

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

ABLAHAD SALIM	)	AB-6960
dba Quik Corner)	
1101 C Street	)	File: 20-251898
San Diego, California 92101,	)	Reg: 96038176
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	April 1, 1999
	)	Los Angeles, CA
)	

Ablahad Salim, doing business as Quik Corner (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 30 days, with 20 days thereof stayed for a probationary period of one year, for having permitted the premises to be operated in such a manner as to give rise to law enforcement problems, 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 (a).

¹The decision of the Department, issued October 31, 1997, pursuant to Government Code §11517, subdivision (c), is set forth in the appendix.

Appearances on appeal include appellant Ablahad Salim, appearing through his counsel, John McCabe, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on October 26, 1990. On November 22, 1996, the Department filed an accusation against appellant charging, in three counts, embracing 88 subcounts², that appellant had permitted the premises to be used in a manner which created a problem for law enforcement officials, failed to take reasonable steps to correct objectionable conditions on the premises, and permitted the premises to operate in a manner constituting a public nuisance.

An administrative hearing was held on March 17, 18, and 19, 1997, at which times oral and documentary evidence was received. Following the close of the hearing, the Administrative Law Judge filed a proposed decision in which he sustained some, but not all, of the charges of the accusation, and in which he recommended a 30-day suspension, with the entire 30 days stayed for a period of two years, the stay conditioned upon the absence of cause for disciplinary action occurring during the stayed period.

The Department, acting under the authority of Government Code §11517,

² Almost all of the subcounts involved arrests for a wide variety of violations of law, most of which occurred near the premises or in its parking lot. Very few of the incidents took place inside the premises. None of the arrests involved sales to minors or to intoxicated persons.

subdivision (c), rejected the proposed decision. It entered, instead, its own decision adopting all of the ALJ's findings and determinations except the penalty. The Department ordered appellant's license suspended for 30 days, with only 20 days stayed, and for only one year rather than the two years proposed by the ALJ. In addition, the Department imposed five conditions on the license.³

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends that the Department abused its discretion by its imposition of an actual suspension and the five conditions. Appellant contends the Department lacked support either in fact or law for its action.

³ The five conditions were as follows:

1. There shall be no consumption of alcoholic beverages by any person on property adjacent to the licensed premises and under the control of the licensee nor by any person on any public sidewalk abutting the licensed premises.
2. The sale of malt beverages in containers in excess of 16 ounces (except for kegs containing six gallons or more) is prohibited. Malt beverage containers of 16 ounces or less may be sold in twenty-four pack, twelve pack, six pack or four pack quantities as packaged by the manufacturer.
3. The sale of wine containing more than 15% alcohol by volume is prohibited.
4. The sale of wine (other than wine coolers sold in four pack quantities as packaged by the manufacturer) in containers of less than 750 ml. is prohibited.
5. The licensee shall be responsible for maintaining free of litter the area adjacent to the premises under the control of the licensee.

DISCUSSION

Appellant concedes the sufficiency of the evidence to support the ALJ's findings and determinations. Appellant argues, instead, that the Department lacked support in either fact or law for its imposition of the actual suspension and the five conditions it imposed on appellant's license.

The Department acted pursuant to Government Code §11517, subdivision (c), which provides, in pertinent part:

"(c) If the proposed decision is not adopted as provided in subdivision (b), the agency itself may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same administrative law judge to take additional evidence."

In so doing, it was free to substitute its own judgment for that of the ALJ with regard to the ultimate disposition of the case, so long as its decision was supported by the record.

Appellant has not challenged the findings and determinations of the ALJ, and the Department has adopted the ALJ's findings and determinations in all respects except the ultimate discipline ordered by the ALJ.

The only question, then, is whether the record supports what the Department did.

The record shows a substantial number of incidents either on the parking lot of the premises or the sidewalk in front of and/or adjacent to the premises involving public drinking and open container violations, loitering, drug transactions, urinating in public, minors in possession of alcohol, and the like.

The premises are located near a community college and a busy trolley stop, and the area is frequented by transients.

The Department had, by letter dated November 1, 1995 [Exhibit 2], warned appellant that it had received information from the San Diego Police Department that the parking lot and adjacent areas surrounding the premises, and the premises itself, were not being maintained in a proper manner. Specifically, the letter reported, as problems associated with the location, the sale and use of illegal drugs in and around the premises; service of alcohol to obvious drunks; service of alcohol to minors; and patrons involved in fights, vandalism, graffiti, littering, loitering, and public urination.

The ALJ's findings show that these incidents continued to occur, despite steps taken by appellant to prevent them.

As the Department points out in its brief, the incidents are interrelated. People drinking in the vicinity of the premises or using controlled substances often loiter or "hang out" in the area. Minors attempting to obtain alcoholic beverages loiter in the area, and solicit adults to purchase for them.

The conditions imposed by the Department appear to be reasonably directed at these problems. Just as the incidents were interrelated, the conditions are as well. The conditions address public consumption and loitering directly, and the other problems, such as drug transactions, public urination, minors in possession and the like, indirectly, by eliminating a root cause of public consumption and

loitering, the sale of single containers of a size that lends itself to immediate consumption.

We do not believe the Appeals Board is in a position to disagree with the Department's view that the sale of single containers of alcoholic beverages is a major contributing factor to problems of the kind involved in this case. Nor can it be said that the Department abused its discretion by imposing these conditions after the ALJ was unwilling to do so. The ALJ was deciding a single case, while the Department in its oversight status must be assumed to possess a broader view of the way such problems must be addressed.

Appellant's misfortune, if it could be called that, is to be located in a troubled area. But, by the same token, that makes it all the more necessary for him to be active and aggressive in his attempts to prevent or minimize the problems associated with his sale of alcoholic beverages.

The Board has traditionally sustained the imposition of conditions which the record shows are reasonably related to the problems they purport to address. This is consistent with the authority given the Department in Business and Professions Code §23800, subdivision (b), which provides that conditions reasonably related to findings made by the Department which would justify a license suspension or revocation may be imposed, either in lieu of or in addition to a suspension.

The ALJ proposed a 30-day suspension, all stayed. The Department ordered a 30-day suspension as well, but stayed only 20 of those days. Can it be said that

the Department's decision to require an actual suspension (a net 10 days) was an abuse of discretion? We do not believe so. This is no more than a disagreement between the Department and an ALJ with regard to a penalty. Weighed against the record in this case, it would seem that either a suspension stayed in its entirety or one only stayed partially would be reasonable. Since the Appeals Board may 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]), there is no basis for doing so here.

ORDER

The decision of the Department is affirmed.⁴

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

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

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.