

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

AB-7600

MARTHA RAMOS dba Scarlett Inn
3549 Cesar E. Chavez Avenue, Los Angeles, CA 90033,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 40-315311 Reg: 99047043

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: March 1, 2001
Los Angeles, CA

ISSUED APRIL 26, 2001

This is an appeal by Martha Ramos, doing business as Scarlett Inn (appellant) from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license for her failure to comply with conditions on her license regarding the sale and offering for sale of food and meals, as well as failure to comply with related conditions, in violation of Business and Professions Code §§23038 and 23804.

Appearances on appeal include appellant Martha Ramos, appearing through her counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on September 20, 1996. On August 12, 1999, the Department instituted an accusation against appellant charging: the

¹The decision of the Department, dated February 10, 2000, is set forth in the appendix.

failure of appellant to comply with various conditions on her license relating to the sale and offering for sale of food and alcoholic beverages (**count 1**); the offering of a forged or fraudulently altered document into evidence in the course of a trial, in violation of Penal Code §132 (**count 2**); and (3) the purchase of Bud Light beer by appellant from a seller which did not hold a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license, in violation of Business and Professions Code §23402 (**count 3**).

An administrative hearing was held on November 4, 1999, and January 19, 2000, at which time oral and documentary evidence was received.

Subsequent to the hearing, the Department issued its decision which determined that the charges relating to violations of conditions (**count 1**) had been established, and that revocation was the appropriate remedy. The charge that appellant had offered in evidence a forged or altered document (**count 2**) was determined not to have been proven, and that count was dismissed. Finally, the Department found that appellant had purchased beer from a seller not properly licensed as one from whom she could lawfully purchase (**count 3**), for which an appropriate remedy was a 10-day suspension.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant contends that the Department abused its discretion in ordering revocation for only a second condition violation, asserting that the Department lacked any appropriate guidelines for determining what an appropriate penalty should be.

DISCUSSION

Appellant contends that, in the absence of any guidelines for the determination of what an appropriate penalty should have been, the Department's order of revocation was an abuse of discretion. Appellant cites the 1998 report of the California State Auditor which stated that "it is because of the department's lack of clear guidance for prioritizing complaints and assessing penalties that it is vulnerable to accusations of discrimination."

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].)

We cannot conclude merely because the Department has not adopted more specific penalty guidelines that the order in this case was an abuse of discretion. Nor do we see any evidence of discrimination.

The Administrative Law Judge was confronted with evidence that appellant was in flagrant and continuing disregard of the condition of her license that her quarterly gross sales of alcoholic beverages not exceed her quarterly gross sales of food. It seems to us that a continuing violation of this kind, when repeated, invites stern discipline.

The Department appears to have concluded that the situation was one which would not change, given the gross disparities in sales of food and alcohol. Given the

Department's expertise in this area, and the broad discretion with which it is vested with respect to discipline, we cannot say it has abused its discretion.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² This 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.