

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

AB-9180

File: 02-478658 Reg: 11073259

EUGENE D. WILLIAMS, Appellant/Protestant

v.

FOURTH ESTATE WINES, LLC, dba Fourth Estate
1300 Montgomery Road, Sebastopol, CA 95472,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: July 12, 2012
Sacramento, CA

ISSUED AUGUST 14, 2012

Eugene D. Williams (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Fourth Estate Wines, LLC, doing business as Fourth Estate (respondent/applicant), for a winegrower license.

Appearances on appeal include appellant/protestant Eugene D. Williams, appearing through his counsel, Jeremy R. Fietz; respondent/applicant Fourth Estate Wines, LLC, appearing through its representative Jeffrey Taylor; and the Department of Alcoholic Beverage Control, appearing through its counsel, Heather Cline Hoganson.

¹The decision of the Department, dated August 1, 2011, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

On May 14, 2009, applicant filed an application for issuance of a winegrower license. A protest was filed by appellant, and an administrative hearing was held on June 2, 2011. At that hearing, oral and documentary evidence was presented concerning the application and the protest by Eugene Williams, the appellant; Wendy McDonald, a licensing representative for the Department of Alcoholic Beverage Control; Jeffrey Taylor, on behalf of applicant Fourth Estate Wines, LLC; and Akiko Freeman, part-owner of the Freeman Winery.

Testimony established that applicant currently operates as a wine wholesaler/retailer, which allows it to purchase wine manufactured by other wineries and sell it to retailers and consumers. Under its current business model, applicant trucks its grapes to Freeman Winery which crushes the grapes, and produces and bottles the wine; the bottled wine is then delivered back to applicant with a Fourth Estate label. This is known as an alternating proprietorship arrangement. Testimony also established that appellant resides next door to Freeman Winery, in a rural area of Sonoma County zoned as Diverse Agricultural. Appellant protested the application of Fourth Estate for a winegrower license on the grounds that it would increase the noise coming from Freeman Winery and from the trucks carrying grapes to the winery. Obtaining a winegrower license will allow Fourth Estate to sell its wines in more states and to pour them on federal property in California. It will not change the alternating proprietorship arrangement with Freeman Winery.

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

Appellant thereafter filed a timely appeal making the following contentions: (1)

the decision is not supported by the findings; and (2) the findings are not supported by substantial evidence. These issues will be discussed together.

DISCUSSION

When 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].) "Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647]; *Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456].)

The Board is bound by the factual findings in the Department's decision as long as they are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. (*CMPB Friends, Inc. v. Alcoholic Bev. Control Appeals Bd.* (2002) 100 Cal.App.4th [1250,]1254 [122 Cal.Rptr.2d 914]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779];) We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor an appellate court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. (See *Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App2d 181, 185 [67 Cal.Rptr. 734] (*Lacabanne*).) The function of an appellate Board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*

(*Masani*) (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

The issues in this case are summarized by the administrative law judge (ALJ) in
Determination of Issues II - IV:

II

Simply put, Mr. Williams does not appreciate having a winery for a next door neighbor. However, what the neighbor may do with its property is a zoning decision made by local authorities. And, since the local authorities have decided that Mr. Williams' neighbor may be a winery, it follows that in September, trucks will transport grapes there, the winery will make noise producing wine, and trucks will transport cases of wine out of there. The Department does not have jurisdiction to prevent Freeman Winery from operating as a winery.

III

Mr. Williams' dislike of a winery for a next door neighbor does not explain his opposition to Applicant's application. Whether the application is granted or denied would not in any way affect Mr. Williams' interests. If the application is denied, trucks will continue to transport Applicant's grapes past Mr. Williams' house, the winery will continue to make noise producing and bottling Applicant's wines, and trucks will continue to transport Applicant's wines past Mr. Williams' house.

IV

Prior to the hearing, Applicant met its burden of proving to the Department that its application for a Type 02 alcoholic beverage license should be granted. Under the unique facts of this case, denying the application would hurt Applicant's interests without serving Mr. Williams' interests. Accordingly, there is no logical reason to change the Department's recommendation that Applicant's application be approved.

Denying the application for a winegrower license will not decrease the complained-of noise and traffic. As stated by the ALJ, even if such an application were denied, Fourth Estate would continue to send grapes to be processed under the existing license. The real objection, it would appear, is to the operation of Freeman Winery next door to the appellant, rather than to anything that would be remedied by denial of Fourth Estate's application for a winegrower license. We believe substantial evidence supports that application.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
BAXTER RICE, 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.