

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

AB-9626

File: 21-434614; Reg: 16084155

CAESAR CONTRERAS,
dba Cork N Bottle Liquor
1302 East Artesia Boulevard, Long Beach, CA 90805,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: none

Appeals Board Hearing: August 3, 2017
Los Angeles, CA

ISSUED AUGUST 17, 2017

Appearances: *Appellant:* Efren Flores, on behalf of Caesar Contreras, in propria persona,

Respondent: Jennifer M. Casey, as counsel for Department of Alcoholic Beverage Control.

OPINION

Caesar Contreras, doing business as Cork N Bottle Liquor, appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking his license because he was convicted of two public offenses involving moral turpitude—inflicting bodily injury on a spouse or cohabitant, and resisting or obstructing a police officer in the course of his or her duties—in violation of Penal Code sections 273.5, subdivision (a), and 148, subdivision (a)(1), and Business and Professions Code sections 23405.1, subdivision (c), and 24200, subdivision (d).

¹The Department's Decision Following Default, dated December 19, 2016, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on January 20, 2006, and no discipline has been previously imposed on his license.

On May 9, 2016, the Department instituted an accusation against appellant charging that, on or about October 20, 2015, appellant was convicted of two public offenses involving moral turpitude, in violation of Business and Professions Code sections 23405.1(c), and 24200(d), namely: inflicting bodily injury on a spouse or cohabitant, in violation of Penal Code section 273.5(a), and resisting or obstructing a police officer in the course of his or her duties, in violation of Penal Code section 148 (a)(1).

An administrative hearing was scheduled for September 14, 2016 at 9:30 a.m. and appellant was given notice of the hearing. Counsel for the Department, an Administrative Law Judge, and a court reporter were present at the hearing and they waited 45 minutes for appellant to appear. When appellant failed to appear, a default was entered against him. Thereafter, the Department issued a Decision Following Default, on December 19, 2016, revoking appellant's license.

Appellant then filed a timely appeal raising the following issues: (1) the Department erred in revoking appellant's license because the convictions do not affect the business, and (2) revocation of the license will impose great financial hardship on appellant and his employees.

Appellant was given notice that the Appeals Board would hear oral argument on his appeal on August 3, 2017 at 9:00 a.m. Approximately 10 days prior to the hearing, appellant communicated by telephone to the Board's staff that he intended to appear for oral argument. The morning of the hearing, however, Efren Flores—appellant's

employee—appeared on his behalf before the Board. Appellant was not present. Mr. Flores asked for a continuance and indicated that appellant was unable to attend due to the illness of his daughter. The Department objected to a continuance.

DISCUSSION

I

The power to determine when a continuance should be granted is within the discretion of the court, and there is no right to a continuance as a matter of law. (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170 [272 Cal.Rptr. 602].) A refusal to grant a continuance will not be disturbed on appeal unless it is shown to be an abuse of discretion. The party requesting a continuance must show that good cause exists for granting the request. (*Cooper v. Board of Medical Examiners* (1975) 49 Cal.App.3d 931, 944 [123 Cal.Rptr. 563]; *Savoy Club v. Board of Supervisors* (1970) 12 Cal.App.3d 1034, 1038 [91 Cal.Rptr. 198]; *Givens v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529, 532 [1 Cal.Rptr. 446].)

In the instant case, the Board received no communication prior to the hearing that a continuance would be sought. Appellant's representative presented no written authorization of his authority to speak on appellant's behalf, nor any written documentation to demonstrate good cause for a continuance. Accordingly, the request for continuance is denied and we decide this matter on the record before us.

II

Appellant contends the Department erred in revoking appellant's license because the convictions do not affect the business. (App.Op.Br. at p. 1.)

Appellant was convicted for inflicting bodily injury on a spouse or cohabitant, in violation of Penal Code section 273.5(a), and resisting or obstructing a police officer in the course of his or her duties, in violation of Penal Code section 148(a)(1). The accusation cites the following provisions of the Alcoholic Beverage Control Act as grounds for disciplining the licensee:

The department may deny any application or suspend or revoke any license of a limited partnership subject to the provisions of this section where conditions exist in relation to any general partner or any limited partner holding 10 percent or more of the capital or profits of the limited partnership that would constitute grounds for disciplinary action against that person if he or she were a licensee.

(Bus. & Prof. Code, § 23405.1(c).) And, further:

The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensees.

(Bus. & Prof. Code, § 24200(d).) In addition to subdivision (d), however, Business and Professions Code section 24200, subdivision (a) provides:

The following are the grounds which constitute a basis for the suspension or the revocation of licenses:

(a) When the continuance of a license would be contrary to public welfare or morals. However, proceedings under this subdivision are not a limitation upon the department's authority to proceed under Section 22 of Article XX of the California Constitution.

(Bus. & Prof. Code, § 24200(a).) Article XX, section 22, of the California Constitution provides in part: "[t]he department shall have the power in its discretion, to deny,

suspend or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals." (*Vallerga v. Dept. of Alcoholic Bev. Control* (1959) 53 Cal.2d 313, 318 [1 Cal.Rptr. 494], internal quotation marks omitted.)

Appellant contends the Department erred in revoking his license and maintains his convictions do not affect the business. Appellant, however, provides no legal authority for this position. "Where a point is merely asserted . . . without any argument of or authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court." (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [199 Cal.Rptr. 72].) To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16 [126 Cal.Rptr.2d 178].)

A conviction for inflicting bodily injury on a spouse or cohabitant, in violation of Penal Code section 273.5(a) has been found specifically to be a crime of moral turpitude. (See *Donley v. Davi* (2009) 180 Cal.App.4th 447, 461 [103 Cal.Rptr.3d 1] ["We conclude [Penal Code] section 273.5 is a crime of moral turpitude as a matter of law."].) Further,

To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it wilfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.

(*People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402 [7 Cal.Rptr.2d 495].)

Similarly, resisting or obstructing a police officer in the course of his or her duties, in violation of Penal Code section 148(a)(1), is clearly contrary to public welfare and morals. While no case specifically finds that a violation of section 148(a)(1) is a crime of moral turpitude, it has been found that resisting an executive officer (Pen. Code § 69) and battery upon a peace officer (Pen. Code §243(c)) are crimes of moral turpitude:

There is no doubt the intentional, willful and unlawful use of force upon a peace officer, however slight, coupled with actual knowledge the victim is a peace officer in the performance of his or her duties, is clearly a crime of moral turpitude and demonstrates a readiness to do evil. . . . inasmuch as the perpetrator's acts demonstrate a disregard for what is reasonably expected of ordinary people. [Citation.]

(*People v. Lindsay* (1989) 209 Cal.App.3d 849, 857 [257 Cal.Rptr. 529].)

We have reviewed the record provided of the criminal charges against appellant and his convictions on both counts. These unchallenged investigatory and judicial documents clearly provide substantial evidence to support the Department's findings and determinations. No connection to the operation of the business is required under the circumstances presented.

III

Appellant contends revocation of the license will impose great financial hardship on him and his employees. (App.Op.Br. at p. 1.)

This Board may examine the issue of excessive penalty if it is raised by an appellant (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183]), but will not disturb the Department's penalty order in the

absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it even if another penalty would be equally, or even more, reasonable.

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, et seq.), and the Administrative Procedures Act (Govt. Code Sections 11400, et seq.), the Department shall consider the disciplinary guidelines entitled "Penalty Guidelines" (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department **in its sole discretion** determines that the facts of the particular case warrant such a deviation - such as where facts in aggravation or mitigation exist.

(Cal. Code Regs., tit. 4, § 144, emphasis added.) Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, cooperation by the licensee in the investigation, and documented training of the licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

In the instant case, no legal basis for a reduction in penalty was put forth except that it would impose great financial hardship. "The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or court to substitute its own judgment therein." (*Rice v. Alcoholic Bev. Control Appeals Bd.* (1979) 89 Cal.App.3d 30, 39 [152 Cal.Rptr. 285].)

The Appeals Board is well aware of the financial hardships that can ensue for both licensees and their employees when revocation of a license is ordered. However,

the Board may not disturb a penalty order unless it is so clearly excessive that any reasonable person would find it to be an abuse of discretion in light of all the circumstances. “If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

The penalty here, while severe, is within the bounds of the Department’s discretion. Appellant’s disagreement with the penalty imposed does not mean the Department abused its discretion. This Board’s review of a penalty looks only to see whether the penalty can be considered reasonable, and, if it is reasonable, the Board’s inquiry ends there.

ORDER

The decision of the Department is affirmed.²

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
JUAN PEDRO GAFFNEY RIVERA, 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.