

ISSUED OCTOBER 19, 2000

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

THE STUMPS, INC.	)	AB-7460
dba The Stumps)	
5947 Adobe Road	)	File: 48/58-282228
29 Palms, CA 92277,	)	Reg: 98044581
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	August 3, 2000
	)	Los Angeles, CA

The Stumps, Inc., doing business as The Stumps (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellant's on-sale general public premises license for 15 days, with all 15 days stayed during a one-year probationary period, for an employee attempting to prevent two victims of the crime of battery from making a report of the crime to a law enforcement agency, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivision (a), arising from a violation of Penal

¹The decision of the Department, dated July 22, 1999, is set forth in the appendix.

Code §136.1(b)(1).

Appearances on appeal include appellant The Stumps, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on April 14, 1994. Thereafter, the Department instituted an accusation against appellant charging a violation of the Penal Code. An administrative hearing was held on December 14, 1998, and April 21, 1999, at which time oral and documentary evidence was received.

Subsequent to the hearing, the Department issued its decision which determined that there was a violation. Appellant thereafter filed a timely notice of appeal.²

In its appeal, appellant raises the issues that the determination and findings are not supported by substantial evidence.

DISCUSSION

Appellant argues that the findings are not supported by substantial evidence, arguing that the alleged improper acts or language were merely advice as to timing of any report of the crime to the police, and not as to whether a report should be filed. Also, the argument is that "[T]he statute requires more than mere counseling or suggestion. The statute requires that the perpetrator specifically intend the victim to not file a report."

²The accusation sets forth three counts, two of which were rejected by the Administrative Law Judge (ALJ), as not sufficiently proven.

Finding XIII found that Fromdahl, a bouncer “advised them [the victims] they should not call the police.” The record shows that two of the three marines were battered by an unidentified patron while the marines were watching a show at the premises. Advice was given to the marines, some of which was good and practical, that they could be disciplined by the Corps if they reported the incident to the police while in an intoxicated condition [I RT 17-18]. The marines left the premises due to the return of the assailant with a possible weapon, went to the home of one of the marines, called their Marine Officer of the Day and made a report, and thereafter called the police [II RT 16]. The Appeals Board feels great sympathy for the bouncer, himself a marine, who stated on the record that his attempt was to delay the calling of the police for the purpose of allowing time for the sobering process to take effect, thus protecting the marines involved from marine discipline, and also, possibly forestalling another confrontation with the previous assailant who may have had a weapon. However, such well meaning views and intent may not be as great a factor as appellant would desire. This issue is not as broad as appellant would have the Appeals Board consider. The statute states in pertinent part:

“... every person who attempts to prevent or dissuade another person who has been a victim of a crime ... from doing any of the following ... (¶) Making any report of that victimization to any peace officer”

Webster’s Third New International Dictionary, 1986, defines:

1. the word “attempt” as “... to make an effort to do, accomplish, solve, or affect (a problem) ...,” at page 140;
2. the word “prevent” as “... to keep from happening or existing esp. by precautionary measures ... to hold or keep back (one about to act) ...,” at page 1798;

3. the word “dissuade” as “... to advise or exhort against (an action) ... to advise (a person) against something – usu. used with from (a faithful monitor persuading us to whatever in conduct is gentle, honorable, of good repute, and so silently dissuading us from base thoughts, low ends, ignoble gains ... to divert by advice or persuasion: turn from something by reasoning ...,” at page 657.

The Administrative Law Judge (ALJ) called the statute harsh in this particular factual situation, and finds little by the technical violation of the law, to condemn the actions of appellant’s employees [Determination of Issues IV and V].

While we agree with the feelings of the ALJ, we also determine that the bouncer, a marine, did attempt to dissuade the marines from reporting the crimes (the question of refusal to allow use of the inside the premises phones is not an issue) [II RT 44, ln 8-9]. It is our view that public policy must demand that no one attempt to restrain the report of crimes, allowing for the open, immediate, and fair resolution of all public offenses.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
 RAY T. BLAIR, JR., MEMBER
 E. LYNN BROWN, MEMBER
 ALCOHOLIC BEVERAGE CONTROL
 APPEALS BOARD

³This 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.