

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

AB-8352

File: 20-389833 Reg: 04057091

MAYA NARAYAN and RAJ NARAYAN dba Elder Creek Market
7025 Elder Creek Road, Sacramento, CA 95824,
Appellants/Applicants

v.

ARTURO VENEGAS, JR.
Chief of Police, Sacramento Police Department
Respondent/Protestant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

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

ISSUED SEPTEMBER 30, 2005

Maya Narayan and Raj Narayan, doing business as Elder Creek Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which denied their application for an off-sale beer and wine license.

Appearances on appeal include appellants Maya Narayan and Raj Narayan, representing themselves, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

On June 26, 2002, appellants applied to the Department for the issuance of an

¹The decision of the Department, dated November 4, 2004, is set forth in the appendix.

off-sale beer and wine license for their store located at 7025 Elder Creek Road in Sacramento. Twenty-one persons, including the Sacramento Police Chief on behalf of his department, filed protests against the application.

An administrative hearing was held on July 14 and 15 and October 14, 2004, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that it was precluded by Business and Professions Code section 23790² from issuing the license because appellants lacked a special permit required by a valid zoning ordinance of the City of Sacramento.

Appellants thereafter filed a timely appeal. Appellants have not filed a brief, but in their notice of appeal challenged the validity of the zoning ordinance.

DISCUSSION

The City of Sacramento has a zoning ordinance which requires stores to have a special use permit before they may sell alcoholic beverages. The City has declined to grant such a permit to appellants. Consequently, the Department, as required by Business and Professions Code section 23790, has declined to issue the off-sale beer and wine license sought by appellants.

² Section 23790 provides, in pertinent part:

No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid ordinance of any county or city. Premises which had been used in the exercise of those rights and privileges at a time prior to the effective date of the zoning ordinance may continue operation under the following conditions:

(a) The premises retain the same type of retail liquor license within a license classification.

(b) The licensed premises are operated continuously without substantial change in mode or character of operation.

Written notice of the opportunity to file briefs in support of the appellant's position was given on March 24, 2005. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review. There is nothing in the record that would indicate that any of the exceptions to section 23790 are applicable.

It appears to us that appellants' remedy, if any, is only by way of appeal from the decision by the City to refuse the special permit. There is nothing in the record to indicate appellants have done so. In our view, it would be inappropriate for the Department or this Board to consider a challenge to the validity of the ordinance in question, since the City is not a party to these proceedings.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, Acting Chairman
SOPHIE C. WONG, 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.