

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

AB-8566

File: 21-416402 Reg: 06062071

ANTOUN NAIEM NAMEH and INTWANIT GEORGOS NAMEH,
dba Red Barn Liquor Mart
728 East Ocean Avenue, Lompoc, CA 93436,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: June 7, 2007
Los Angeles, CA

ISSUED DECEMBER 19, 2007

Antoun Naiem Nameh and Intwanit Georgos Nameh, doing business as Red Barn Liquor Mart (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ denying their petition for modification of conditions on their off-sale general license.

Appearances on appeal include appellants Antoun Naiem Nameh and Intwanit Georgos Nameh, in pro. per., and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated June 8, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued, with conditions, on September 28, 2004. Subsequently, appellants petitioned the Department to remove the conditions on their license. The Department denied the petition on February 23, 2006, and appellants requested a hearing to contest the denial.

At the administrative hearing held on April 27, 2006, documentary evidence was received and testimony was presented concerning the bases for original imposition of the conditions, the current crime statistics, the police department's opposition to removing the conditions, and appellants' reasons for asking for removal of the conditions. Subsequent to the hearing, the Department issued its decision which determined that appellants did not carry their burden of showing that changed circumstances warranted the removal of the conditions from the license.

Appellants have filed an appeal making the following contentions: (1) The crime statistics used were incorrect or misinterpreted; (2) the condition restricting the size of bottles sold does not address the problems that caused the original imposition of the condition; and (3) the conditions restricting the size of bottles and the hours of operation adversely and unfairly affect appellants' business.

DISCUSSION

The Department may impose "reasonable conditions" on a license under the authority of Business and Professions Code² section 23800, subdivision (a). That section provides that "If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds

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

that those grounds may be removed by the imposition of those conditions," the Department may grant the license subject to those conditions. Section 23801 states that the conditions "may cover any matter . . . which will protect the public welfare and morals" Section 23803 provides that the Department may remove or modify conditions on a license "if it is satisfied that the grounds which caused the imposition of the conditions no longer exist."

The petition for conditional license that appellants signed in 2004 stated that the conditions were imposed because issuance of the license would tend to create a law enforcement problem or add to an undue concentration of licenses. Therefore, appellants agreed to conditions limiting the area used for displaying distilled spirits, the hours of operation, and the size of bottles of distilled spirits that could be sold, and requiring that they sign an acknowledgment of the retail operating standards set out in section 25612.5. These conditions were attached to the license when it was owned by the prior licensee and continued in effect when appellants purchased the license.

At the hearing, crime statistics, computed according to the requirements of section 23958.4, were presented showing for calendar years 2004 and 2005, that crime reporting sector 161, in which the premises is located, remained an area of "undue concentration" as defined by section 23958.4, subdivision (a)(1).

Appellants contend that the crime statistics used to determine that the premises is located in a "high crime area" are misinterpreted because they do not separate arrests from reported crimes. They argue that the number derived from combining arrests and crimes would not differentiate a sector in which there are many arrests and few crimes from one in which there are few arrests, but many crimes. Therefore, they conclude, the statistics used do not show the reality of the crime situation in the city or

in their sector. They point to local news articles and statements by local officials that the city crime rate is down.

Appellants also argue that crime rates for different sectors cannot be fairly compared, because the sectors vary in geographic and population size, as well as residential and commercial concentrations.

To qualify for modification or removal of the conditions, appellants were required to show "that the grounds which caused the imposition of the conditions no longer exist[ed]."

While appellants make some valid points about the crime statistics used, the definition of a "high crime area" (more properly called an area of undue concentration determined under section 23958.4, subdivision (a)(1)) is set by statute, as are the crime statistics that are used in making that determination. (Bus. & Prof. Code, § 23958.4, subds. (a)(1) & (c).)

The statistics used complied with the requirements of the statute and showed that one of the grounds for imposition of the conditions still existed.

As to the law enforcement problem, the protest of the Lompoc chief of police asserted that the problem still existed as it had in 2003, when the conditions were imposed. Appellants made several arguments asserting that crime was down in Lompoc in general and in their area, but provided no evidence that would support a conclusion that a law enforcement problem no longer existed.

As the ALJ and the Department acknowledged, appellants are responsible and hard-working licensees. However, they have not shown a change in the circumstances causing imposition of the conditions that would warrant removing or modifying the conditions at this time.

ORDER

The decision of the Department is affirmed.³

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

³This 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.