to open some time in the year 2000.²

Two Department investigators testified that on two occasions, they observed trash and debris behind the premises and on the parking lot areas. The investigators took two photos of the debris on the first occasion of investigation, and 11 photos on the second investigation which was accomplished about one week after the first investigation.

Subsequent to the hearing, the Department issued its decision which determined that there had been a violation, and ordered the suspension.

²This testimony was given on January 27, 2000.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the issue that the mere existence of some trash around the premises and its parking area was not sufficient to constitute a violation of the condition, and arguing the penalty is excessive.

DISCUSSION

I

Appellant argues that the condition which reads: “[Appellants] shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control,” should not be interpreted to mean that at no time can there be any litter. Appellants interpret the condition to mean that the litter will be collected within a reasonable time after discard, by customers, or the winds.

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

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.³

³The California Constitution, article XX, §22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic

The decision of the Department finds that the trash seen by the investigators on the two investigative times at the premises constituted a violation of the condition. The decision also states that appellant needs to be more careful in the future to reasonably maintain a litter-free premises and parking lot.

The authority of the Department to impose conditions on a license is set forth in Business and Professions Code §23800. The test of reasonableness as set forth in §23800, subdivision (a), is that "...if grounds exist for the denial of an application...and if the department finds that those grounds [the problem presented] may be removed by the imposition of those conditions..." the department may grant the license subject to those conditions. Section 23801 states that the conditions "...may cover any matter...which will protect the public welfare and morals...."

We therefore view the word "reasonable" as set forth in §23800 to mean reasonably related to resolution of the problem for which the condition was designed. Thus, there must be a nexus, defined as a "connection, tie, link,"⁴ in other words, a reasonable connection between the problem sought to be eliminated, and the condition designed to eliminate the problem.

Photo 3B taken on June 11, shows an accumulation of trash and plastic bags, between the parked cars and the premises. Photos 4A and 4B are of a wall dividing the premises' parking lot from nearby residents. The wall appears to be concrete block,

Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

⁴See Webster's Third New International Dictionary, 1986, page 1524.

with an iron fence on top with barbed wire on top of the iron fence. There are five separate plastic bags caught in the barbed wire. The most telling evidence are photos 4C and 4D which show portions of the parking area with extensive small type litter, which does not appear, as suggested by appellant in its brief, as items dropped by patrons, which dropping, appellant argues, is hard to control. The debris appears to be of such size and composition, as to have been on the ground over some time, and does not appear to have been blown there by the winds.

Of less significance are photos 4E, and 4F, taken in the gated area in an alley way behind or beside the premises. This area is where shopping carts are stored along with broken shopping carts and other stored matter. There are broken but empty boxes on the ground with a few plastic bags under the stored shopping carts. The bags appear to have come to the location by way of wind. Photo 4H shows an alley area (an area between the premises and a block wall) where broken white colored boxes have been discarded, along with shopping carts and parts from broken parts from inside the store.

It appears that the debris in some of the photos come from a too-lax policing of the area. There is sufficient evidence that the Department has not acted arbitrarily in assessing responsibility to appellant.

II

Appellant contends the penalty is excessive. At the hearing the Department requested a penalty of 25 days with 10 days stayed, which the Administrative Law Judge (ALJ) concluded was “too harsh.” The ALJ assessed a penalty of 15 days.

The Appeals Board will not disturb the Department's penalty orders in the

absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

We cannot say that the penalty as assessed is so out of reason, as to be arbitrary.

ORDER

The decision of the Department is affirmed.⁵

TED HUNT, CHAIRMAN
E. LYNN BROWN, 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 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.