

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

AB-7942

File: 40-379400 Reg: 01051779

JON GEORGE, Appellant/Protestant

v.

SYCUAN TRIBAL DEVELOPMENT CORPORATION,
dba Singing Hills Resort at Sycuan
3007 Dehesa Road, Oak Glen Snack Stand, El Cajon, CA 92021,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 14, 2002
Los Angeles, CA

ISSUED JANUARY 28, 2003

Jon George, (appellant/protestant) appeals from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Sycuan Tribal Development Corporation, doing business as Singing Hills Resort at Sycuan (respondent/applicant), for the person-to-person transfer of an on-sale beer license.

Appearances on appeal include appellant/protestant Jon George; respondent/applicant Sycuan Tribal Development Corporation, appearing through its counsel, George Forman; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

¹The decision of the Department, dated January 31, 2002, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

On August 3, 2001, applicant petitioned for the person-to-person transfer of an on-sale beer license. The premises is a golf course with a snack bar serving golfers and employees, open from 7:00 a.m. to 5:00 p.m. each day. At the time of the application, the premises was licensed by the Department and was exercising the privileges of an on-sale beer license at the golf course snack bar.

Appellant protested, alleging that applicant is not the true or sole owner of the licensed premises, is not qualified to hold an alcoholic beverage license because of its criminal record, and has a chronic record of insobriety. The Department reviewed the protest and rejected it pursuant to Business and Professions Code² section 24013, subdivision (b),³ having determined that the grounds stated in the protest were not valid reasons for denying transfer of the license. In the course of its investigation of the transfer application, the Department fingerprinted and did background checks of applicant's corporate officers. No criminal history was found with regard to any of the officers. The Department issued an on-sale beer license to applicant.

²Unless otherwise indicated, statutory references in this decision are to the Business and Professions Code.

³Section 24013, subdivision (b), provides, in pertinent part:

The department may reject protests, . . . if it determines the protests are false, vexatious, or without reasonable or probable cause at any time before hearing thereon, notwithstanding the provisions of Section 24016 or 24300. . . . If the department rejects a protest as provided in this section and issues a license, a protestant whose protest has been rejected may, within 10 days after the issuance of the license, file an accusation with the department alleging the grounds of the protest as a cause for revocation of the license and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Appellant then filed an accusation with the Department alleging his protest grounds as grounds for revocation of the license, in accordance with section 24013, subdivision (b). An administrative hearing was held on December 13, 2001, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which found that appellant did not establish that applicant is unqualified to hold an alcoholic beverage license, and dismissed the protest-accusation.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) The criminal records of some tribal members of the Sycuan Band are evidence that the licensee's president lied under oath; (2) licensee was required to be developed under Tribal Law and register as a foreign corporation with the California Secretary of State; (3) licensee is not the true and sole owner of the licensed premises; (4) the licensed premises does not pay Federal, state, or local taxes; (5) criminal charges of fraud should be filed against the Sycuan Band, the licensee, and the licensee's officers.

DISCUSSION

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. If the Department determines that there is not good cause to deny the license, it may issue the license.

The scope of the Appeals Board's review of Department decisions is limited by the California Constitution, by statute, and by case law. In reviewing a Department

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 The Board may not consider any evidence other than that contained in the record of the Department's proceedings. (Bus. & Prof. Code, §23083, subd. (a).)

Appellant's first three contentions were raised during the administrative proceeding before the Department. They were considered by the Department and the evidence presented with regard to each contention was discussed in the Department's decision. The Department found that no evidence was presented which supported the suspension or revocation of the license which had been issued. We have reviewed the record of the Department proceeding and find the Department's decision to be supported by the facts in the record.

The fourth contention raised by appellant, that the applicant does not pay federal, state, or local taxes, was not raised at the hearing and may not be raised for the first time on appeal. (*Islam* (2000) AB-7442.) Both the fourth contention and the fifth, that criminal charges of fraud should be filed against the Sycuan Band, are matters outside the jurisdiction of both the Department and this Board. As noted above,

⁴ Cal. Const., art. XX, § 22; Bus. & Prof. Code §§ 23084, 23085; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

the Board's powers are limited to reviewing the Department's decisions for certain specified errors. Beyond those questions listed in the statute and the California Constitution, this Board has no power.

We find that, on this record, there is no basis for concluding that the Department erred or exceeded its discretion in rejecting appellant's contentions. Appellant's contentions on appeal, to the extent that this Board may consider them, are rejected.

ORDER

The decision of the Department is affirmed.⁵

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

⁵This 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.