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

AB-8069
File: 47-301688 Reg: 02052558

WESTBAKE INVESTMENTS, INC. dba Anthony's Music Box
53 Montgomery Drive, Santa Rosa, CA 95404,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Robert R. Coffman

Appeals Board Hearing: January 8, 2004
San Francisco, CA

ISSUED APRIL 16, 2004

Westbake Investments, Inc., doing business as Anthony's Music Box (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which revoked its on-sale general public eating place license for having operated the premises as a disorderly house and having created a law enforcement problem, violations of Business and Professions Code section 24200, subdivisions (a) and (b), in conjunction with section 25601.[2]

Appearances on appeal include appellant Westbake Investments, Inc., appearing through its counsel, Peter Ottenweller, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

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[1]The decision of the Department, dated December 12, 2002, is set forth in the appendix.

[2] Unless otherwise stated, all statutory citations are to the Business and Professions Code.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on March 22, 1995. On March 15, 2002, the Department instituted an accusation against appellant charging that appellant permitted the premises to be operated as a disorderly house (count 1, consisting of 16 sub-counts); permitted an intoxicated patron to remain in the premises (count 2); and created a law enforcement problem for the City of Santa Rosa Police Department (count 3).

An administrative hearing was held on June 11, 12, 13, and August 15, 2002, at which time oral and documentary evidence, consisting of approximately 600 pages of testimony and argument and numerous exhibits, including 16 police incident reports, was received. Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established, and ordered appellant's license revoked.

Appellant has filed a timely appeal, and raises the following issues: 1) There was not sufficient evidence to support the determination that the premises constituted a disorderly house during the period January 1, 2000 through June 1, 2001; (2) there was not sufficient evidence to support the determination that appellant permitted an intoxicated patron to remain on the premises; (3) there was not sufficient evidence to support the determination that the premises caused a law enforcement problem for the Santa Rosa Police Department; (4) Business and Professions Code section 25601 is unconstitutionally vague; (5) Business and Professions Code section 24200, subdivision (a) is unconstitutionally vague; (6) the Department did not consider factors in mitigation before ordering revocation; (7) the administrative law judge (ALJ) improperly excluded evidence of what constitutes a disorderly house or drain on police

services; and (8) the ALJ improperly excluded testimony regarding mitigation.[3]

In reviewing appellant's contentions, the Board is guided by the following general principles.

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]

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and *Toyota Motor Sales*

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[3] The California Constitution, article III, section 3.5 precludes an administrative agency from holding an act of the Legislature unconstitutional. Therefore, we decline to address the constitutional issues raised by appellant.

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

U.S.A., Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of California* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].) 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 Bev. Control App. Bd.* (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734]; *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

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

Needless to say, there were countless conflicts in the testimony, and many instances where issues of credibility arose. It was the ALJ’s responsibility to resolve

such questions.

An accusation was filed against appellant in 1999 alleging that it permitted the premises to be operated as a disorderly house and in such a manner as to create a law enforcement problem. Appellant acknowledges that the accusation followed "numerous complaints" by the Santa Rosa Police Department for conduct occurring between 1996 and 1998. Appellant asserts that its owner met with representatives of the Department and Santa Rosa Police Department personnel, acknowledged that corrective action was needed, and implemented those corrective measures suggested to him. These included such things as adding lighting to the parking lot; the placement of "no trespassing" and "no loitering" signs in the parking lot; changing the music format from hip-hop to top-40 dance music; employing and training more security personnel; halting the service of alcoholic beverages 45 minutes before closing time; beginning a process of escorting patrons from the premises 15 minutes before closing time; instituting a dress code; allowing an equal number of men and women in the premises; authorizing doormen to exclude those with a prior history of disruptive behavior; and contacting the Santa Rosa police for assistance if needed. Appellant cites the testimony of Santa Rosa police officer Jessie Hanshew to the effect that, even though the premises still had its issues, things had turned around since his original contacts with the premises five years earlier.

The 1999 accusation alleged, among other things, nine instances involving assaults and/or batteries, two instances of an intoxicated person having been permitted to remain in the premises, and 121 police responses to a wide variety of situations. A decision and order was entered pursuant to stipulation suspending appellant's license for 45 days, 40 of which were conditionally stayed, subject to one year of discipline-free

operation. (See Exhibit 2.)

Appellant's owner claims that, after the 1999 charges were resolved, and the remedial measures instituted, neither the Department nor the Santa Rosa police ever told him he was operating a disorderly house, or that his operation was constituting a drain on police services. Appellant's owner alleges he was "shocked" to learn at what he thought was to be a courtesy meeting with a new District Manager that the Department considered his business to be a disorderly house and a drain on police services.

The accusation from which the present appeal has been taken alleges, among other things, 12 instances of battery, two incidents involving fights, and one assault with a deadly weapon. The accusation also alleges 51 instances of police responses to conduct in or at the premises. The similarities to the 1999 accusation are striking.

I

Business and Professions Code section 25601 provides as follows:

> Every licensee, or agent or employee of a licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.

"[T]hree distinct courses of conduct are described by section 25601: first, the keeping of a disorderly house; second, the keeping of a house which disturbs the neighborhood; and third, the keeping of a house to which people resort for purposes which injure, inter alia, public morals. (*Boreta Enterprises, Inc.* v. *Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85, 97 [84 Cal.Rptr. 113].)

Pointing out that the original meaning of the term "disorderly houses" had to do

with prostitution, the court in *Boreta* explained that, in cases under Business and Professions Code section 25601, the term had been applied to a relatively wide range of activities occurring on licensed premises "which have involved threats to the safety or tranquility of the surrounding neighborhood." (*Boreta, supra,* 2 Cal.3d at p. 97.) Moreover, the kind of conduct which gives rise to a disorderly house violation is usually conduct of which the licensee can hardly be unaware - excessive noise, fights, obviously intoxicated patrons and the like. Indeed, an investigation of a possible disorderly house violation necessarily will continue over time, since it is the habitual character of the conduct which implicates the disorderly house statute. (See *Los Robles Motor Lodge, Inc. v. Department of Alcoholic Beverage Control* (1966) 246 Cal.App.2d 197, 203 [54 Cal.Rptr. 547].)

The accusation charged a violation of section 25601 on the basis of 16 incidents (each alleged as a sub-count to count 1 of the accusation) which it alleged occurred during the 18-month period between January 7, 2000, and April 20, 2001. The ALJ sustained all but one of them, dismissing only sub-count 2 of count 1. Appellant argues in its brief that the ALJ should have dismissed or disregarded all of the sub-counts, claiming none of them support the disorderly house count of the accusation.

Of the 16 incidents alleged in support of count 1, 11 involved acts of battery by patrons, either on other patrons or on employees of appellant. One involved a battery by an employee.

We have summarized in an addendum hereto, which we incorporate herein, the evidence regarding the sub-counts of count 1, and are satisfied from our overall review of the record and these sub-counts that there is sufficient evidence to sustain both the

disorderly house count and the order of revocation.

Appellant argues that it is unable to prevent a spontaneous act, but that when such an act occurs, it is the responsibility of its staff to immediately contain the outburst and prevent it from escalating. Were we dealing with only a few of such "spontaneous acts," there would be some persuasive force to appellant's position. But where, as in this case, the pattern of violence is repeated time and again, stronger measures must be taken, and, since appellant is unable to take such measures, it is the Department's responsibility to do so. We think the ALJ assessed the situation correctly when he wrote:

> Respondent contends all the problems at the premises were unavoidable, i.e., it could not have done anything to avoid them. It attributes such problems to individuals behaving badly, but maintains that such behavior is normal for a bar/restaurant.
>
> While it is certainly debatable whether the above described behavior of respondent's patrons is normal, and while one might disagree with respondent's contention its employees could not have done anything to avoid such conduct, the contention reflects a mistaken view of the law applicable to this matter. The unlawful behavior of patrons need not be the result of any intentional conduct on the part of the respondent or its employees. A mere showing that violations of law took place is sufficient to place a licensee in violation of the disorderly house statute. [Citations.] The fact the licensee may not have been able to prevent the violations of law does not preclude a finding that a disorderly house exists at the licensed premises. In addition, where objectionable behavior in a licensed establishment is of a continuing nature and not merely an isolated or accidental instance, it can be concluded that the licensee has permitted the conditions which violate the statutory prohibition against keeping a disorderly house.

(Legal Conclusion 1.)

It is well settled that a licensee has an affirmative duty to maintain an orderly house. (See, e.g., *Yu v. Alcoholic Beverage Control Appeals Board* (1992) 3

Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280];[5] *Givens v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529, 534 [1 Cal.Rptr. 446].) The ALJ's reasoning parallels that in *Yu, supra*, where the court rejected the argument that the licensee was in a high crime area and could not control the situation. Appellant may not be in a high crime area, but it caters to a youthful clientele, and, as seen in the evidence, many of the incidents alleged in the accusation involved a mixture of alcohol and youthful aggressiveness. Appellant knew, or certainly should have known, that more prophylactic and comprehensive measures were required than those it took if the volatile mixture that the business created was to be controlled.

II

The accusation alleged 51 occasions where Santa Rosa police were required to respond to appellant's premises. Concluding that the premises had been a significant law enforcement problem, the ALJ found that 41 of the occasions, in addition to the 16 matters in count 1 of the accusation, were attributable to the premises. Appellant contends that 18 of the 41 occasions were unrelated to the premises, and that those remaining that involved the premises consumed a relatively small amount of time.

Appellant contends that the number of police calls to the premises did not affect adversely the ability of the Santa Rosa police to respond to an emergency, asserting that there is no evidence the police could not respond to an emergency call because they were committed to appellant's premises. It also asserts that the nightly presence of a police unit at closing time in order to prevent problems from occurring was a part of

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[5] The Court of Appeal in *Yu* reversed a decision of the Appeals Board which had held that 11 of 66 alleged police incidents over a 14-month period, together with eight narcotics transactions were insufficient to support a finding of a law enforcement problem.

the officer's regular duties.

Appellant's assertion that it is normal for police presence to be required at closing time rests on the assumption that it is normal to expect problems requiring their presence. This also assumes that it is acceptable for an establishment to have an operating history such that police feel it necessary to have officers on the scene on a routine basis to head off trouble. We do not accept either of these assumptions.

Whether it is a function of the manner in which the premises are operated - licensed as a restaurant but operated as a nightclub - or the residual effects of its prior operation and the reputation it acquired - or, perhaps, the aggressive nature of the youthful clientele to whom it caters - it is clear that Anthony's has used more than its fair share of police resources, such that it is fair to say that it has created a law enforcement problem for the Santa Rosa Police Department. Whether the necessary presence of police officers at appellant's premises on such a frequent basis prevented them from responding to other, perhaps more urgent, calls is immaterial.

III

Appellant contends that the penalty of revocation is too harsh, and that the Department failed to consider, or improperly excluded evidence of facts in mitigation.

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].)

It is plain from a reading of the proposed decision that the ALJ took into account

in formulating his penalty recommendation the history of the premises, the problems that led to the 1999 accusation, the steps said to have been taken by management to prevent a recurrence of those problems, and the evident failure of those remedial steps. We cannot say that the Department has abused its discretion in deciding that the only effective cure to the problems demonstrated by the evidence is license revocation.

ORDER

The decision of the Department is affirmed.[6]

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

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[6] 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.

ADDENDUM

Sub-count 1: (See Proposed Decision, Finding 3.)

A patron was leaving the bar. A second patron confronted him about remarks he had made to a female patron. One struck the other, and a fight ensued. When the owner of the premises attempted to break up the fight, one of the patrons fled, and the other, apparently confused by blows to the head, continued fighting with the owner, in the belief the owner was the person he had been fighting.

Appellant contends that there was no evidence that alcohol was a factor contributing to the incident. However, the police officer who broke up the struggle noted in his report [Exhibit 3-1] that the patron who was fighting with the owner appeared to be intoxicated. The original aggressor was later apprehended by other officers, and charged with battery, a violation of Penal Code section 242.

Appellant also suggests that the incident was not a drain on police resources because the officer who broke up the fight happened to be in the parking lot of the premises when the fight broke out. This may be true as to that officer, but at least two other officers were drawn into the incident, searching for and apprehending the original assailant, who had fled the scene.

Sub-count 2:

This sub-count was dismissed.

Sub-count 3: (See Proposed Decision, Finding 4.)

A patron was being ejected after a complaint that he had been harassing two females. He would not leave voluntarily, and threatened appellant's security personnel with a beer bottle. After being physically escorted from the premises, he spit on one of them and challenged them to a fight. They subdued him. At some point during the incident, the police were summoned by the security personnel.

The officer dispatched to the scene noted in his report [Exhibit 3-3] that the patron exhibited symptoms of intoxication. At the hearing, he testified that he remembered the patron being "very intoxicated." [I RT 27.]

Appellant states that its personnel responded appropriately in the way they handled the situation with the patron, and by summoning the police. The claim that appellant did nothing to promote, aid, or encourage the patron's behavior ignores the role the patron's intoxication played in the incident. Additionally, the claim that no physical confrontation occurred inside the premises is contradicted by the written statement [Exhibit 3-3, page 8] of Daniel Bodeen, one of appellant's bouncers. According to Bodeen, the threat with the beer bottle, his seizure of the bottle from the patron, and an ensuing kick by the patron, all occurred before the patron was removed from the premises.

Sub-count 4: (See Proposed Decision, Finding 5.)

An intoxicated patron had been removed from the premises and sent home in a cab. He returned a short time later and attempted to drive his vehicle from the parking lot. He collided with another vehicle. Police were called, and the patron was charged with driving under the influence. The arresting officer testified that he could see some obvious signs of intoxication, and, in his opinion, the patron was "flat out drunk." [II RT 341-342.]

While the patron's conduct in the premises may have been "loud and belligerent," there is no evidence he was permitted to remain in or about the premises while intoxicated. To the contrary, he was required to leave, and it was his intoxication and his stubborn refusal to stay away that led to the incident.

However, even though appellant's personnel may have conducted themselves properly, the nature of the incident is such that its inclusion in an accusation charging that a premises operated as a disorderly house is not inappropriate, since it is reasonable to infer that the patron acquired his drunken state in the premises.

Sub-count 5: (See Proposed Decision Finding 6.)

A quarrel broke out between two friends, and one pushed the other to the ground. Police were summoned. No charges were filed.

The ALJ found from the testimony that one of the two women was extremely intoxicated. The police officer at the scene testified that he did not recall either of the two being intoxicated. [II RT 331.] He did, however, treat it as an alcohol-related incident in his written report [Exhibit 3- 5].

The ALJ's determination that one of the women was extremely intoxicated is not in accord with the evidence. Again, however, this is the type of incident which, if it occurs frequently, points to a possible disorderly house condition.

Sub-count 6: (See Proposed Decision, Finding 7.)

An intoxicated patron was removed from the premises after having bumped into others on the dance floor and shouted at them. According to appellant's owner, the patron had refused to take a taxi home. Police were called.

Again, there is no evidence that anyone on appellant's behalf acted improperly once the patron's objectionable conduct manifested itself. However, the patron was permitted to become intoxicated while in the premises. (See Exhibit 4.)

Sub-count 7: (See Proposed Decision, Finding 8.)

A security guard was struck by a pool cue at closing time when he told two

patrons they had to leave. After the patrons had been forcibly escorted from the premises, one of them threw a beer bottle at one of appellant's bartenders and her companion, hitting both of them. Police were summoned and a report written. (See Exhibit 3-6.)

Appellant's summary of this incident omits any reference to the fact that the bottle-throwing occurred only after the patrons had been forcibly escorted from the premises.

Sub-count 8: (See Proposed Decision, Finding 9.)

An altercation broke out between two patrons after one of them had touched the buttocks of a female patron. They pushed each other and both fell to the ground. They were then escorted from the premises. Police were summoned.

There is no indication in the police report [Exhibit 3-7] that either patron was drinking or intoxicated, but the officer testified that one of the two had been drinking and the other was intoxicated [II RT 304]. No arrests were made.

Sub-count 8: (See Proposed Decision, Finding 10.)

An officer on routine patrol observed security personnel in the parking lot. Upon investigation, he learned that a patron had assaulted another patron for flirting with his girlfriend. [RT 220-222.] There is nothing in his report [Exhibit 3-8] that would indicate whether either of the patrons had been drinking or were intoxicated.

The patron who had been assaulted had blood on his forehead and nose, and a bruised eye. He declined to prefer charges.

Sub-count 9: (See Proposed Decision, Finding 11.)

An altercation developed between a male and a female patron, each accusing the other of having threatened to stab them. When a security guard tried to prevent the female from taking a bottle of water with her as she left, she kicked him in the stomach and hit him in the face. Police were summoned, but no arrests were made. (See Exhibit 3-9.) The officer at the scene testified that he had no recollection whether either of the patrons had been drinking. Had the security guard been drinking, he would have stated that in his report.

Sub-count 10: (See Proposed Decision, Finding 12.)

Two women in the premises bumped into each other and exchanged words. One hit the other, and then left the bar with a friend. The two were attacked outside by a group of six women, and one of the two suffered two broken wrists in the attack. The police were not summoned, and the evidence was in dispute as to whether appellant's security personnel took sufficient action to prevent or halt the altercation.

The police learned of the incident when one of the women who had been

attacked filed a complaint with the police the following evening. (See Exhibit 3-10.)

Appellant disputes the ALJ's interpretation of events, asserting that it is in conflict with the facts as testified to by appellant's employees and the Santa Rosa police. Appellant also asserts that the ALJ failed to take into account in assessing her credibility, that Lisa Cronk (the woman who suffered the broken wrists) had filed a civil lawsuit against appellant.

This contention appears to involve nothing more than a credibility issue, which the ALJ resolved against appellant.

Sub-count 11: (see Proposed Decision, Finding 13.)

What appeared to be an argument between two patrons in the pool table area of the premises escalated on the front steps of the premises when one struck the other. The assailant was arrested. He was hostile and combative while in the police car en route to the station. The police report [Exhibit 3-11] noted that he was intoxicated.

Appellant objects to that part of the ALJ's finding that one of appellant's bouncers observed the assault but took no action to intervene or to separate the two individuals. We have reviewed the testimony of the officer, as well as his written report, both based upon statements made to him by employees of appellant. At best, it can be said that it was only during the argument phase of the exchange between the two belligerents that no one intervened. Once the physical assault occurred, it appears that appellant's employees acted promptly to intervene, albeit too late to prevent injury to the victim of the battery.

This does not mean, however, that the incident, one of a long string of similar incidents at appellant's premises during the period in question, can be ignored. The seeds of the battery apparently sprouted inside the premises, where the argument began and was permitted to continue until it erupted in violence.

Sub-count 12: (See Proposed Decision, Finding 14.)

A patron, Clifford Kingston, filed a complaint with the Santa Rosa Police Department alleging that Jessie Jenkins, an employee of appellant, knocked Kingston unconscious the preceding evening, and later kicked him while in the parking lot. (See Exhibit 3-12.) Jenkins told police he was attempting to remove Kingston from the premises after Kingston, who was intoxicated, had stood close to Jenkins and flailed his arms when told to move away. Both declined to prosecute.

Sub-count 13: (See Proposed Decision, Finding 15.)

An intoxicated patron scuffled with security guards after he was removed from the premises for displaying a knife while on the dance floor. A Santa Rosa police officer used a taser gun to subdue him. (See Exhibit 3-13.)

Sub-count 14: (See Proposed Decision, Finding 16.)

A disruptive patron had become combative with security personnel after being requested to leave the nightclub. The patron was struggling with security personnel when the police arrived. (See Exhibit 3-14.) The patron was cited for battery.

Sub-count 15: (See Proposed Decision, Finding 17.)

Two women were involved in a fight in the parking lot, and police were summoned. One of the women had a strong odor of alcohol on her breath, her speech was slurred, she had trouble staying on her feet, and needed assistance standing. The dispute appears to have begun on the dance floor, when verbal insults were exchanged. Police were summoned and a report written. (See Exhibit 3-15.)

Sub-count 16: (See Proposed Decision, Finding 18.)

A Santa Rosa police officer responded to a report of a disturbance and observed what appeared to be a fight ensuing in the parking lot. (See Exhibit 3-16.) A woman was being restrained by a security guard, and others were fighting or being very noisy. The officer placed the woman in her police car for her safety. Apparently a dispute had arisen between two women who bumped each other on the dance floor.