

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

AB-8581

File: 48-178735 Reg: 05061388

MICHAEL BRADLEY and NANCY BRADLEY, dba Michelle's Bar
1330 West Sixth Street, Corona, CA 92882,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: May 3, 2007
Los Angeles, CA

ISSUED AUGUST 2, 2007

Michael Bradley and Nancy Bradley, doing business as Michelle's Bar (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their on-sale general public premises license for 30 days, with 10 days stayed on the condition that the premises operate discipline-free for one year, for permitting their bartender to remain in the premises under the influence of alcoholic beverages in such a condition that she was unable to exercise care for her own safety or the safety of others, a violation of Business and Professions Code section 24200, subdivision (b), and Penal Code section 647, subdivision (f).

¹The decision of the Department, dated June 22, 2006, is set forth in the appendix.

Appearances on appeal include appellants Michael Bradley and Nancy Bradley, appearing through their counsel, Louis R. Mittelstadt, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree Wortham.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on October 6, 2003. On December 20, 2005, the Department filed an accusation against appellants charging that they permitted their bartender to remain in the premises under the influence of alcoholic beverages and unable to care for her own safety or the safety of others.

At the administrative hearing held on April 5, 2006, documentary evidence was received and testimony concerning the violation charged was presented by officer Will Torres of the Corona Police Department. Co-licensee/co-respondent Michael Bradley also testified.

Subsequent to the hearing, the Department issued its decision which determined that the violation occurred as charged. Appellants have filed an appeal contending there is not substantial evidence to support the finding that the bartender was unable to care for her own safety or the safety of others.

DISCUSSION

Appellants contend the finding that the bartender was unable to care for her own or others' safety is not supported by substantial evidence. They argue she was able to walk without falling down and, although slurred, her speech was understandable by the officers. No competent evidence, they assert, was presented to show the bartender was unable to care for her safety or that of others. Appellants urge that the administrative law judge (ALJ) improperly relied on hearsay evidence presented by officer Torres, who testified that Fire Department personnel and one of the two

unidentified patrons sitting at the bar told him that the bartender had been passed out for a while behind the bar.

"Substantial evidence" is relevant evidence which reasonable minds would accept as 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]; *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When an appellant charges that a Department decision is not supported by substantial evidence, the Appeals Board's review of the decision is limited to determining, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. (Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23084, 23085; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].) In making this determination, the Board may not exercise its independent judgment on the effect or weight of the evidence, but must resolve any evidentiary conflicts in favor of the Department's decision and accept all reasonable inferences that support the Department's findings. (*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Masani)* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826]; *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 51 [248 Cal.Rptr. 271]; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925]; *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, 826-827 [40 Cal.Rptr. 666].)

The pertinent testimony of the officer is summarized in Finding of Fact III:

A. On October 27, 2005, Will Torres, a police officer with the Corona Police Department, went to the premises in response to a radio call that

he received at approximately 3:30 p.m. When Torres arrived at the premises, he met with Fire Department personnel who were attending to the bartender who was later identified as Andrea Jamrozy. Jamrozy was standing next to the bar and leaning against the bar counter. One of the firemen advised Torres that they had found Jamrozy behind the bar, that she had passed out and that it was not a medical emergency. Torres conversed with Jamrozy and she told Torres that she was the bartender. Torres observed that Jamrozy was unsteady on her feet, that she had to hold on to the bar, that her speech was slurred, that she was very disoriented and that she seemed confused. Torres also noticed that there was a strong odor of alcohol coming from Jamrozy's breath. . . . Jamrozy did admit that she had consumed alcoholic beverages. Torres spoke to the two unidentified patrons who were sitting at the bar counter and one of them told him that Jamrozy had been passed out for a while.

[¶] . . . [¶]

C. After observing Jamrozy and after speaking to her, Torres determined that she was intoxicated to the point where she could not care for herself or take care of the premises. Jamrozy was subsequently taken into custody and Officer Bell transported her to the Corona Police Department jail.

The Administrative Procedure Act (Gov. Code, §§ 11340-11529) provides the rules of evidence in Department administrative hearings. Section 11513, subdivision (d), addresses hearsay evidence:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

The direct testimony of Torres established clearly that the bartender was intoxicated. It also established that she was unsteady, very disoriented, and confused. It is a reasonable inference from this evidence that the bartender was unable to exercise care for her own safety. This constitutes substantial evidence supporting the finding.

The hearsay evidence about the bartender being passed out merely supplements the officer's direct evidence. Therefore, it was properly admitted and considered by the ALJ and the Department in making a determination.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.