

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

AB-7824

File: 20-361826 Reg: 00049769

DON GARCIA, Appellant/Protestant

v.

OSD ENTERPRISES, INC. dba Ultramar Gas Station
805 South Harbor Blvd., Anaheim, CA 92805,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: June 4, 2002
Los Angeles, CA

ISSUED AUGUST 14, 2002

Don Garcia, (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of OSD Enterprises, Inc., doing business as Ultramar Gas Station (respondent/applicant) for an off-sale beer and wine license.

Appearances on appeal include appellant/protestant Don Garcia, appearing through his counsel, David Haas; respondent/applicant OSD Enterprises, Inc., appearing through its president, Parvin Soroushian, and its treasurer, Khoda B. Ostowari; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated May 3, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Applicant has petitioned for issuance of an off-sale beer and wine license. The Department investigator recommended that the license be issued, but protests were filed by protestant and by Roberta Thompson, superintendent of the Anaheim City School District. The latter protest was withdrawn before the hearing.

An administrative hearing was held on March 29, 2001, at which time oral and documentary evidence was received. At that hearing, testimony concerning the application and the protest was presented.

Subsequent to the hearing, the Department issued its decision which denied appellant's protest, dismissed the protest of the other protestant, and allowed the license to issue.

Appellant thereafter filed a timely notice of appeal in which he raises the following issue: the Administrative Law Judge (ALJ) abused his discretion in recommending the license be granted even though the proposed premises is located in an area of high crime and undue concentration.

Written notice of the opportunity to file briefs in support of the appellant's position was given on February 4, 2002, and again on March 21, 2002. No brief has been filed by appellant. We have reviewed the notice of appeal and find it contains insufficient information to aid our review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Appeals Board that the claimed error exists. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble

(1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

The record reveals that the proposed premises lies in an area of undue concentration as defined by both subdivisions (a)(1) and (a)(2) of Business and Professions Code §23958.4 (nine licenses presently exist although only six are technically permitted, and the crimes reported in the crime reporting district exceeded the average for the city). However, the city of Anaheim determined that public convenience or necessity would be served by issuance of the license. The Department may issue a license under such circumstances, notwithstanding the undue concentration. (Bus. & Prof. Code § 23958.4, subd. (b)(2).)

There are 11 conditions on the license which:

- limit hours of alcoholic beverage sales to between 8 a.m. and 12 midnight and limit display space for alcoholic beverages to 25% of the square footage;
- prohibit exterior advertising (or interior advertising visible from outside) of alcoholic beverages;
- prohibit loitering and the consumption of alcoholic beverages on the property under the control of the licensee;
- require lighting in the parking lot sufficient to make easily discernable what goes on there, but which is not disturbing to the neighbors;
- require appellant to keep the area under its control litter-free, graffiti-free, and free of newspaper racks, pay telephones, bicycle racks, "and any other objects which may encourage loitering";
- prohibit amusement machines or video games in the premises;
- prohibit the sale of beer, malt beverages, and wine coolers in single containers of 16 oz. or less, and the sale of beer and malt beverages in larger containers (e.g., quarts, 22 oz., etc.).

No protests were received by the Department during the protest period. After the protest period ended, however, the Department accepted the protests of Garcia and Thompson. Thompson's protest was subsequently withdrawn.

Appellant indicated in his testimony that he was opposed to the consumption of alcoholic beverages in general. His objections were all general, having to do with the societal evils of drink. The ALJ acknowledged appellant's concerns, but correctly pointed out that "he has not met his burden of proving that the 'particular license' involved in this case should not issue." (Det. of Issues VI.)

ORDER

The decision of the Department is affirmed.²

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

²This 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.