

ISSUED MAY 22, 1997

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

HAYTHAM ABDEL-KARIM and	)	AB-6664
RIFAT AL-WADI)	
dba Norm's Market & Liquor	)	File: 21-286786
197 West 40th Street	)	Reg: 95034514
San Bernardino, CA 92404,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Marguerite C. Geftakys
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	January 8, 1997
	)	Los Angeles, CA
)	

Haytham Abdel-Karim and Rifat Al-Wadi, doing business as Norm's Market & Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which denied their petition to remove two conditions from their off-sale general license: one prohibiting sales of wine or distilled spirits in containers of less than 750 ml. in size and the other prohibiting malt beverage products from being sold in less than six-pack quantities per sale.

Appearances on appeal include Haytham Abdel-Karim and Rifat Al-Wadi, appearing through their counsel, Charles T. Schultz; and the Department of Alcoholic Beverage Control, appearing through its counsel, David Sakamoto.

¹The decision of the Department dated April 18, 1996, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' conditional on-sale general license was issued on September 7, 1993. On August 26, 1994, appellants petitioned the Department to remove two of the conditions on the license. The Department denied their petition on November 17, 1995, and appellants requested a hearing.

An administrative hearing was held on January 22 and February 29, 1996, at which time oral and documentary evidence was received. At that hearing, it was determined that there had been no change in the circumstances which had caused the imposition of the conditions initially, and that removal of the conditions would be contrary to public welfare and morals.

Subsequent to the hearing, the Department issued its decision denying the petition for removal of the conditions. Appellants filed a timely notice of appeal.

In their appeal, appellants raise the following issue: The finding that the grounds causing the imposition of the conditions still existed was not supported by substantial evidence, and the decision was not supported by the findings.

DISCUSSION

Appellants contend the finding that the original grounds for the conditions still existed was not supported by substantial evidence and that the decision was not supported by the findings.

Appellants argue that the conditions were originally imposed due to the opposition of nearby residents, that there is no longer opposition from the

residents, and, therefore, the grounds no longer exist for imposition of the conditions. Appellants point out that four of the five residents within 100 feet of the premises testified in favor of removal of the conditions at the hearing before the Administrative Law Judge (ALJ), that there was no testimony showing any police problem at the premises, and that there are 18 licensed premises in the area, none of which have conditions imposed on them.

The Department argues that the original conditional license states specifically that the only ground for imposition of the conditions was the existence of residences within 100 feet of the premises, which made the premises subject to the prohibition of California Code of Regulations, Title 4, Chapter 1, §61.4 (Rule 61.4). The Department argues that the only legal basis for removal of the conditions would be the non-existence of the original grounds which caused imposition of the conditions. Since there are still residences within 100 feet of the premises, the Department contends that there is no legal basis for removing the conditions.

The Department's insistence that the only question to be considered is whether residences continue to exist within 100 feet is mechanical. The Department position ignores the provision of Rule 61.4 which allows an exception in situations where the applicant can show that operation of the licensed premises would not interfere with the quiet enjoyment of the nearby residences. The mere existence of residences within 100 feet is not the problem; inherent in the Rule

61.4 prohibition is the need to protect the quiet enjoyment of the residences by the residents. Presumably a licensee could justify removal of a condition by showing that quiet enjoyment would not be disturbed if the condition were removed.

Appellants here have not met their burden of showing that the nearby residents would be unaffected by removal of the conditions. The testimony of the present nearby residents in support of removal of the conditions is not determinative, since the Department must consider the quiet enjoyment of any residents, not just the ones who presently occupy the nearby residences. The appellants did not demonstrate any change in the grounds which caused the imposition of the conditions, not because they failed to show that there were no longer residences within 100 feet of the premises, but because they failed to show that operation of the business without the conditions would not interfere with the quiet enjoyment of the nearby residences.

CONCLUSION

The decision of the Department is affirmed.²

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

²This 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.