

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

AB-7766a

File: 47-203381 Reg: 00049120

4805 CONVOY, INC., dba Dream Girls
4805 Convoy Street, San Diego, CA 92111,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: February 13, 2003
Los Angeles, CA

ISSUED APRIL 4, 2003

4805 Convoy, Inc., doing business as Dream Girls (appellant), appeals from an order of the Department of Alcoholic Beverage Control¹ that suspended its license for 30 days.

Appearances on appeal include appellant 4805 Convoy, Inc., appearing through its counsel, William R. Winship, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. Appellant originally appealed from a decision of the Department which ordered appellant's license suspended for 30 days for allowing violations of Rule 143.3. The Appeals Board reversed the Department's

¹The order of the Department, dated October 24, 2002, is set forth in the appendix.

decision (*4805 Convoy, Inc.* (2001) AB-7766), the Department petitioned for a writ of review, and the court of appeal granted the writ. The court reversed the decision of the Appeals Board, and the matter was remanded to the Department for further proceedings. The Department then issued the order that is the subject of this appeal.

Appellant raises the following issues in this appeal: (1) appellant was not afforded due process; and (2) the Department's penalty is an abuse of discretion.

DISCUSSION

I

Appellant contends it was not accorded due process in that it was not notified of the violations until more than 30 days later, rather than shortly after they occurred, as was customary. By the time it was notified, appellant argues, it was too late to identify witnesses or preserve the relevant videotapes of the alleged violations that it needed to adequately prepare a defense.

Appellant raised this issue at the administrative hearing before the Department's Administrative Law Judge (ALJ) and in its prior appeal before this Board. Both the Department and this Board considered this issue and concluded that the delay in notification did not violate due process.

The Board's decision was final, subject only to review by the appellate court. The court reversed the Board's decision on another issue, leaving the Board's due process decision intact. This Board has no power to reconsider its decisions. The issue has been decided and there is no basis for this Board to review it once again.

II

Appellant contends the Department abused its discretion in ordering a 30-day suspension. It argues that the penalty is excessive since it is based on "a single dance,

a violation which the police officer solicited and encouraged" and appellant had no similar violations during the preceding five years. It also argues that the penalty will have a severe economic effect on appellant and its employees.

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].)

While it is undeniable that the suspension ordered will have a significant economic impact on both appellant and its employees, that by itself does not mean that the penalty is an abuse of discretion. Whenever a license is suspended, the licensee and employees face an economic loss.

In the original decision adopted by the Department, the ALJ specifically took into consideration as mitigation the factors mentioned by appellant. The Department's recommended penalty of revocation stayed for a two-year probationary period and a 30-day suspension was, therefore, rejected in favor of the simple 30-day suspension that appellant is now contesting.

"If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Beverage Control Appeals Board* (1965) 62 Cal.App. 2d 589, 594 [43 Cal.Rptr. 633, 636].) While 30 days is a significant suspension, it does not appear excessive given the disciplinary history, the nature of the violations involved, and the previous mitigation of the penalty originally recommended by the Department.

ORDER

The decision of the Department is affirmed.²

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

²This final order is filed in accordance with Business and Professions Code section 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 section 23090 et seq.