

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

AB-8653

File: 20-422675 Reg: 06063397

MARK LARSON, Appellant/Protestant

v.

FADEL TURKI HANNOUN and MOTIE JABER, dba Green Valley Market
16166 Spunky Canyon Road, Saugus, CA 91350,
Respondents/Applicants

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 6, 2007
Los Angeles, CA

ISSUED DECEMBER 13, 2007

Mark Larson (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Fadel Turki Hannoun and Motie Jaber, doing business as Green Valley Market (respondent/applicant), for an off-sale beer and wine license.

Appearances on appeal include appellant/protestant Mark Larson, appearing in pro. per.; respondents/applicants Fadel Turki Hannoun and Motie Jaber, appearing through their counsel, Andreas Birgel, Jr.; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated November 29, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

On February 2005, the applicants petitioned for issuance of an off-sale beer and wine license. A protest was filed by appellant, and the applicants filed a petition for conditional license which imposed 10 conditions on the license.² At the administrative hearing held on September 28, 2006, three witnesses testified: Department licensing representative Vilma Rivera; protestant Mark Larson; and co-applicant Motie Jaber. The Department and the applicants also presented documentary evidence that was entered into the record as exhibits. The protestant presented no documentary evidence.

Subsequent to the hearing, the Department issued its decision which denied appellant's protest and allowed the license to issue. Appellant filed an appeal making the following contentions: Operation of the proposed premises would interfere with nearby school bus stops; normal operation of the premises will interfere with the quiet enjoyment of their property by nearby residents; the proposed premises is located within 100 feet of a residence; licensing the premises will create a public nuisance; and issuance will result in an undue concentration of licenses.

DISCUSSION

Appellant asserts five grounds for appeal, listed above. All of these grounds were raised at the administrative hearing; all were found to be unsupported by the evidence presented at the hearing.

In his appeal brief, appellant contends that the Department licensing representative's testimony was wrong; the situation has changed since the county

²The conditions required that the gross receipts from products other than beer and wine exceed the gross receipts from beer and wine; restricted the hours, location, and manner of alcoholic beverage sales; prohibited video games and loitering; and made applicants responsible for keeping the area under their control free of litter.

planning department made a finding of public convenience or necessity and issued a Conditional Use Permit to the applicants; and co-applicant Jaber committed perjury. In support of these contentions, appellant attached 17 exhibits, none of which were presented at the administrative hearing.

Appellant's position, although not stated as such, is that the findings in the Department's decision are not supported by substantial evidence. "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, 94 [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].)

Under the substantial evidence rule, the Board starts with the presumption that the findings of fact are supported by substantial evidence in the record and the burden is then on appellant to show that there is no substantial evidence whatsoever to support the findings. (*Pescolido v. Smith* (1983) 142 Cal.App.3d 964, 970 [191 Cal.Rptr. 415].) In making its determination, this Board is restricted to considering the evidence contained in the administrative record. (Bus. & Prof. Code, § 23083.)

Appellant has not met his burden. He failed to present evidence to support his contentions at the hearing, and he is not entitled to present his evidence for the first time on appeal. The exhibits attached to appellant's appeal brief are, therefore, disregarded.

The administrative record reveals substantial evidence supporting all the findings made in the Department's decision, and to the extent that appellant presented any evidence to the contrary, it was rejected in the Department's decision. Appellant's assertions on appeal simply reiterate those he made at the hearing, and are clearly insufficient to cause this Board to question the Department's findings.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This 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.