

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

AB-8282

File: 20-142225 Reg: 03055767

THE PLACE ON VALLEY, INC. dba Central Meat Co.
155 West Pomona, Santa Ana, CA 92707,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: May 5, 2005
Los Angeles, CA

ISSUED JULY 6, 2005

The Place on Valley, Inc., doing business as Central Meat Co. (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its off-sale beer and wine license pursuant to Business and Professions Code sections 24200,² subdivision (d), and 23405, subdivision (d).³ Luis Tiburcio Mendoza, appellant's president, chief executive officer, and holder of 20 percent of the stock of appellant, pled guilty to having knowingly purchased stolen meat in violation of Penal

¹The decision of the Department, dated April 15, 2004, is set forth in the appendix.

² Business and Professions Code section 24200 sets forth grounds which form a basis for license suspension or revocation. Subdivision (d) thereof provides that a plea, verdict, or judgment of guilty to any public offense involving moral turpitude constitutes such a ground.

³ Business and Professions Code section 23405 treats corporate licensees. Subdivision (d) thereof permits the Department to suspend or revoke the license of a corporation subject to section 23405 "where conditions exist in relation to any officer, director, or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if the person was a licensee."

Code section 496, subdivision (a).

Appearances on appeal include appellant The Place on Valley, Inc., appearing through its counsel, Federico Acosta, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 4, 1983. Thereafter, on August 27, 2003, the Department instituted an accusation against appellant charging that Luis Tiburcio Mendoza ("Mendoza"), a holder of 20 percent of the corporate stock of appellant, pled guilty to a violation of Penal Code section 496, subdivision (a) (receiving stolen property), an offense involving moral turpitude. The accusation was amended on February 2, 2004, to allege that Mendoza was an officer and director of appellant corporation, and that the stolen property had a value in excess of \$19,000.

An administrative hearing was held on February 13, 2004. At that hearing, counsel for appellant stipulated that Mendoza was an officer and director of appellant corporation; that, on October 20, 2002, at the licensed premises, Mendoza knowingly bought/received stolen meat valued in excess of \$150,000;⁴ and that, on June 9, 2003, Mendoza pled guilty to an information charging him with having violated Penal Code section 496, subdivision (a), by purchasing/receiving stolen property. Appellant's counsel submitted evidence that Mendoza had resigned as president and director of appellant, and had transferred his stock in appellant to Augustina Mendoza, his wife, who replaced him as president. Subsequent to the hearing, the Department issued its

⁴ The accusation was amended at the hearing to allege that amount.

decision which found, in addition to the stipulated facts, that Mendoza was the owner of 20 percent or more of the issued and outstanding stock of appellant corporation. The Department ordered the license revoked.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant asks the Appeals Board to remand the case to the Department pursuant to Business and Professions Code section 23085,⁵ to permit it to offer evidence of Mendoza's assistance to law enforcement authorities as mitigation.

DISCUSSION

Appellant asserts in its brief that while Mendoza's prosecution was pending, he cooperated with law enforcement authorities by holding himself out as an interested buyer of stolen meat notwithstanding the risks posed to him. Appellant states that his cooperation with law enforcement continued even after the administrative hearing, when he identified the perpetrator of a cargo theft who was being prosecuted in Los Angeles. This, appellant contends, is mitigation evidence which warrants a remand.

Appeals Board Rule 198 requires a declaration setting forth the substance of the newly discovered evidence, its relevance, as well as the names and addresses of witnesses and any exhibits to be submitted, and the reason such evidence could not, with due diligence, have been produced at the hearing. Appellant has not filed such a declaration.

⁵ Section 23085 provides, in pertinent part:

In appeals where the board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department, it may enter an order remanding the matter to the department for reconsideration in light of such evidence.

The Department has opposed appellant's request for a remand, pointing out that the information appellant wishes to add to the record was known to Mendoza, whose knowledge is imputed to appellant, during the administrative hearing. Appellant has not demonstrated why it could not have presented evidence of on-going cooperation with law enforcement at that time. The request is untimely at best.

The decision is quite explicit as to why revocation was ordered (Conclusions of Law 9 and 10):

Complainant asked to have the license revoked outright. It was pointed out that the perpetrator held the most responsible position with Respondent and that the subject crime involved a very large dollar value and occurred on the Licensed Premises. Respondent suggested that a fair and equitable sanction would be a "suspended fine" in an affordable range. It was pointed out that Respondent had done all it could to dissociate itself from Mendoza, the involved perpetrator and that he no longer has any dealings with it.

No consideration was given to the matters of prior discipline referred to in Findings of Fact, paragraph 3, since the underlying offenses are so disparate. The Order which follows is harsh but seems required because on the facts presented in this case there is far too great a likelihood that the familial connection between Luis T. Mendoza and his family members will remain strong; strong enough not to permit the Department license to be held by other family members at this location and in this business with any reasonable expectation that Luis T. Mendoza will have nothing whatsoever to do with the business so licensed. Further, the actions the corporation did take seem to have been taken reluctantly and at the very last minute. It is most unlikely to believe that permitting the license to remain in the name of the corporation will adequately protect the public from Luis T. Mendoza. The Place on Valley, Inc., may continue to serve the community. It will have to do so without selling alcoholic beverages.

The proposed new evidence does nothing to lessen the concern expressed in the decision about the potential for Mendoza's continued involvement in the business because of his strong familial connection.

We have no doubt that Mendoza's cooperation with law enforcement while his prosecution was pending was in large extent to gain leniency in his own case, and it

would appear he had some success in that effort. However, the decision, whether Mendoza's or that of someone else on behalf of appellant to withhold, for reasons good to them, what is now claimed to be mitigating evidence, undermines any claim of newly discovered evidence.

ORDER

The decision of the Department is affirmed.⁶

SOPHIE C. WONG, MEMBER
FRED ARMENDARIZ, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁶ 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.