

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

AB-7698

GRANTON E. MARK, Appellant/Protestant

v.

DE PIERRO DEVELOPMENT CORPORATION dba Arco AM/PM
73434 29 Palms Highway, 29 Palms, CA 92277
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 20-360205 Reg: 00048808

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: August 17, 2001
Los Angeles, CA

ISSUED OCTOBER 24, 2001

This is an appeal by Granton E. Mark seeking to overturn a Department ruling¹ which dismissed his protest² against the issuance of an off-sale beer and wine license.

Appearances on appeal include Granton E. Mark, representing himself, Jonathon E. Logan, counsel for the Department, and Kerri De Pierro on behalf of De Pierro Development Company.

An administrative hearing was held on June 30, 2000. Michael Piltz, a

¹ A copy of the Department decision, dated September 7, 2000, is set forth in the appendix.

² Mark originally protested the issuance of the license. When his protest was overruled, and the license issued, he resubmitted his protest in the form of an accusation, seeking to revoke the license. In each case Mark asserted that the applicant was unfit to hold a license because of its past exercise of unsafe practices and uncivilized behavior.

Department investigator, testified that he was assigned to investigate Mark's protest prior to the issuance of the license. He concluded that the complaint did not relate to the proposed premises, and the protest was rejected. Mark, appearing without counsel, testified that, in his opinion, the applicant was unfit to hold a license because it ignored his complaints about safety violations at a restaurant located two blocks from the proposed premises, and acted in an uncivilized manner in so doing. Kerri De Pierro also testified, responding to questioning by Mark concerning the alleged safety violations.

Following the hearing, the Administrative Law Judge issued his proposed decision, recommending that the protest be dismissed. Finding that Mark had failed to establish any common ownership between the restaurant accused of safety violations and the premises of the applicant, or that any hazardous condition ever existed on property under the control of the restaurant, the Administrative Law Judge summed up his views this way:

"Mark is likely well-intended. Nevertheless, his personal dealings with the owners/operators of the restaurant two blocks down the street have little if any bearing on the qualifications of this respondent to hold the license which is in issue here."

Appellant seems in this appeal to be asking the Appeals Board to conduct its own review of the evidence and substitute its views for those of the Department. This, of course, is impermissible.

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or 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. 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.³

We have reviewed the record, and are satisfied that the Administrative Law Judge's findings are supported by the record.

Appellant's complaint concerned what he believed was an unsafe condition at a restaurant two blocks from the proposed premises, and the restaurant owner's failure to remedy the situation to Mark's satisfaction. Mark was of the belief there was a common ownership between that restaurant and the corporate applicant. Even if there was, which is not apparent from the record, a private dispute over the alleged existence of an unsafe condition at another business establishment and unrelated to the sale of alcoholic beverages is not a valid basis upon which to prevent the issuance of a license.

ORDER

³ California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

The decision of the Department is affirmed.⁴

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

⁴ 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.