

ISSUED SEPTEMBER 11, 1998

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

| | | |
|-------------------------------------|---|--------------------------|
| SALVADOR SEDANO PRECIADO |) | AB-6918 |
| dba Mana's Restaurant |) | |
| 3840 Martin Luther King, Jr., Blvd. |) | File: 41-319110 |
| Lynwood, CA 90262, |) | Reg: 96037213 |
| Appellant/Applicant, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | John P. McCarthy |
| Lonnie and Mary Lawrence, |) | |
| Respondents/Protestants, |) | Date and Place of the |
| |) | Appeals Board Hearing: |
| and |) | May 6, 1998 |
| |) | Los Angeles, CA |
| DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | |
| Respondent. |) | |

Salvador Sedano Preciado, doing business as Mana's Restaurant (applicant), appeals from a decision of the Department of Alcoholic Beverage Control¹ issued pursuant to Government Code §11517, subdivision (c), which sustained the protests of Lonnie and Mary Lawrence and denied appellant's application for an on-sale beer and wine public eating place license on the ground that issuance would be

¹The decision of the Department under Government Code §11517, subdivision (c), dated June 27, 1997, and the proposed decision of the administrative law judge, are set forth in the appendix.

contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Department Rule 61.4 (4 Cal.Code Regs. §61.4).

Appearances on appeal include appellant Salvador Sedano Preciado; protestants Lonnie and Mary Lawrence; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

On June 27, 1997, the Department issued its decision under Government Code §11517, subdivision (c), sustaining the protests of Lonnie and Mary Lawrence and denying appellant's application and petition for a conditional on-sale beer and wine public eating place license, on the ground that issuance of the license would violate Department Rule 61.4 and would tend to create a law enforcement problem. In so doing, the Department rejected the proposed decision of Administrative Law Judge (ALJ) John P. McCarthy dated January 17, 1997, following an administrative hearing which was held on November 14, 1996. ALJ McCarthy's proposed decision sustained the protests, but, despite determining that issuance of an unconditional license would violate Rule 61.4 (Determination of Issues V), and that issuance of an unconditional license would tend to create a law enforcement problem for the Los Angeles County Sheriff's Department (Determination of Issues VII), nonetheless, approved the issuance of a license for the restaurant portion of the premises, conditioned upon applicant's willingness to accept fourteen enumerated conditions upon the license.

The premises consist of a large building which includes a sizeable Mexican restaurant (depending upon whose testimony is accepted, its capacity ranged between 170 and 270) and a much larger banquet hall.² The building once housed a bowling alley. Under appellant's ownership, in addition to the operation of the restaurant, the building has been used for union meetings, banquets, the viewing of pay-per-view televised boxing matches, and all-night "rave" parties, attended by up to 1,200 college-age men and women, and lasting until 6:00 a.m. During these events, the neighborhood has been exposed to loud music, noise, and parking and traffic problems.

Appellant has filed a timely notice of appeal from the decision of the Department under Government Code §11517, subdivision (c).

Written notice of the opportunity to file briefs in support of the appellant's position was given on January 30, 1998. No formal brief has been filed. However, the Appeals Board has been furnished a document dated June 30, 1997, which accompanied appellant's notice of appeal. This document, originally directed to the Department of Alcoholic Beverage Control, appears to be an attempt to present grounds for reversal of the decision of the Department.

A copy of this document is attached. It appears to have been prepared by Benjamin R. Miranda, the lay advocate who represented appellant at the

² According to appellant's representative, who also testified, the banquet area will accommodate 2,700 people, but an agreement supposedly exists between appellant and the Lynwood Fire Department pursuant to which appellant will never let occupancy reach that level or anywhere near it.

administrative hearing, but also appears to have been signed by appellant.

Construing this document liberally, appellant raises four issues: (1) Although not denying the existence of problems associated with crowds, loud music, noise, parking and litter, appellant claims the problems existed prior to his ownership of the restaurant; appellant claims the littering problems involving beer bottles cannot be attributed to him because he does not sell beer at this time, but may be caused by the protestants who host "fights on cable" and sell beer to their guests; (2) appellant's attempts at placating the nearby residents by inviting them to inspect his facility have been rejected; (3) the protestants are motivated by their own failure to acquire the facility; and (4) the alleged complaints by neighbors consist of false reports.

There is no evidence in the record as to the source of the littering problem involving beer bottles. It is not unreasonable to speculate that the all-night parties attended by over a thousand college-age people could be the source of such a problem. There is no evidence to support appellant's claim that the Lawrences were responsible.

Nor is there any evidence to support the claim that the Lawrences attempted to acquire the facility, or that the neighbor complaints about noise, loud music and parking problems were false.

In its decision under Government Code §11517, subdivision (c), the Department adopted a number of the findings and determinations made by the ALJ, and made additional findings and determinations of its own. Essentially, the

Department determined that appellant had failed to overcome the presumption implicit in Rule 61.4 that issuance of a license would adversely affect the quiet enjoyment of their property by those residents located within 100 feet of the premises (four residences are located within 100 feet):

“Petitioner’s current operation without the sales, service or consumption of alcoholic beverages is seriously disturbing the nearby residents. He has presented no evidence or indication that his operation with a license will somehow ameliorate the current unsatisfactory situation.” (Determination of Issues VI-D.)

. The Department’s thinking was also apparent in its treatment of the law enforcement problem:

“The current disturbances complained of by the Ernestine Avenue residents (Finding of Fact paragraph VII) can be expected to continue and in all likelihood to become worse for them should a license issue to petitioner. It is no stretch to envision those disturbances and the reasonable reaction of the nearby residents resulting in an inordinate number of calls for service and therefore creation of a law enforcement problem for the local authorities.” (Determination of Issues VIII.)

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 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.³

"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].)

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].)

A review of the transcript of the administrative hearing establishes the existence of substantial evidence in support of the Department's findings and determinations. The Department acted well within its discretion when it sustained

³ 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].

the protests.

CONCLUSION

The decision of the Department is affirmed.⁴

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

⁴This 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 decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate 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.