

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

AB-7715

BEVERLY A. RIOS dba Canby Sweet
7221 Canby Avenue, Reseda, CA 91335,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 48-340779 Reg: 00048910

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

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

ISSUED OCTOBER 29, 2001

Beverly A. Rios, doing business as Canby Sweet (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended her license for 20 days for her bartender, Karen Lee Trost, having served an alcoholic beverage (schnapps) to James Knox, who at the time thereof was obviously intoxicated, 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 §25602, subdivision (a).

Appearances on appeal include appellant Beverly A. Rios, appearing through her counsel, Dale Kanter, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated September 21, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on March 24, 1998.² Thereafter, the Department instituted an accusation against appellant charging the service of a glass of schnapps to Knox at a time when Knox was obviously intoxicated.

An administrative hearing was held on July 26, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Los Angeles police officers Robert Nakamura and Anthony Ljubetic regarding their observations which led them to believe Knox was intoxicated, and by Edward Delapanae and Karen Trost, who testified Knox was sober.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and a 20-day suspension was ordered.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant contends that the Department failed to prove Knox was intoxicated.

DISCUSSION

Appellants argue that the Administrative Law Judge should have accepted the testimony of appellant's witnesses to the effect that Knox was sober and displayed no signs of intoxication, and rejected the testimony of the police officers because it was inconsistent and because they were unfamiliar with Knox's behavioral characteristics.

² Prior to this date, appellant was a co-licensee as a member of a partnership to which a license was issued on September 26, 1983.

Appellant's argument is essentially an attack on the credibility of the police officers. Appellant points to minor inconsistencies or alleged inconsistencies,³ and stresses their importance, in an apparent attempt to persuade the Appeals Board to retry the case.

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.⁴

³ In the course of pointing out the alleged inconsistencies in the police officer's testimony, appellant misquotes the transcript excerpt from page 24 - appellant asserts officer Nakamura said Knox did not stagger while walking to the exit of the bar. Actually, Nakamura said he did.

⁴ 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 credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Guided by these principles, the Board has little choice but to affirm the decision of the Department. Indeed, based upon our review of the record, any other course would be ill-advised. The testimony of the two police officers established that Knox displayed ample symptoms of intoxication - loud behavior, slurred voice, staggered gait and balancing difficulty, among others - and did so in circumstances where his behavior would have been noticed had appellant's employees been properly performing their duties.

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.