

ISSUED MARCH 5, 1997

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

HORTOBAGY, INC.	)	AB-6669
dba Hortobagy Restaurant)	
11138 Ventura Boulevard	)	File: 41-243480
Studio City, CA 91604,	)	Reg: 95033194
Appellant/Applicant)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
DEPARTMENT OF ALCOHOL)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing
	)	January 8, 1997
	)	Los Angeles, CA
)	

Hortobagy, Inc., doing business as Hortobagy Restaurant (hereinafter "appellant") appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied its application for an on-sale beer and wine public eating place license because the spouse of the sole shareholder of appellant was twice convicted of crimes involving moral turpitude, the issuance of a license in such circumstances being contrary to the universal and generic public welfare and morals provisions of the

¹The decision of the Department, dated May 2, 1996, is set forth in the appendix.

California Constitution, article XX, §22, Business and Professions Code §23958, and Rule 58 of Chapter 1, Title 4, California Code of Regulations.

Appearances on appeal include Hortobagy, Inc., appearing through its counsel, Henry Steelman; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto..

FACTS AND PROCEDURAL HISTORY

Appellant filed an application with the Department for the issuance of an on-sale beer and wine general public eating place license on or about February 24, 1995. On May 18, 1995, the Department denied the application. Appellant thereafter requested an administrative hearing.

An administrative hearing was held on March 4, 1996, at which time oral and documentary evidence was received concerning the circumstances relating to the criminal convictions and rehabilitation of Laslo Bossanyi, the husband of Eva Bossanyi, sole shareholder of appellant corporation.

Subsequent to the hearing, the Department issued its decision which determined that issuance of the requested license would be contrary to the public welfare and morals. Appellant thereafter filed a timely notice of appeal.

In its appeal, appellant contends (1) that the Department exceeded its jurisdiction and did not proceed as required by law, in that it accorded too much weight to Mr. Bossanyi's prior convictions and insufficient weight to Mr. Bossanyi's rehabilitation,

and (2) that there is substantial newly-discovered evidence which should be considered.

DISCUSSION

I

Appellant contends that the Department accorded too much weight to Mr. Bossanyi's prior fraud convictions, and insufficient weight to his rehabilitation efforts. Appellant casts these contentions as going to the Department's jurisdiction, while they actually are a challenge to the weight given the evidence presented at the hearing.

Appellant conceded Mr. Bossanyi's's prior convictions, both of which were for mail fraud, and both of which involved sophisticated schemes to induce the victims to part with monies. The evidence showed that Mr. Bossanyi had satisfactorily completed his probation for the two crimes, and had made some restitution. He had not finished paying the fine assessed in one of the proceedings, blaming this failure on miscommunication with his attorney and the court. Appellant's attorney presented a witness who testified to his opinion of Mr. Bossanyi's character, and offered several letters to the same effect. The Administrative Law Judge (ALJ) made a specific finding (Finding IX) that Mr. Bossanyi has made significant strides toward rehabilitation.

However, in that same finding, the ALJ concluded that in light of the seriousness and widespread nature of his criminal conduct and the fact that he has only been off probation since 1993, an insufficient time has elapsed to demonstrate that as an

unlicensed spouse he would have the qualifications required to hold a license. The ALJ further found that Mr. Bossanyi is not in compliance with the terms of his probation relating to the fine which was imposed. A factor which undoubtedly weighed heavily in the ALJ's decision was his finding that the victims of the telephone solicitation program underlying the 1985 conviction had never received the gifts promised them or the return of their money (Finding V).

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing a Department decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded

relevant evidence at the evidentiary hearing.²

The ALJ appears to have considered the evidence which was presented to him, both that which favored the position of the Department and that which favored the position of the appellant. There is no dispute regarding the criminal convictions upon which the Department based its denial of the application.

It is clear that the crimes for which Mr. Bossanyi was convicted were crimes involving moral turpitude. Appellant has not contended to the contrary. Thus, the question is whether, if Mr. Bossanyi himself were the applicant, would he be qualified to be issued a license.

The court in Koss v. Department of Alcoholic Beverage Control (1963) 215 Cal. App.2d 489 [30 Cal.Rptr. 219, 222], enumerated several considerations the Department may consider in determining if a license would endanger welfare or morals: "the integrity of the applicant as shown by his previous business experience; the kind of business to be conducted on the licensed premises; the probable manner in which it will be conducted; the type of guests who will be its patrons and the probability that their consumption of alcoholic beverages will be moderate; the nature of the protests made, which primarily were directed to previously existing conditions attributed to an unlicensed premises...."

²The California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

In evaluating an application for a license, the Department must assure itself that public welfare and morals are preserved from probable impairment. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433 [102 Cal.Rptr. 857].) In this regard, the ALJ concluded that not enough time had passed since Mr. Bossanyi's probation ended.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the 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].)

Appellate review does not "... resolve conflict[s] in the evidence, or between inferences reasonably deducible from the evidence" (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr. 658].) Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the

Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (substantial evidence supported both the Department's and the license-applicant's position); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; Gore v. Harris (1964) 229 Cal.App.2d 821 [40 Cal.Rptr. 666].)

This is a case where the Department's expertise must be allowed to come into play. Mr. Bossanyi participated in two different schemes to defraud. He blamed his involvement on immaturity and bad company, but, based upon the apparent severity of the sentences imposed upon him, had to have been deeply involved. It is also clear that he is undoubtedly a force behind the ownership of the restaurant, although his wife is the legal owner. The Department is much closer to the "street," and it is in a better position than the Board to make a judgment of the degree to which Mr. Bossanyi has been rehabilitated, and the risk he might pose to the public welfare and morals.

We have considered appellant's other contentions, and do not deem them of sufficient import to warrant overturning the Department's decision.

II

Appellant contends there is substantial new evidence which should be considered. As noted, appellant offered evidence during the hearing before this Board to the effect that an order had been entered remitting the fine which had been

outstanding. This is not really evidence which could not have been discovered prior to the administrative hearing. Indeed, the record had been permitted to remain open an additional 30 days for the express purpose of permitting appellant to offer such evidence. The timing of appellant's efforts to be relieved of his obligation to pay the court-ordered fine, in relation to applicant's efforts to obtain a license, raises considerable doubt in the mind of this Board as to whether his success in being relieved of the fine is of any great relevance on the subject of rehabilitation.

CONCLUSION

Having considered appellant's arguments and deeming them unpersuasive, the decision of the Department is affirmed.³

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

³ This final order is filed as provided in 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.