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

AB-8322
File: 40-396500 Reg: 04056514

IMELDA CASTELLANOS and RAUL M. CASTELLANOS, dba Rack & Cue Billiards
18615 Sonoma Highway, Space 220, Boyes Hot Springs, CA 95476,
Appellants/Applicants

v.

RICHARD D. ARENDT, ET AL.,
Respondents/Protestants

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stewart A. Judson

Appeals Board Hearing: April 7, 2005
San Francisco, CA

ISSUED JUNE 24, 2005

Imelda Castellanos and Raul M. Castellanos, doing business as Rack & Cue Billiards (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which denied their application for issuance of an on-sale beer license.

Appearances on appeal include appellants/applicants Imelda Castellanos and Raul M. Castellanos, appearing through their counsel, Beth Aboulafia; respondents/ protestants Richard D. Arendt, et al.; and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

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[1]The decision of the Department, dated July 22, 2004, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants applied for issuance of an on-sale beer license on or about January 10, 2003. They operate a pool hall with a dozen pool tables and a small fixed bar on the second floor of a small strip mall. They wish to be able to sell beer to their patrons along with soft drinks and snacks.

Protests were filed against issuance of the license, raising several contentions: Normal operation of the premises will interfere with residents' quiet enjoyment of their property and with a nearby private park; issuance will create a traffic problem in the area, tend to aggravate a police problem in the area, and create or aggravate an undue concentration of licenses in the area; the proposed premises was not properly posted; and granting the license would be contrary to public welfare and morals. The Department conducted an investigation and concluded that the application should be denied on the bases that issuance of the license would create or add to law enforcement problems, the proposed premises is located in an area of undue concentration based on crime statistics, and operation of the business would interfere with the residences of the 17 protestants.

At the administrative hearing held on May 6, 2004, documentary evidence was received and testimony concerning the application and the protests was presented.

Before locating the pool hall in the Fiesta Plaza shopping mall, co-applicant Raul Castellanos (Castellanos) researched the area and ascertained that there are no similar businesses in the vicinity. Appellants and their family members maintain the business; Castellanos himself works at the pool hall 11 or 12 hours a day, 7 days a week. He testified that he tolerates no loitering or bothersome behavior from people who enter the pool hall, and that appellants intend to have a facility where families will feel

comfortable to play pool, watch sports, and have drinks and snacks. For 11 years prior to opening the business in Boyes Hot Springs, appellants had a similar facility in Napa that was licensed by the Department, with no record of discipline on that license.

The strip mall in which appellants' pool hall is located has about 10 other businesses, including a multiplex movie theater, a market, a laundromat, and a video store. There is a large parking area in front of the buildings and a smaller area in back. The mall owners have renovated the mall and installed security cameras, including several in the hall and stairway to appellants' business. Security guards make periodic checks on the businesses each night. Loitering and public consumption of alcoholic beverages, which had sometimes been a problem there previously, has decreased markedly at the mall through the combined efforts of the owners and the tenants.

Northeast of the mall is a residential development known as Mission Oaks; all the protestants live in this area. None of the protestants live within 100 feet of the proposed premises, and there was no evidence that any of the residential property in Mission Oaks directly abuts the mall property. There is no direct access from Fiesta Plaza to the Mission Oaks neighborhood; between the Plaza and the residential neighborhood there is a solid wall, six to eight feet high.

Subsequent to the hearing, the Department issued its decision dismissing all but one of the protest issues. The protests were sustained on the remaining issue, that "[i]ssuance of the license will aggravate an undue concentration of licenses in the area" (Det. of Issues IX), and applicants' petition was denied because "[t]he proposed premises is in an area of undue concentration" and the Department determined that "[a]pplicants have not demonstrated that public convenience and necessity will be served by issuance of the license" (Det. of Issues IV).

Appellants filed an appeal making the following contentions: 1) The findings do not support the decision; 2) appellants were not required to establish that public convenience or necessity would be served by issuance of the license; and 3) even if appellants were required to establish public convenience or necessity, the determination that they failed to do so was erroneous. The first two contentions are related and will be discussed together.

DISCUSSION

Business and Professions Code[2] section 23958 provides, in part, that the Department "shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or . . . would result in or add to an undue concentration of licenses, except as provided in Section 23958.4." Undue concentration is deemed to exist when the area in which the applicant premises is located has a specified greater-than-average number of reported crimes or the ratio of certain licenses to the census-tract population exceeds the ratio of similar licenses to the county's population. (Bus. & Prof. Code, § 23958.4, subds. (a)(1) & (a)(2).) Where undue concentration exists, a license may still be granted if the applicant shows that public convenience or necessity would be served by issuance of the license. (Bus. & Prof. Code, § 23958.4, subd. (b)(2).)

In the Department's Findings of Fact, following a description of the proposed premises is a section entitled "UNDUE CONCENTRATION/LAW ENFORCEMENT PROBLEM" comprising paragraphs IX through XVI. Paragraph IX describes the computation of crime statistics according to subdivision (a)(1) of section 23958.4

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

showing that the reporting district in which the proposed premises is located is "a high crime reporting district" and is "by definition . . . an area of undue concentration of retail licenses." Paragraph X describes the Department's contacts with a representative of the Sheriff's Department regarding crime and police calls to the Plaza, and paragraph XI notes testimony regarding the private park in Mission Oaks and the lack of evidence of either a parking or noise problem in the residential area. We quote the remainder of the "UNDUE CONCENTRATION/LAW ENFORCEMENT PROBLEM" findings because they are the most pertinent to the present appeal:

> XII - The Department did not receive a statement from the County of Sonoma indicating a determination that issuance of the license would serve public convenience and necessity.[3] Applicants submitted a letter dated January 14, 2003, stating their intention "to hold to very high standards" regarding their intended operation, including carefully screening customers and monitoring purchases "made by any one customer." Applicants assert they "can more accurately assess their intake, limit their purchases to [sic] beer, and better control a family atmosphere where customers can enjoy the entertainment..." Applicants concluded by stating, "The sale of beer has always been requested by our customers, represents an important enhancement to our operations, and adds profit essential to the financial success of *Rack and Cue*."
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> XIII - The Department concluded that this letter failed to demonstrate in what manner public convenience and necessity would be served by issuance of the license. A careful reading of the letter shows that the Department's determination was neither arbitrary nor capricious.
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> XIV - The evidence establishes that there is an undue concentration of licenses in this crime-reporting district.

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[3]Subdivision (b)(2) of section 23598.4 provides that, notwithstanding section 23598, the Department may issue a license "[I]f the local governing body of the area in which the applicant premises are located . . . determines . . . that public convenience or necessity would be served by the issuance." If the local governing body does not make such a determination, the Department may still issue a license "if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period."

> XV - The Sheriff did not file a protest against the issuance of this license. Competent evidence did not show the nature of the crime in this reporting district or what problems(s) would be presented to the Sheriff's Department were this license to issue. The mere fact that crime statistics show that this district is a high crime-reporting district as a factor in determining whether there is an undue concentration of licenses does not, in and of itself, show how an additional license will aggravate a law enforcement problem in the absence of some competent evidence indicating so.
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> XVI - The evidence did not establish that issuance of the license will create or aggravate a law enforcement or police problem in the area.

In the part of the Determination of Issues headed "PETITION" (¶¶ III - V), the decision states that issuing the license will not tend to create or aggravate a law enforcement problem (¶ III) nor interfere with residents within 600 feet of the proposed premises (¶ V). Paragraph IV, the basis for denial of the petition (Order, ¶ 3) states:

> The proposed premises is in an area of undue concentration of licenses (Business and Professions Code section 23958.4(a)(1)). Applicants have not demonstrated that public convenience and necessity will be served by issuance of the license (Business and Professions Code section 23958.4(b)(2)). Cause for denial of respondents' petition exists under Article XX, Section 22 of the California State Constitution and Business and Professions Code section 23958.4(a)(1) in that respondents failed to demonstrate public convenience and necessity would be served by issuance of the license (Business and Professions Code section 23958.4(b)(2)).

The second part of the Determination of Issues, headed "PROTESTS" (¶¶ VI - XII), concludes that operation of the premises will not interfere with residents' quiet enjoyment of their property or with the private park in Mission Oaks (¶¶ VI, XI); that issuance will neither create a traffic problem nor aggravate a police problem (¶¶ VII, VIII); and that the proposed premises was properly posted with notice of the application for license (¶ X). The protests were sustained based on paragraphs IX and XII (Order, ¶ 4), which state that "Issuance of the license will aggravate an undue concentration of licenses in the area," and "Granting of the license will be contrary to public welfare and

morals under Article XX, Section 22 of the California State Constitution and Business and Professions Code section 23598.4."

I

Appellants contend the findings do not support the determination that issuance of the license would "aggravate an undue concentration of licenses in the area." (Det. of Issues IX.) They reason as follows: undue concentration was determined to exist in the present case under subdivision (a)(1) of section 23958.4, based on the number of reported crimes in the reporting area; under subdivision (a)(2), which looks at the ratio of licenses to population in the census tract, there was *not* an undue concentration of licenses in the census tract;[4] logically, issuance of this license could only "aggravate an undue concentration of licenses in the area" if it aggravated, or increased, crime in the area, since crime statistics were the basis for determining that undue concentration existed; paragraph XVI of the Findings of Fact states that "[t]he evidence did not establish that issuance of the license will create or aggravate a law enforcement or police problem in the area"; therefore, paragraph XVI does not support, and directly contradicts, the determination that issuance would aggravate the undue concentration of licenses.

In addition, appellants assert, the findings do not establish that issuance of the license would *result in* an undue concentration of licenses. Without a finding that issuance of the license would either result in or add to an undue concentration, appellant argues, the Department had no authority under section 23958 to deny the license or to require a showing of public convenience or necessity.

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[4]The Department investigator's report showed that, using subdivision (a)(2), 15 licenses were allowed in the census tract, but only 3 existed.

This case points up an analytical difficulty created by the alternative methods used in section 23598.4 to determine "undue concentration." Subdivision (a)(2) seems to be more logically related to the term used in section 23958, "an undue concentration of licenses," since it involves computing ratios of licenses to population and comparing the ratios for the census tract and the county. To find out if issuing a particular license "would result in or add to" an excessive number of licenses in an area, one merely has to count how many licenses would exist in the area if the license applied for were issued and compare that number with the number of licenses allowed pursuant to the subdivision (a)(2) computation.

Subdivision (a)(1), however, with which we are concerned in the present case, disregards entirely the number of licenses in an area, relying instead on a comparison of the number of "reported crimes"[5] in a "reporting area" with the average number of reported crimes for the entire jurisdiction of the local law enforcement agency. With no benchmark number of licenses to compare with the number of licenses that would exist if the applied-for license were issued, how does one know if issuance will "result in or add to an undue concentration of licenses"?

Appellants' solution is to look at the effect of issuance on *crimes*, since that is the basis for the subdivision (a)(1) computation. They would have us look at whether issuing the license "would tend to create a law enforcement problem," which is the

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[5]"Reported crimes" means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(Bus. & Prof. Code, § 23958.4, subd. (c)(2).)

alternative basis for denying a license application under section 23958. In this case, the ALJ found no evidence that issuance of this license would create or aggravate a law enforcement or police problem in the area (Findings of Fact XVI, Det. of Issues III & VIII), and appellants conclude that this is the same as saying that issuance would not "aggravate an undue concentration of licenses in the area," where undue concentration is based on crime statistics. This conclusion, appellants urge, directly contradicts paragraph IX of the Department's Determination of Issues.

However, "law enforcement problem" and "undue concentration" are separate criteria for denial. "[A]n applicant with a tendency to 'create a law enforcement problem' may have his application denied whether he is in a neighborhood of undue concentration or not." (*Department of Alcoholic Bev. Control v. Alcoholic Bev. Etc. Appeals Bd. (Kolender)* (1982) 136 Cal.App.3d 315, 320, fn. 4 [186 Cal.Rptr. 189].)

Using appellants' solution essentially does away with subdivision (a)(1) entirely, because it would require the rest of section 23958.4 to be ignored if undue concentration were determined using subdivision (a)(1); instead, the inquiry would switch to whether there would be aggravation of a law enforcement problem. However, the basic tenets of statutory construction require that statutes be read in such a way as to give effect to every provision (*Reimel v. Alcoholic Beverage Control Appeals Board* (1967) 256 Cal.App.2d 158, 167 [64 Cal.Rptr. 26]), and "[a]n interpretation that renders statutory language a nullity is obviously to be avoided." (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 357 [19 Cal. Rptr. 2d 882].)

The Department's apparent solution is to require that *whenever* undue concentration is determined to exist by virtue of subdivision (a)(1), the applicant must demonstrate that public convenience or necessity would be served by issuance of the

license. This interpretation seems to ignore the language of section 23958 mandating denial of an application only where issuance would *result in or add to* an undue concentration of licenses. However, since subdivision (a)(1) is not concerned with the number of licensed premises, it can be said that issuance of *any* license may be considered to result in or add to an undue concentration of licenses as determined under subdivision (a)(1). Presumably, in a "high crime area" it is desirable, in general, to limit the number of alcoholic beverage outlets, given the accepted connection between crime and the use of alcoholic beverages. (See, e.g., *Department of Alcoholic Bev. Control v. Alcoholic Bev. Etc. Appeals Bd. (Diez)* (1982) 133 Cal.App.3d 814, 820 [184 Cal.Rptr. 367].) Requiring a showing of public convenience or necessity when undue concentration exists due to "high crime" appears to be a reasonable alternative to a complete prohibition on issuance of licenses in such an area.

We believe the Department's apparent interpretation is more reasonable than that of appellants. When a statute is subject to more than one interpretation, the construction to be preferred is the one that is more reasonable. (See *People ex rel. Department of Public Works v. Murata* (1960) 55 Cal.2d 1, 7 [357 P.2d 833; 9 Cal.Rptr. 601]; *Patell Estate* (1963) 221 Cal.App.2d 376 [34 Cal.Rptr. 512].) We cannot say that it is unreasonable to require a showing that issuance of the license in such a situation would serve public convenience or necessity.

II

Appellants contend the determination that they failed to demonstrate public convenience or necessity is erroneous because they were not required to show public convenience or necessity, the ALJ used the wrong standard for determining public convenience or necessity, and the determination is not supported by the findings.

The Department is authorized by the California Constitution to exercise its discretion to deny an alcoholic beverage license if the Department reasonably determines for "good cause" that granting such license would be contrary to public welfare or morals. The Department's discretion " 'is not absolute but must be exercised in accordance with the law, and the provision that it may revoke [or deny] a license "for good cause" necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare and morals.' " (*Martin v. Alcoholic Beverage Control Appeals Board* (1961) 55 Cal.2d 867, 876 [13 Cal.Rptr. 513], quoting *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 775.) "[T]he Department's role in evaluating an application for a license to sell alcoholic beverages is to assure that the public welfare and morals are preserved 'from probable impairment in the future.' " (*Kirby v. Alcoholic Beverage Control Appeals Board (Schaeffer)* 7 Cal.3d 433, 441 [102 Cal.Rptr. 857, 498 P.2d 1105].)

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. (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].)

Appellants' first assertion, that they were not required to show public convenience or necessity because the existence of undue concentration was determined under subdivision (a)(1) of section 23958.4 rather than subdivision (a)(2), is rejected in section I of this decision: Appellants are required to show that public convenience or necessity would be served by issuance of the license regardless of the subdivision used to determine that undue concentration exists.

As to the ALJ's use of the wrong standard, we agree with appellants. The requirement is to show public convenience *or* necessity; throughout, the ALJ used the phrase "public convenience *and* necessity." The Appeals Board stated in *Dahdah Trading Corporation* (1999) AB-7304, that the latter is a stricter, and erroneous, standard. (See *Sepatis v. Alcoholic Bev. Etc. Appeals Bd*. (1980) 110 Cal.App.3d 93, 99 [167 Cal.Rptr. 729] (*Sepatis*) [public convenience *and* necessity "arguably more restrictive because of the conjunctive"].) Although we cannot say that this error of law, by itself, is sufficient to require reversal of the Department's decision, this is not the only error we find in this decision.

Finding of Fact XIII is the apparent basis for the determination that appellants did not show public convenience or necessity: "The Department concluded that [appellants'] letter failed to demonstrate in what manner public convenience and necessity would be served by issuance of the license. A careful reading of the letter shows that the Department's determination was neither arbitrary nor capricious." We believe this finding is insufficient to support the determination that appellants did not show public convenience or necessity.

The courts have noted the importance of findings in an agency decision "to expose the agency's mode of analysis to a reviewing court." (*Department of Alcoholic*

Bev. Control v. Alcoholic Bev. Control Appeals Bd. (1981) 122 Cal.App.3d 549, 555 [175 Cal.Rptr. 342]; *Bakman v. Department of Transportation* (1979) 99 Cal.App.3d 665, 688 [160 Cal.Rptr. 583]; *Kirby v. Alcoholic Bev. Control Appeals Bd. (Lopez)* (1969) 3 Cal.App.3d 209, 218 [83 Cal.Rptr. 89]; see also *Robinson v. State Personnel Bd.* (1979) 97 Cal.App.3d 994, 1003-1004 [159 Cal.Rptr. 222].)

The California Supreme Court, in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836, 522 P.2d 12] (*Topanga*)), stated that an agency, in its decision, "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." The court explained that:

> Among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions. [Citations.] In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis. [Citations.]
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> Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency. Moreover, properly constituted findings enable the parties to the agency proceeding to determine whether and on what basis they should seek review. [Citations.] They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable. [Fns. omitted.]

(Topanga, *supra*, at pp. 516-517.)

The finding in question tells us only that the Department found appellants' letter to be inadequate. The ALJ does not explain why he believed appellants had failed to demonstrate that public convenience or necessity would be served by issuance of the

license; instead, the ALJ simply deferred to the Department's determination of this issue. In doing so, he gave no clue to whatever analysis of the letter he conducted, but simply posed a challenge to the reader, including this Board and any court that may review this decision, to figure out what about the letter is lacking. This does not provide the requisite bridge for the analytic gap; it is more like a providing a hatchet, pointing to the forest, and telling us to build our own bridge.

This lack of "roadsigns" is particularly egregious because the term "public convenience or necessity" is a standard without a definition. Department findings have been challenged before due to the lack of a definition for public convenience or necessity, and this Board has rejected such attacks where the licensee has successfully shown the existence of public convenience or necessity and thus qualified for a license in an area of undue concentration.[6] However, the lack of a definition or standard becomes more troublesome when an application is denied.

The court in *Sepatis*, *supra*, upheld the Department's exercise of discretion in granting a license to a bar in an area of undue concentration in San Francisco where the Department held that the license would serve public convenience or necessity because it " 'will appeal to all segments of the community including many residents and business people in the area who are presently reluctant to enter other bars in the vicinity.' " (*Sepatis*, *supra*, 110 Cal.App.3d at p. 97.) The court in its discussion noted that, "The real problem stems from the fact that neither the statute nor the Department's rules contain any definition of the term 'public convenience or necessity' as that term is used in section 23958, nor do they indicate just what criteria (apart

[6]See, e.g., *Lissner v. Picetti* (2002) AB-7794; *Vogl v. Bowler* (1997) AB-6753.

from criteria relevant to determination of 'undue concentration') are denoted by that concept." (*Id*. at p. 99.)

The court held that, in making a determination as to public convenience or necessity, "matters of aesthetics and predicted mode of operation are not beyond [the Department's] reach in exercising its discretionary powers." (*Sepatis*, *supra*, 110 Cal.App.3d at p. 101.) It also warned, however, that when the Department determines public convenience or necessity based on the character of a premises or the segments of the public to whom the premises might appeal, "the denial of a license for *failure* of the applicant to show public convenience or necessity, might well give rise to meritorious claims of arbitrary administrative action," unless the Department adopts "standards susceptible of meaningful review." (*Id*. at p. 100, original italics.)

Here, we lack both a meaningful standard of review for what constitutes "public convenience or necessity" in general, and a meaningful statement of how appellants failed to meet that standard. It is as if the Department were saying to the applicants, "You must show how public convenience or necessity will be served by issuing this license, but you have to guess what public convenience or necessity means, and if you don't get it right, we don't have to tell you, or the Appeals Board or the courts, what was lacking; you can read what you wrote and figure it out."

An additional problem with the finding is that it is based entirely on appellant's letter. There is no indication that the ALJ or the Department considered information bearing on this issue presented at the hearing through testimony or documentary evidence. The Department may not simply ignore or refuse to consider pertinent and undisputed evidence. (See *Martin v. Alcoholic Beverage Control Appeals Bd.* (1961)

55 Cal.2d 867, 880 [13 Cal.Rptr. 513, 362 P.2d 337].) This record contains evidence and findings that appear very similar to evidence and findings that, in other cases that have come before this Board, the Department has relied on to support a finding of public convenience or necessity.

That is not to say that the evidence in this case supports a finding of public convenience or necessity. Each case must be decided on its own facts, and it is the province of the Department, not this Board, to evaluate the evidence and decide whether good cause exists to deny this license.

> "[T]he department exercises a discretion adherent to the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion upon the same subject. . . . Where the decision is the subject of choice within reason, the Department is vested with the discretion of making the selection which it deems proper; its action constitutes a valid exercise of that discretion; and the appeals board or the court may not interfere therewith. [Citations.] Where the determination of the department is one which could have been made by reasonable people, the appeals board or the courts may not substitute a decision contrary thereto, even though such decision is equally or more reasonable in the premises. [Citations.]"

(*Sepatis*, *supra*, at 102, quoting *Koss v. Dept. Alcoholic Beverage Control* (1963) 215 Cal.App.2d 489, 496 [30 Cal.Rptr. 219].)

It may be there is a legitimate reason for rejecting appellants' petition, but this decision does not provide the requisite basis for reaching such a conclusion, because the findings do not support the critical determinations. With no analysis or explanation, we can only conclude that the Department has acted arbitrarily in denying this application.

ORDER

The decision of the Department is reversed, and the matter is remanded to the Department for such further proceedings as are necessary and appropriate in light of the foregoing discussion.[7]

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

[7]This 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 section 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.