

ISSUED AUGUST 15, 1997

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

DAXA & HARSHAD P. SWAMI	)	AB-6808
dba 9 to 9 Market)	
1887 East Thompson Boulevard	)	File: 20-270944
Ventura, CA 93001,	)	Reg: 96036344
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 2, 1997
	)	Los Angeles, CA
)	

Daxa and Harshad Swami, doing business as 9 to 9 Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked appellants' off-sale beer and wine license for co-appellant Harshad Swami (Harshad) possessing cocaine base for sale, a crime involving moral turpitude, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §24200, subdivision (d), and Health and Safety Code §11351.5.

¹ The decision of the Department, dated January 30, 1997, is set forth in the appendix.

Appearances on appeal include appellants Daxa and Harshad Swami, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 27, 1992. Thereafter, the Department instituted an accusation against appellants alleging that Harshad possessed for sale in the premises, cocaine base; possessed in the premises methamphetamine; maintained a licensed premises for the purpose of unlawfully selling, giving away, or using cocaine base; and knowingly received, possessed, concealed or had in his possession a camera from which the manufacturer's serial number or other identification had been removed or defaced.

An administrative hearing was held on December 18, 1996, at which time documentary evidence was received evidencing Harshad's guilty plea in the superior court to the charge of felony possession of cocaine base for sale and the dismissal of the remaining charges. At the administrative hearing, no testimony was presented.

Subsequent to the hearing, the Department issued its decision which determined that Harshad's guilty plea to a crime involving moral turpitude constituted grounds for discipline pursuant to Business and Professions Code §24200, subdivision (d), and that continuation of the license would be contrary to public welfare and morals. The Department ordered the license revoked.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issue: revocation without the ability to sell the license will cause great financial hardship.

DISCUSSION

Appellants contend that the penalty of revocation without allowing them to sell the license, will cause great financial hardship to them and to their family.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].)

However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

Appellants appear not to contest the determination of the Department, only the penalty. They presented no evidence at the administrative hearing and have filed only a brief letter outlining their financial difficulties.

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 penalty is harsh, but the crime to which Harshad pled guilty is a serious one. While we can sympathize with the family members of the appellant who must

suffer because of his actions, we cannot say that the Department has exceeded the bounds of its discretion in revoking this license.

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 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.