

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

AB-7838

File: 21-360208 Reg: 00049849

RUPINDER S. GILL, Appellant/Protestant

v.

JASBIR SINGH and NIRMAL SINGH dba Shop N Quick
3564 East Belmont Avenue, Fresno, CA 93702
Respondents/Applicants

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Jeevan S. Ahuja

Appeals Board Hearing: April 11, 2002
San Francisco, CA

ISSUED MAY 29, 2002

Rupinder S. Gill, appellant/protestant, appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Jasbir Singh and Nirmal Singh, doing business as Shop N Quick, respondents/applicants, for a person to person, premises to premises, transfer of an off-sale general license. This license permits the sale of beer, wine, and distilled spirits in their original package for consumption off the premises.

Appearances on appeal include appellant/protestant Rupinder S. Gill, appearing through his counsel, Alan Forester; respondents/applicants Jasbir Singh and Nirmal Singh, appearing through their counsel, Michael B. Levin; and the Department of

¹The decision of the Department, dated May 24, 2001, is set forth in the appendix.

Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

FACTS AND PROCEDURAL HISTORY

Applicants petitioned for a person to person, premises to premises, transfer of an off-sale general license. The Department investigator recommended that the transfer be permitted. Protests were filed by Gill and others.²

An administrative hearing was held on March 22, 2001, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Department investigator John Acosta, who described the investigation he conducted, his suggestions of conditions to be placed upon the license to satisfy the concerns of the protestants, and his recommendation for conditional approval of the application. Protestant Gill, and Jerry Mulford, appearing on behalf of his parents, Alice and Enoch Mulford, testified in opposition to the application. In addition, Akidad Singh testified in support of the application.

Subsequent to the hearing, the Department issued its decision which overruled the protests and permitted the transfer. The Department concluded, with respect to the issues addressed by the hearing, that issuance of the license would not result in or add to an undue concentration of licenses; it would not create or aggravate a law enforcement problem; it would not interfere with the operation of a school in the area; and it would not interfere with the operation of a church within the area.

Protestant Gill thereafter filed a timely notice of appeal, raising a number of

² Gill is the only protestant who has filed an appeal. Jerry Mulford, a protestant at the hearing on behalf of his parents, has filed a letter brief raising essentially the same issues as Gill.

issues. The Board has considered the issues he has raised, and is satisfied that the decision of the Department is correct.

DISCUSSION

I

Protestant Gill asserts that the decision does not address the effect an additional seller of liquor will have on the crime rate in the area, with particular emphasis on crimes of violence, prostitution, and "menacing".³

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 scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.⁴

³ It is our impression that appellant is referring to the problems associated with loitering and pan-handling.

⁴ California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

It is with these principles in mind that we consider the protestant's claim that the decision does not address the concerns of the community regarding the effect an additional seller of liquor will have on crime in the area.

The decision concluded that the evidence failed to establish that issuance of the license (which would replace the existing beer and wine license and permit the sale of beer, wine, and hard liquor) would either create or aggravate existing law enforcement

Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

problems. In reaching this conclusion, the decision considered the investigator's testimony, his report of the opinions expressed by the beat officer who patrols the area, the testimony of one of the protestants that the crime rate in the area was dropping, and the testimony of protestant Gill. Although the decision acknowledged the existence of prostitution and criminal activity, the principal basis for the Department's position appears to have been the opinion of the beat officer that the premises had not posed a law enforcement problem in the past or added to the crime in the area even though licensed for the sale of beer and wine for many years.

The potential that a premises will pose a law enforcement problem is almost always a matter of some speculation. Where there is no past history of such, it is difficult to fault the conclusion that the past can be a sufficient basis for a prediction of the future.

II

Protestant asserts that there are already two stores in the area licensed to sell hard liquor, so there is no need for a third. He also contends there has been no showing of public convenience or necessity.

The Development Department of the City of Fresno issued a letter stating that issuance of the applied-for license would serve public convenience and necessity. This resolved the issue of undue concentration. (See Business and Professions Code §23958.4, subdivision (b)(2).)

The Department is not bound by the opinion of a protestant as to the need for additional licenses. Here, where the protestant is a competitor concerned about dilution of sales, such an opinion is not likely to be accorded great weight.

III

Appellant contends that the protests of the police and a school were not addressed.

There was no formal protest from either the Fresno Police Department or the Hidalgo Elementary School.

As the decision notes, an untimely letter was received from Fresno Police Captain Marty West expressing his concerns. The investigator testified that he took those concerns into account, along with the views of the beat patrol officer, in deciding to recommend the issuance of the license.

The investigator visited the school and surrounding area on three occasions, and spoke to the school's principal, Mary Marcalletti. Although she believed there was an over-concentration of licenses, and that there had been problems with drunks on the school ground, she did not believe the upgrade of the license would aggravate existing problems.

ORDER

The decision of the Department is affirmed.⁵

TED HUNT, CHAIRMAN

⁵ 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.

E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD