

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

RAFAEL PEREZ	)	AB-6837
dba La Hacienda Bar)	
1847 Rumrill Blvd.	)	File: 48-304835
San Pablo, CA 94806,	)	Reg: 96037392
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	December 3, 1997
	)	San Francisco, CA
)	

Rafael Perez, doing business as La Hacienda Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which conditionally revoked his on-sale general public premises license, for permitting the premises to be used as a disorderly house or a place where people resort to the disturbance of the neighborhood, and creating conditions which caused a law enforcement problem, being contrary to the universal and generic public welfare and morals

¹The decision of the Department, dated March 20, 1997, is set forth in the appendix.

provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §§24200, subdivisions (a) and (b), and 25601.

Appearances on appeal include appellant Rafael Perez; and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on July 7, 1995. Thereafter, the Department instituted an accusation against appellant charging that he had (1) allowed the premises to become a disorderly house, citing 14 instances of illegal conduct, and (2) created conditions which caused law enforcement problems, citing 26 instances of police calls.

An administrative hearing was held on January 28 and 29, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the charges of the accusation. Sergeant Folsie of the San Pablo police department testified that, prior to the transfer of the license to appellant, the police department objected to the transfer due to extensive police problems which had occurred at the premises under the previous management. Apparently, the police felt that the premises' location, clientele, and reputation, all served as a virtual guarantee that the premises would still demand an inordinate amount of police contacts [RT I, 82-83]. It appears from the testimony of the sergeant that the premises were allowed to open under the management of appellant over the objections of the police department [RT I, 83].

Subsequent to the hearing, the Department issued its decision which

determined that some of the charges were true, but dismissed four of the disorderly house charges.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the issue that the evidence does not support the decision.

DISCUSSION

Appellant contends that the evidence does not support the findings of the Department, essentially saying that the findings are not supported by substantial evidence.

"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 [95 L.Ed. 456, 71 S.Ct. 456] and 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 conflicts 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.2d 658].)

Passing to the question of the differing powers and responsibilities of the

Appeals Board and the Department of Alcoholic Beverage Control, it is the Department which is authorized by the California Constitution to exercise its discretion whether to suspend or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the continued operation of such a 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 the Department's 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 accusation lists, in count I, 14 incidents alleged to be in violation of Business and Professions Code §25601. Section 25601 states:

"Every licensee ... who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety"

²The California Constitution, article XX, section 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].

The decision of the Department dismissed four of the 14 sub-counts.

The accusation lists, in count II, 12 incidents of police calls and the 14 incidents under §25601, or a total of 26 incidents of police calls, investigations, and arrests alleged to have created a law enforcement problem for the San Pablo Police Department, being contrary to the public welfare and morals, as set forth in Business and Professions Code §24200, subdivision (a). The Department's decision found all of the 12 alleged incidents of police calls true, making a total of 22 incidents of police calls combined with the disorderly house allegations.

Appellant filed a brief which contends that the findings are not supported by substantial evidence, but has failed to set forth the references to the record which would support the brief's conclusions. The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881]), which it will not do in the present appeal, as the penalty is substantial. The Board has reviewed the entire record and sets forth its view as to each count of the accusation, and the decision.

Under the decision's finding III, which considered count I, the disorderly house allegations, we conclude:

1. Sub-count (a) is not supported by substantial evidence as there was no

evidence presented except improper hearsay evidence;

2. Sub-count (b) is supported by substantial evidence [RT I, 16-17, 24, and exhibit 2];
3. Sub-count (c) is supported by substantial evidence [RT I, 26-28, 34-35, 41-42, and exhibit 2];
4. Sub-count (d) is supported by substantial evidence [RT II, 9-10, 35-36, and exhibit 2];
5. Sub-counts (g), (h), and (i), are supported by substantial evidence [RT I, 194-196, RT II, 47, 65-66, and exhibit 2];
6. Sub-count (j) is supported by substantial evidence [RT I, 88-91];
7. Sub-count (k) is supported by substantial evidence [RT I, 162-163, and exhibit 2]; and
8. Sub-count (n) is not supported by substantial evidence, in that there was no evidence presented as to the alleged violation [RT II, 15-16, 23].

Under the decision's finding IV, which considered count II, the law enforcement allegations and the re-alleged count I, the disorderly house allegation, we conclude:

1. Sub-count (1) is supported by substantial evidence [exhibit 3];
2. Sub-count (2) is not supported by substantial evidence as no evidence was submitted to substantiate the allegation;
3. Sub-count (3) is supported by substantial evidence [RT I, 189-190];
4. Sub-count (4) is supported by substantial evidence [RT I, 164-165, and

exhibit 3];

5. Sub-count (5) is supported by substantial evidence [RT II, 12-14, and exhibit 3]];

6. Sub-count (6) is supported by substantial evidence [RT I, 56-57, 59, 61-72, and exhibit 3];

7. Sub-count (7) is not supported by substantial evidence, as there was no evidence of the violation charged;

8. Sub-count (8) is supported by substantial evidence [RT I, 91-94, and exhibit 3];

9. Sub-count (9) is supported by substantial evidence [RT II, 74-75, and exhibit 3];

10. Sub-count (10) is supported by substantial evidence [RT I, 178-185, and exhibit 3];

11. Sub-count (11) is supported by substantial evidence [exhibit 3];

12. Sub-count (12) is supported by substantial evidence [RT I, 96-99, 102-103, 218-222, and exhibit 3]; and,

13. In addition to the above listed matters of finding IV's law enforcement problems, sub-counts (b) through (d) and (g) through (k) of finding III, the disorderly finding, along with sub-counts (a) and (n) [found by the Appeals Board not to be supported by substantial evidence], are however, sufficient for inclusion in the law enforcement problem finding.

We conclude there are sufficient numbers of violations to warrant a

suspension of 30 days, with the license revoked but imposition stayed for 3 years, all in the hopes, we infer, of obtaining a more orderly-run premises. The penalty imposed by the decision of the Department was reasonable.

CONCLUSION

The decision of the Department is affirmed.³

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

³This 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.