

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

AB-7636a

File: 47-321019 Reg: 99047495

MVP SPORTS GRILL, INC. dba MVP Sports Grill
14160 Beach Boulevard, Westminster, CA 92683,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: December 6, 2001
Los Angeles, CA

ISSUED JANUARY 29, 2002

MVP Sports Grill, Inc., doing business as MVP Sports Grill (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 20 days, with 10 days thereof conditionally stayed for one year, for having violated a condition on its license, a violation of Business and Professions Code §23804.

Appearances on appeal include appellant MVP Sports Grill, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. The original appeal resulted in a

¹The Decision of the Department Following Appeals Board Decision, dated July 12, 2001, is set forth in the appendix.

voluntary dismissal by the Department of one of two counts originally sustained in its decision, the sustaining by the Board of the remaining count,² and a remand by the Appeals Board to the Department directing it to reconsider the penalty. The Department did so, again ordering a 20-day suspension, but staying 10 days of the suspension for one year, conditioned upon discipline-free operation during that period.

Appellant now contends that the penalty is excessive.

DISCUSSION

Appellant asserts that, even though the Department was directed to reconsider the penalty, the new penalty “did not substantively change.” Appellant makes much of the fact that, while the accusation originally contained five counts, only one count, that charging a condition violation, survived the hearing and appeal process.

Appellant glosses over the fact that the original 20-day suspension was imposed by the Department after the Department had dismissed three of the five counts of the accusation.

Appellant also exaggerates when it asserts that the new penalty is substantially the same as the original penalty. In fact, if appellant is successful in avoiding for a full year any incidents warranting discipline, the original penalty will have been reduced by one-half.

Appellant asserts that this case is similar to that in Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183], where, among other things, the court took note of the licensee’s “long record of entirely

² This count charged a violation of a condition on appellant’s license requiring that noise be limited to the area under appellant’s control.

legitimate operation.” The decision did not indicate when the license had been granted. Here, appellant was granted its license on February 7, 1997. The condition violations took place on successive evenings in the beginning of July 1999, a little over two years later. In our mind, this is not a “long record of entirely legitimate operation,” nor can the violation be blamed on the act of a low-level employee, as it was in Joseph’s of Calif., supra.

The Department is vested with a broad discretion when it comes to discipline. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) We cannot say that it has abused that discretion in this case.

ORDER

The decision of the Department is affirmed.³

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

³ 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.