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

AB-7787
File: 48-345011 Reg: 00048800

CHUNG OK YEO dba Club Gina
117 South Western Ave., Los Angeles, CA 90004,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: February 7, 2001
Los Angeles, CA

ISSUED APRIL 18, 2002

Chung Ok Yeo, doing business as Club Gina (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which revoked her license for having permitted drink solicitation activity, and having maintained enclosed rooms in the premises in violation of conditions on her license, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§24200, subdivisions (a) and (b); 25657, subdivisions (a) and (b); 23804, and Department Rule 143.

Appearances on appeal include appellant Chung Ok Yeo, appearing through her counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing

[1]The decision of the Department, dated March 22, 2001, is set forth in the appendix.

through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on October 27, 1998. Thereafter, the Department instituted a multi-count accusation against appellant charging numerous acts of drink solicitation, violations of license conditions, consumption by minors, and permitting minors to remain on the premises without lawful business therein.

An administrative hearing was held on August 23 and November 9, 2000. Subsequent to the hearing, the Department issued its decision which sustained the charges relating to drink solicitation involving two females, identified as Grace Park ("Park") and Yoon Suh ("Suh")) (counts 1 through 4 of the accusation), and to violation of license conditions prohibiting the presence of enclosed rooms in the premises (count 15, subcounts (a) through (c) and (e) through (g).

Appellant thereafter filed a timely notice of appeal, contending that the Department's decision is internally inconsistent as to each category of charges and, as a consequence, does not support the penalty of revocation.

DISCUSSION

Appellant challenges the Department's decision as internally inconsistent in two major respects, and, argues that, as a consequence, it cannot support an order of revocation. Appellant asserts that the charges of counts 1 and 2, that appellant employed or paid a percentage or commission to Park and Suh, in violation of §25657, subdivision (a), and the charges of counts 3 and 4 that appellant employed or

knowingly permitted Park and Suh to loiter, in violation of §25657, subdivision (b), are mutually exclusive, and the Department's determinations that both code provisions were violated are internally contradictory.[2] Appellant contends that the decision fails to make clear whether it is the employment counts or the loitering counts which are the basis for the order of revocation. Appellant asserts that this is important because the revocation order is based in large part on the existence of a prior violation.

The Department, on the other hand, contends that the determination by the Administrative Law Judge (ALJ) that both subdivisions of §25657 had been violated was perfectly proper, and that the order of revocation is supported by both the solicitation and loitering charges as well the condition violations.

Appellant cites Garcia v. Munro (1958) 161 Cal.App. 2d 425 [326 P.2d 894] in support of its contention that allegations charging violations of subdivisions (a) and (b) are mutually exclusive. In that case, the court reversed a Department determination that the licensee had permitted a bartender to loiter for the purpose of soliciting drinks, finding that there was no evidence she had sat with patrons or neglected her duties as a bartender.

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[2] Count 1 charges that appellant employed Park, or paid her a percentage or commission on the sale of alcoholic beverages, for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages on the premises, in violation of Business and Professions Code §25657, subdivision (a); Count 2 makes the same charge with respect to Suh. Count 3 charges that appellant employed or knowingly permitted Park to loiter in or about the premises for the purpose of begging or soliciting customers to purchase alcoholic beverages for her, in violation of Business and Professions Code §25657, subdivision (b). Count 4 makes the same charge with respect to Suh. The allegations in each of the four counts parallel the statutory language.

The Department relies on the decision in Wright v. Munro (1956) 144 Cal.App.2d 843 [301 P.2d 997], and contends that subdivision (b) outlaws two different types of licensee conduct - either to employ anyone for the purpose of begging or soliciting drinks from others or to knowingly permit anyone to loiter in the premises for the purpose of soliciting drinks from other patrons. Thus, the Department argues, subdivision (b) is aimed at eliminating drink solicitation by the licensee's employees as well as by anyone else that the license knows of who is loitering in the premises for that purpose.

Wright v. Munro does not go as far as the Department suggests. It did not hold that subdivision (b) alleges two different types of conduct - it simply held a pleading in the language of the statute was sufficient to permit the person charged to prepare his defense.

Although we have been advised that the prior violation was also of subdivision (b), the record does not indicate which aspect of subdivision (b) was implicated - employment or permitting.

In Macario M. Sanchez (2001) AB-7535, the Board stated:

> "It is not unusual, nor is there anything improper, for an accusation to challenge a single course of conduct under different theories premised upon different statutes or rules. That does not mean that if the proof is such that all of the elements of each of the statutory and rule violations are met, multiple punishments are permissible.
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> "However, this is simply not a case of multiple punishment. The order of revocation is a single disciplinary penalty. Under the circumstances of the stay order under which appellant was operating ... any of the individual counts, if sustained, would have been sufficient to support an order of revocation."

Appellant appears to have assumed that a violation sufficient to warrant the reimposition of a previously stayed order of revocation must be identical to the violation which led to the order of revocation. Such an assumption is incorrect. While the Board has, from time to time, reminded the Department that there must be a reasonable relationship between a prior violation and the current violation to justify an enhancement of the penalty which would normally be imposed, it has never required complete identity.

Here, the facts strongly suggest that appellant has institutionalized a pattern of solicitation by providing "drinking companions" for its patrons, whether by employing the drinking companions or simply capitalizing on their presence in the premises. In either case, the evidence establishes a course of conduct built around drink solicitation.

It is this institutionalized pattern of discrimination, as reflected in the facts, which accounts for the ALJ's determination that some of the condition violations did not deserve further discipline while others could be deemed sufficiently egregious as to support the order of revocation. It was not simply the maintenance of rooms for use by patrons, but the manner in which the rooms were used.

Reduced to its essentials, this was a case where the licensee committed violations either identical to, or sufficiently similar to, earlier violations which had resulted in a conditionally stayed order of revocation, and, therefore, violated the conditions of the stay. We cannot say the Department abused its discretion by ordering revocation.

ORDER

The decision of the Department is affirmed.[3]

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

[3] 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.