

ISSUED JANUARY 14, 1997

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

KULDEEP SINGH PATTAR	)	AB-6638
dba A-1 Liquor & Wine)	
1230 East Martin Luther King Jr. Way	)	File: 21-300227
Merced, CA 95340,	)	Reg: 95033316
Appellant/Applicant,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
CARL POLLARD,)	
Respondent/Protestant, and	)	Date and Place of the
	)	Appeals Board Hearing:
DEPARTMENT OF ALCOHOLIC	)	September 4, 1996
BEVERAGE CONTROL,	)	San Francisco, CA
Respondent.)	
_____)	

Kuldeep Singh Pattar, doing business as A-1 Liquor & Wine (applicant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied his application for an off-sale general license, and sustained a protest against issuance of the license, on the ground that issuance might aggravate an existing law enforcement problem, unless applicant agreed to the imposition of five additional conditions, in which event the protest would be overruled.

¹The decision of the Department dated February 15, 1996, is set forth in the appendix.

Appearances on appeal include applicant Kuldeep Singh Pattar, appearing through his counsel, Donald A. Tenenbaum; the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen; and protestant Carl Pollard.

FACTS AND PROCEDURAL HISTORY

Applicant applied for a person-to-person transfer of an existing off-sale general license at the premises' location, in September 1994. Following its investigation, the Department decided it would not deny the issuance of the license, subject to applicant's agreement to the imposition of 14 conditions (original conditions) on the license if it were to issue.

A temporary interim retail permit was issued allowing applicant to exercise the privileges of the applied-for license pending a final determination of the issues raised by a filed protest. The protest was filed against the issuance of the license, alleging law enforcement problems, undue concentration of licenses, and trash problems.

An administrative hearing was held on December 19 and 20, 1995, for consideration of the issues raised by the protestant. Subsequent to the hearing, the Department issued its decision sustaining the protest on the ground that issuance might aggravate a law enforcement problem. However, the Department ordered that if applicant consented to five additional conditions being placed on his license, the protest would be overruled and the license would be issued. Thereafter, applicant filed a timely notice of appeal.

In his appeal, applicant raises the following issues: (1) there was no substantial evidence supporting finding IX that found a gang problem in the area, (2) there were no

findings supporting Determination of Issues VI that issuance of the license might aggravate a law enforcement problem, and (3) the Department proceeded without authority in imposing conditions on the person-to-person transfer of the license to applicant, and imposing additional conditions without proper legal authority.

DISCUSSION

I

Applicant contends that there was no substantial evidence supporting Finding IX that found a gang problem in the area.

Patrick Lunney, Chief of Police of the Merced Police Department, testified concerning gangs in the Merced area. He stated that there was some gang activity around the premises. His testimony, however, indicated that the licensed premises, although within the area encompassed by the gang activity, was not its central focus.² Thus, although we cannot say there is no substantial evidence in the record that there is a gang problem in the area, it does not follow that a connection between the gang problem and law enforcement activity and the licensed premises has been established. More importantly, we are not convinced that any connection has been shown between the new conditions imposed by the Department, in response to the protest, and the existence of any gang problem.

²The chief stated: "...we have validated a number of individuals that are engaged in criminal gang activity. This covers a wide variety of people. (¶) Yet, spread throughout the city of Merced, there is some activity around the applicant location as well as in other places in the city. Because that's a main thoroughfare, there have been documented cases of gang-related activities, including shootings, in the area. Those types of activities. I cannot say it's confined to that area; however, it is indigenous, as it is other places in the city" [RT 89].

II

Applicant contends that there were no findings supporting Determination of Issues VI that issuance of the license may aggravate a law enforcement problem.

The decision of the Department does not set forth a finding concerning law enforcement problems. Determination of Issues VI, which concluded that law enforcement problems "may be aggravated," is not legally acceptable as a determination without supporting findings.

Either there were grounds to find that there were situations that aggravated an existing law enforcement problem, or there were not. Chief Lunney of the Merced Police Department testified that the premises in the past had many incidents of crime [RT 90] and an inordinate number of police calls for service [RT 91]. Officer Best, a police officer for the Merced Police Department, testified that while the foot traffic that apparently was causing most of the problems for the area was on the west side of the street, the premises (on the east side) were a factor, since the transients would cross the street and "...that whole area has been a problem over the years because of the high foot traffic. There's robberies, usually physical assaults, and most of them stem from alcohol consumption" [RT 56].

Exhibit II, a letter from Officer Best to Mr. Ito, who was investigating the license application for the Department, was admitted into evidence without objection, although without foundation. The letter advised the Department that 179 calls for service were made to the premises from June 1988 to June 1994, a period of six years. The officer in his testimony stated that the highest calls for service to the premises were for public

intoxication, drunk driving, narcotic arrests, and warrant arrests [RT 63]. Yet the exhibit shows only two "liquor law" calls, five assault calls, six narcotic type calls, and 23 public intoxication calls during the six-year or 72-month period.

Thus, the issue before the Board, on this contention, is whether the Department erred by not setting forth findings as to law enforcement problems other than to state that there was a gang problem. That finding (gangs) was weakly supported, as pointed out above. This Board does not feel that alone the findings would support the conclusion of the Department that there were law enforcement problems, without other findings in support.

Under Business and Professions Code §23084, subdivision (c), the Board may consider whether "the decision is supported by the findings." Determination VI lacks such findings.

The statistical evidence offered concerning law enforcement problems covered a period prior to the operation of appellant's business under the conditional license. There was no current evidence relating to specific law enforcement problems and the decision of the Department did not set forth any findings as to law enforcement problems except for its reference to the existence of gang problems. The connection between the new conditions imposed by the decision and the operation of appellant's premises, particularly new conditions 2, 4 and 5, is, therefore, tenuous at best.

III

Applicant contends that the Department proceeded without authority in imposing the original 14 conditions on the person-to-person transfer of the license to applicant,

and that the additional conditions were imposed without proper legal authority.

The Petition For Conditional License signed by applicant states that the grounds for the imposition of the conditions were the filing of a protest, an area of significant law enforcement problems, issuance without conditions would tend to aggravate an existing law enforcement problem, and a family member who apparently jointly applied for the license did not qualify as a licensee.

The authority of the Department to impose conditions on a license is set forth in Business and Professions Code §23800. Where the Department has made findings which would justify the imposition of discipline, the Department may impose conditions "where the imposition of a condition is reasonably related to those findings." The conditions "may cover any matter...which will protect the public welfare and morals." Thus, we conclude that a reasonable condition is one that is reasonably designed and intended to prevent the recurrence of the problem or problems which warranted the solution of discipline. Over time, the Board has stated that there must be a connection between the existing problem affecting the license and the proposed solution by means of the imposition of reasonable conditions.

While appellant challenges the 14 original conditions imposed on his license as unreasonable, the time for any appeal as to such contention has long expired. To the extent he challenges those conditions on the ground they were arbitrarily imposed, assuming this Board could entertain such a challenge, we disagree.

Applicant argues that since he is transferring an existing license to himself, he stands in the stead of the prior licensee, who did not have conditions on his license.

There is no law or logic to this argument. Essentially, the transfer allows the Department to look anew at the licensed premises and, within the bounds of applicable law, correct any problems that may have arisen since the original license was issued.

In the recent case of Sam Mamola Enterprises, Inc. (1996) AB-6520, the Appeals Board considered similar facts and legal issues (person-to-person transfer), and stated: "...appellant tendered the proposition that the department lacked jurisdiction to impose such stringent conditions. We reject appellant's view that appellant stands in the stead of the prior licensee which surrendered its license. The application is for a new license which would bear a new license number, proposed to be transferred to appellant through the court system from that former licensee...."

We view the five new conditions somewhat differently. Condition 1 states: "Petitioner shall install adequate lighting on the side of the premises that borders the alley; the lighting shall not disturb the normal privacy and use of any neighboring residences." This condition appears to have a reasonable connection to the loitering and transient issue of the broader law enforcement (gang) problem alluded to in connection with the original 14 conditions. Also, there appears to be a reasonable connection to original condition 5, prohibiting consumption on the property under the control of appellant; original condition 1, which prohibited sales of beer in less than six-packs; and original condition 12 which mandated illumination of the parking lot area.

Condition 2 states: "Condition No. 1 of the Petition for Conditional License shall be modified to read as follows: 'Beer in containers of less than 40 oz. shall not be sold in units of less than a six-pack.'" We believe that the addition of this condition is

unreasonable. In Hawamdeh (1996) AB-6518, the Department argued that containers not normally sold in six-pack sizes must be sold in six-packs. The Appeals Board stated: "We view such an extension of logic to be beyond the perimeters of reason."

Condition 3 states: "No malt liquor beverages or other fortified beer or fortified wine shall be sold from the premises." Although the connection is weak, we cannot conclude that this condition is unreasonable. That is, we can see a relationship between the apparent limitation on the sale of this type of alcoholic beverage and the concerns deemed to warrant the original conditions.

Condition 4 states: "There shall be no expansion of the premises" and Condition 5 states: "There shall be no person-to-person transfer of the license." It appears that the objective of conditions 4 and 5 is to relieve the Department, in advance, of its duty to pass on the qualifications of any proposed transferee or any proposed expansion of the licensed premises. Essentially, the Department is setting up conditions that prohibit it from exercising its authority under its own rules (rule 60) and the statutes to investigate an application to transfer, and its power to consider an expansion. (Bus. & Prof. Code §24070.) This appears to the Appeals Board as an indirect attempt to satisfy the complaints of the protestant, and the belated complaints of the Merced Police Department, by ensuring that applicant will be the last licensee at the present location, and that his business can never grow to the point where it could expand.

CONCLUSION

The decision of the Department is affirmed, except insofar as the decision

mandates the imposition of new conditions 2, 4, and 5, which we find unreasonable under the governing statute; in that respect, the decision is reversed.³

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

³This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.