ISSUED MAY 27, 1997

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

AMIN A. JADALLAH dba Breed's Market & Liquor 21381 Cajalco Drive Perris, CA 92370, Appellant/Licensee, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)	AB-6498a File: 21-226153 Reg: 94029798 Administrative Law Judge at the Dept. Hearing: James Ahler Date and Place of the Appeals Board Hearing: February 5, 1997 Los Angeles, CA

Amin A. Jadallah, doing business as Breed's Market & Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which conditionally revoked appellant's off-sale general license for permitting the premises to be used as a disorderly house or a place to which people resort to the disturbance of the neighborhood, and for permitting the premises to be used in a manner which created a law enforcement problem, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and in violation of Business and Professions Code §§24200,

[1]The Department's Decision Following Appeals Board Decision dated September 16, 1996, is set forth in the appendix.

subdivision (a), and 25601.

Appearances on appeal include appellant Amin A. Jadallah, appearing through his counsel, Rick A. Blake; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant was issued an off-sale general license on December 16, 1988. An accusation was thereafter initiated by the Department on April 4, 1994, alleging multiple incidents at or about the premises dating from April 20, 1992, through December 13, 1993.

An administrative hearing was held in October 1994. At that hearing, appellant, sheriff's officers, and Department investigators described the area surrounding appellant's business (a five-square-mile area) as deteriorated. Appellant's premises had experienced the same or similar problems as the greater area. The sheriff's department "targeted" this five-mile radius which included a feed store, an abandoned tire shop, an apartment complex, a liquor store, and appellant's premises. The sheriff's department determined the entire five-mile radius was a "hangout" for narcotic activity and undesirable individuals [RT V1, 39, 40, 42, 60]. Referring specifically to appellant's premises, one sheriff's deputy testified at the administrative hearing that "... there is usually always other people gathered in that parking lot. I don't know if it is any fault of the owners it is just a place there" [RT V2, 130].

Thereafter, the Department issued its decision unconditionally revoking the

license. Appellant filed a timely notice of appeal.

The Appeals Board issued its decision on June 24, 1996, affirming the Department's decision concerning the disorderly house and law enforcement Determinations, but reversing the decision concerning the failure to correct objectionable conditions and public nuisance Determinations, and remanded the matter for a reconsideration of the penalty.

The Department's subsequent decision conditionally revoked the license, suspended the license for 30 days, and essentially imposed a condition concerning the prohibition against loitering and litter, and a condition prohibiting the sale of malt beverages in less than six-gallon quantities, unless in six-containers lots or more.

Appellant filed a timely notice of appeal. In his appeal, appellant raises the issue that the conditions concerning litter and container size are unreasonable.

DISCUSSION

Appellant contends that the imposed conditions regarding litter and limitations on single container sales are unreasonable.

The authority of the Department to impose conditions on a license is set forth in Business and Professions Code §23800. The requirement of "reasonableness" is set forth in §23800, subdivision (b): "Where findings are made by the department which would justify a suspension or revocation of a license, and where the imposition of a condition is reasonably related to those findings...."

We therefore view the word "reasonable" as set forth in §23800,

subdivision (b), to mean reasonably related to a resolution of the problem or problems for which the condition was designed, as found in the findings. Thus, there must be a nexus, defined as a "connection, tie, link,"[2] in other words, a reasonable connection between the problem as set forth in the findings sought to be eliminated, and the condition designed to eliminate the problem.

The Department argues in its brief that "A 'clean' premises is less attractive to loiterers and criminals." The original decision of the Department dated December 29, 1994, alleged that a clerk came from the premises and picked up trash in the parking lot [Finding 31].

The Department's argument concerning the attraction capabilities of litter, that litter attracts loiterers and criminals and, therefore, a condition can be imposed, is one of those truisms of dubious foundation.[3] But, while the argument may generally have some merit, an imposition of a condition based solely on that argument would be highly speculative and arbitrary. However, the record shows an area deep into deterioration. It takes no small measure of experience to understand the plight within the immediate area of the premises, and the outgrowth of problems associated therewith. Finding 31 spoke concerning a solicitation count (sexual favors), and added that about 10 persons were near the premises drinking from bottles in paper bags, and an employee on occasion picked up trash in the

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[2]See Webster's Third New International Dictionary, 1986, page 1524.

[3]The Department has not cited authority that would lend some credence to the Department argument. The Board's experience would be close to opposite: Loiterers and possibly criminal elements create a litter problem.

parking lot.

We conclude that the imposition of a condition as proposed by the Department for control of litter is supported by the record however slight, and places no undue burden on appellant.

The Department also seeks to impose a second condition that would exclude all alcoholic beverages in less than six-gallon quantities, except in quantities of six or more containers.

Appellant argues that nowhere in the original decision by the Department are the evils of public drunkenness, sales of single containers with public drinking, or loitering with alcoholic beverages, addressed sufficiently to connect public drinking with single containers.

The Appeals Board, in its original decision, affirmed the disorderly house and law enforcement determinations, but stated that "... There was no showing of a nexus between the sale of alcoholic beverages and the crimes alleged," which was true as the crimes proven by the Department relating to the disorderly house allegations were crimes of prostitution, drug sales, assaults, and assorted business crimes, such a passing bad checks. However, the Board did not differentiate among the 74 police calls to the premises as to whether any such calls were alcohol related.

Since the issue has been raised in this re-appeal, the Board has revisited the record concerning each police computer item and has compared each entry to the coded listing denoting the reason for the call. The review found that there were

three calls for drunkenness in public (Penal Code §647f), on 12/16/92, 1/17/93, and 3/4/93 (count II, subcounts 3, 8, and 22).

These three subcounts, along with finding 31 that loiterers were drinking from bottles in brown bags, on or next to the premises' parking lot, suggest a sufficient nexus between the "immediate drinking" problems in the premises' area, and the proposed prohibition on single containers sales.[4]

We conclude that the proposed condition regulating the sale of single containers is a reasonable condition according to the record.

CONCLUSION

The decision of the Department is affirmed.[5]

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL

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[4]As the condition has not been crafted with any particularity, we suggest the Department consider crafting the limitations within reasonable limitations considering the record in this matter. We wonder if the outside limit of six-gallons is over-control, where there are containers of lesser capacity, such as 3.5 gallons, that could possibly resolve the Department's dilemma.

[5]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.