

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

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|-------------------------|---|--------------------|
| AMARJIT GILL dba |) | AB-7167 |
| Lake Discount |) | |
| Liquors 332 E. |) | File: 21-323843 |
| Bidwell St. Folsom, |) | Reg: 97041596 |
| CA 95630, |) | |
| |) | Denial of Petition |
| Appellant/Licensee, |) | to Pay a Fine in |
| |) | Lieu of Service of |
| v. |) | Suspension |
| |) | |
| |) | Date and Place of |
| |) | the Appeals Board |
| DEPARTMENT OF ALCOHOLIC |) | Hearing: |
| BEVERAGE CONTROL, |) | |
| Respondent. |) | September |
| |) | 2, 1998 San |
| |) | Francisco, CA |

Amarjit Gill, doing business as Lake Discount Liquors (appellant), appeals from a decision of the Department of Alcoholic Beverage Control which denied his petition to pay a fine in lieu of serving a 10-day suspension of his off-sale general license, as the Department was not satisfied that public welfare and morals would not be impaired by permitting appellant to operate during the period set for the suspension, and payment of a fine would achieve the purposes of discipline.

Appearances on appeal include appellant Amarjit Gill, and the Department of Alcoholic Beverage Control, appearing through its chief counsel, Kenton Byers.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on November 4, 1996. Thereafter, the Department instituted an accusation on September 5, 1997, charging that appellant on November 8, 1996, permitted his clerk to sell an alcoholic beverage to a person under the age of 21 years. Appellant signed a stipulation and waiver form consenting that a 10-day suspension could be imposed on the license, with a notation on the form that appellant wished to pay a fine in lieu of serving the suspension.

On December 10, 1997, appellant signed the usual form of petition to pay a fine, offering to pay the sum of \$750, the minimum payment. The petition stated that gross sales for a period of 12 months were approximately \$24,000, or as computed on a 365-day basis, \$66 in gross sales per day. The Department conducted an investigation of appellant's records and calculated that gross sales for the period set by appellant were \$193,669, or a daily gross of \$530. The Department's calculations were based on beer and wine wholesalers' deliveries to appellant during the period of \$138,261. The Department concluded that instead of the \$750 offer, the amount should have been the sum of \$2,653. The petition to pay the fine was denied.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the issue that he stipulated to the suspension with the understanding he would be allowed to pay a fine.

DISCUSSION

Appellant contends that he stipulated to the suspension with the understanding he would be allowed to pay a fine.

The Appeals Board has over the years refused to consider appeals where the issue involves the failure or refusal to grant a P.O.C. allowing the licensee to pay a fine instead of serving the suspension. The case of Radlike (1979) AB-4617, stated that "This is a discretionary matter vested solely in the department."

However, in the mid-1990's, the Board commenced hearing appeals on the issue of the payment of a fine, with the scope of review limited to that of determining if the Department acted arbitrarily. The reasoning was that, since the discretion is totally within the Department, if it abused that discretion by unjust actions, the Board would intervene.

The Board stated in Meacham (1997) AB-6111d:

"Thus it is no answer for appellant to contend that the Department is required to grant its petition simply because it is willing to pay the maximum monetary penalty that can be required upon acceptance of a compromise. That would merely obviate the need for the licensee's books and records to permit the computation of an appropriate monetary penalty. (S) It is also essential that the Department be satisfied that 'the public welfare and morals would not be impaired by permitting the licensee to operate during the period of suspension and that the payment of money will achieve the desired disciplinary purposes.' (Bus. & Prof. Code §23095, subd. (a) (1).) There are no criteria set forth in the statute to guide or control the Department's determination of whether it is satisfied that the alternative sanction of a monetary penalty will achieve the desired disciplinary purposes. It would seem, then, that this is a determination upon which the Department must bring to bear its considerable expertise in ascertaining what is necessary in order to effect an appropriate discipline, a determination which inescapably rests upon an exercise of discretion."

The Board has not in the recent past avoided the taking of appeals on the issue of the payment of a fine where a question exists as to whether the Department acted arbitrarily in refusing the offer to pay the fine.

The record shows that the Department provided appellant with a form for him to calculate his gross sales for each day in a one-year period, then multiply that figure by 10, the number of days of suspension. As shown in the facts section of that form, appellant unduly underestimated or misrepresented his sales. Apparently, on that basis, the Department could well have concluded that it could not find that public welfare and morals would not be impaired by permitting the payment of a fine.

ORDER

We conclude that the Department exercised its discretion in a reasonable manner. The

decision of the Department is affirmed.¹

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

¹ *This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §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 §23090 et seq.