

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

EVERADO M. and HERMINIA GODOY	)	AB-7190
dba La Estrella)	
500 North Brookhurst Street	)	File: 47-277835
Anaheim, CA 92801,	)	Reg: 97041173
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	August 12, 1999
	)	Los Angeles, CA
_____)	
)	

Everado M. and Herminia Godoy, doing business as La Estrella (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 days, with 10 days thereof stayed for a probationary period of one year, for appellants providing entertainment which was audible beyond the area under their control in violation of a condition on their license, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

¹The decision of the Department, dated July 9, 1999, is set forth in the appendix.

Appearances on appeal include appellants Everado M. and Herminia Godoy, appearing through their counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general public eating place license was issued on November 19, 1992. Thereafter, the Department instituted an accusation against appellants charging that they had violated two conditions on their license by permitting persons under the age of 21 in the area of the premises designated "Dance Hall" (Count 1), and by allowing the sound of entertainment in the premises to be audible beyond the area under appellants' control (Count 2).

An administrative hearing was held on April 20, 1998, at which time oral and documentary evidence was received. At that hearing, the Department withdrew and dismissed Count 1 of the Accusation, and testimony was presented regarding the entertainment noise (Count 2) by Lieutenant Steven Thomas Walker (hereinafter "Walker") of the Anaheim Police Department and by Lalo Godoy (hereinafter "Godoy"), appellants' son.

Walker testified that, as he turned into the parking lot of the premises on April 26, 1997, he noticed the front door of the premises was "wide open" and he "could hear the music clearly" [RT 9-10]. As he drove around the northeast corner of the building, the music was even louder [RT 10]. After parking his car, he walked around to various locations and he could hear the music "all the way up to the intersection of Valley and Crescent, roughly 200 yards" [RT 11].

Godoy testified to efforts that appellants had made to keep the music from being heard outside [RT 18]. He also stated, in response to a question from the Administrative Law Judge (ALJ), that the parking lot over which appellants have control ends approximately 40-50 feet from the intersection of Valley and Crescent [RT 24-25].

Subsequent to the hearing, the Department issued its decision which determined that the allegations of Count 2 were proven.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants contend that the evidence does not support the findings and the findings do not then support the decision.

DISCUSSION

Appellants contend that the evidence does not support Finding IV, that “entertainment provided at [appellants’] licensed premises was audible outside the area under [appellants’] control.” They argue that there is no evidence establishing that any noise heard was from “entertainment” provided by the licensee, postulating that the sounds heard “could have been the result of a band practicing, a clean-up crew with a radio or stereo system being played, or any number of other possibilities.” (App. Br. at 4.) Appellants also contend there was no evidence that the premises was the source of the noise; that the premises was open and operating at the time Walker was there; or that the noise Walker heard at the intersection of Crescent and Valley was the same noise he heard near the entry to the premises. (App. Br. at 3.)

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v.

National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].) Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].) We find that there is substantial evidence in the record to support the findings and the decision.

Walker testified specifically that he heard “music emitting from the walls of the business” and answered affirmatively the question, “You went to several different locations and at each location you noted that you could hear the music coming from within the La Estrella restaurant?” [RT 10]. This testimony establishes that the noise Walker heard at all the locations he visited was coming from the premises. It also establishes that what he heard was music. Absent any evidence to the contrary, the ALJ was justified inferring that the music was entertainment coming from, and provided by, appellants’ premises. While appellants appear to have made efforts to soundproof the premises, those efforts were not successful on the night in question.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.