

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

CALIFORNIA AB, INC.	)	AB-7275a
dba Sweetwater Texaco)	
2615-K Sweetwater Springs Blvd.	)	File: 20-326675
Spring Valley, CA 91978,	)	Reg: 98043955
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 6, 2000
	)	Los Angeles, CA

California AB, Inc., doing business as Sweetwater Texaco (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied its petition for the removal of a condition on its license limiting the hours during which alcoholic beverages may be sold.

Appearances on appeal include appellant California AB, Inc., appearing through its counsel, Freddy Abraham Garmo, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant acquired its off-sale beer and wine license in 1997. When the existing license was acquired, it was encumbered by conditions which appellant

¹The decision of the Department, dated June 24, 1999, is set forth in the appendix.

then assumed, one of which was the condition limiting hours of sale to those between 7:00 a.m. and 12:00 midnight. Appellant's petition for conditional license recites that the license was originally conditioned due to a law enforcement problem in the area. (See Exhibit 2.)

Appellant notified the Department by letter dated April 16, 1998 (Exhibit 1, page 3) of its request that the condition in question be modified to permit sales of alcoholic beverages until 2:00 a.m. Appellant's request was the subject of an administrative hearing held on April 22, 1999, at which time oral and documentary evidence was received.² At that hearing, testimony was presented by Department witnesses Heidi Roji, an investigator employed by the Department, and Roberta Bethea, a lieutenant with the San Diego County Sheriff's Department, and by Saad Attisha, a vice-president of appellant.

Roji testified that statistics she had been provided by the Sheriff's Department demonstrated that the premises was located in a high crime area, and, for that reason, the Sheriff's Department opposed the request for modification.

Bethea also testified that the premises were located in a high crime area, the reason the Sheriff's Department opposed the application.

Attisha testified that he was orally advised by the sergeant in the Sheriff's Department primarily responsible for the area where the premises is located that he saw no problem with that area, so Attisha should "go ahead and apply" for the

² A hearing was initially conducted on September 4, 1998, following which an order that the petition be deemed abandoned was entered by default, appellant having failed to appear. (See Exhibit 3.) Thereafter, pursuant to stipulation, that order was vacated, giving rise to the hearing from which the present appeal has been taken.

modification. Attisha also described various things he had done to deter any crime in the area, such as adding additional lighting, installing a surveillance camera, and cleaning the parking lot of litter.

Appellant also introduced statistical data obtained from the Sheriff's Department, but, as the ALJ noted, included only crime data, and none for arrests.

Subsequent to the hearing, the Department issued its decision, which determined that appellant had failed to demonstrate that the grounds which had caused the imposition of the condition in question no longer existed.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) whether appellant met its burden of establishing that the grounds which caused the imposition of the condition no longer exist; and (2) whether the Department's decision is supported by substantial evidence. These issues are interrelated, and will be considered as one.

DISCUSSION

Appellant contends that it demonstrated by a preponderance of the evidence that the grounds for the imposition of the license condition - a law enforcement problem - no longer exist.

The issue is whether the decision is supported by substantial evidence in light of the entire record. Appellant has challenged the decision as not based on substantial evidence. That challenge must fail.

"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 [71 S.Ct. 456]; 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].)

Appellant offers a number of reasons why the decision is in error, but none of its contentions are persuasive.

The statistical data offered by appellant did not refute that offered by the Department (in Exhibit 5) which showed that the area where appellant's gas station is located is a high crime area, registering 164.9 percent of the average level of crimes and arrests in the jurisdiction of the Sheriff's Department. Appellant argues, without any legal support, that the focus should be on the specific location of the premises, and, since it has been free of any crimes or violations, there can be no law enforcement problem.

Appellant goes outside the record to argue that his client is being treated differently from other licensees in the immediate area who do not have conditions on their licenses. This argument was not made at the hearing, and no evidence was offered to show this was the case.

Appellant also argues that the license condition was imposed in the first instance because of the conduct of one of the former owners. A copy of the original petition for conditional license is attached to appellant's brief. The ALJ

sustained the Department's objection to the admissibility of this same document at the hearing.

Appellant claims, without any supporting evidence, that this document demonstrates that the condition that a named individual have no ownership interest or employment in the business was the reason for the limitation on hours of operation, and, therefore, the objection to the application by the Sheriff's Department should be disregarded.

The recitals in the original petition for conditional license indicate that the condition relating to hours of sale antedated the circumstances which led to the condition barring the named individual from involvement in the business. That being so, it would appear that appellant's claim that the conduct of that individual is responsible for the license condition is little more than surmise.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

Board Member Ray T. Blair, Jr., did not participate in the deliberation of this appeal.

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.