

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

AB-7367

File: 20-338275 Reg: 98044364

LAITH S. ARABO, SR., AND SABRI P. ARABO dba Red Bird Market
2035 Highland Avenue, National City, CA 91950,
Appellants/Applicants

v.

SKIP DiCERCHIO, et al., Respondents/Protestants

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: March 7, 2002
Los Angeles, CA

ISSUED MAY 16, 2002

Laith S. Arabo and Sabri P. Arabo, doing business as Red Bird Market (appellants/applicants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which denied their application for an off-sale beer and wine license and sustained the protests of Skip DiCerchio, Chief, National City Police Department; Jose Arevalo, Jr.; Ruth Arevalo; Noemi P. Arevalo; Tom Horton; Ayne B. Majul; and Troy O. Owens (respondents/protestants).

Appearances on appeal include appellants/applicants Laith S. Arabo and Sabri P. Arabo, appearing through their counsel, John J. McCabe, Jr.; protestants Skip DiCerchio Chief, National City Police Department, appearing through Lieutenant

¹The decision of the Department, dated March 4, 1999, is set forth in the appendix.

William Osborne; Jose Arevalo, Jr.; Ruth Arevalo, appearing through Jose Arevalo, Jr.; Noemi P. Arevalo; Tom Horton; Ayne B. Majul; and Troy O. Owens; and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Protests were filed against appellants' application for an off-sale beer and wine license for their small, family-owned grocery store and, following an investigation pursuant to Business and Professions Code §23958, the Department denied the application.

An administrative hearing was held on January 7, 1999, at which time documentary evidence was received and testimony was presented by Department investigator Jenny Hill; by protestants Troy Owens, Tom Horton, Jose Arevalo, Jr., and Ayne Majul; by crime analyst Beverly Sturk, Sergeant Lanny O'Roark, and Lieutenant William Osborne, all of the National City Police Department; and for appellants by realtor Manuel Lopez and co-applicant Laith Arabo.

Subsequent to the hearing, the Department issued its decision sustaining the protests and denying the petition for license.

Applicants thereafter filed a timely notice of appeal in which they raise the following issues: (1) The evidence does not support the findings and the findings do not support the decision; (2) the Department's decision did not contain proper findings showing "good cause" for denying the license; and (3) the citizen protests were without merit. All three of these issues are interrelated and will be discussed together.

DISCUSSION

Appellants contend the decision is deficient because there is insufficient evidence to support the findings and determinations, and it does not provide any analysis showing why the protests were sustained, but only a series of conclusionary statements. Even with its broad discretion, appellants assert, the Department must base its decisions on sufficient evidence to show "good cause," and the decision must reveal the Department's analysis with sufficient particularity to allow review.

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals. The Department's exercise of discretion "is not absolute but must be exercised in accordance with the law, and the provision that it may revoke [or deny] a license "for good cause" necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare and morals." (Martin v. Alcoholic Beverage Control Appeals Board (1961) 55 Cal.2d 867, 876 [13 Cal.Rptr. 513] quoting from Weiss v. State Board of Equalization (1953) 40 Cal.2d 772, 775.) "[T]he Department's role in evaluating an application for a license to sell alcoholic beverages is to assure that the public welfare and morals are preserved 'from probable impairment in the future.'" (Kirby v. Alcoholic Beverage Control Appeals Board (Schaeffer) 7 Cal.3d 433, 441 [102 Cal.Rptr. 857, 498 P.2d 1105].)

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board

may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

"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]; 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].) Rather, 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

²The California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board, supra, 7 Cal.3d at 439 (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]; Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

The proposed premises is a small neighborhood market with a full line of groceries, including fresh produce and meat, and a full-time butcher. It is located in National City on Highland Avenue, a major north/south thoroughfare in the city. The area around the market is a mix of residential and commercial properties.

Residences behind the market, to the east, are separated from it by an alley. Adjacent to the market's property, to the north, is the residence of one of the protestants, Ayne Majul. Appellants built a new fence that separates their property from Ms. Majul's. To the north beyond Ms. Majul's house, the properties are essentially all commercial, as are those on the other side of Highland Avenue. Across the street to the south is Hi-Bev Liquor, a premises with an off-sale general license. The Church of God of Prophecy is located a block to the east of the market, on the other side of the street.

A previous tenant of the property held an off-sale beer and wine license until surrendering it in January 1997; that license was cancelled in January 1998. The market was apparently closed in July 1997. Sometime during July or August 1998, appellants began remodeling the market, and they opened for business as Red Bird Market on about September 1, 1998.

The ultimate determination that granting the license would be contrary to public welfare and morals (Determination X) was based on the following determinations:

applicants failed to show that operation of the business would not interfere with the quiet enjoyment of nearby residents (Determination III); issuance of the license would result in or add to an undue concentration of licenses and it was not established that public convenience or necessity would be served by issuance of the license (Determination VI); because the market is within 600 feet of two churches, denial was within the discretion of the Department (Determination IX); and issuance of the license would tend to create a law enforcement problem (Determination V).

Appellants are accurate when they state that the decision "merely contains a series of conclusionary statements, with no recitation to the facts or the law to uphold them." Our review has been hampered by the almost total lack of analysis in the decision. The courts have noted the importance of findings in an agency decision "to expose the agency's mode of analysis to a reviewing court." (Department of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (1981) 122 Cal.App.3d 549, 555 [175 Cal.Rptr. 342]; Bakman v. Department of Transportation (1979) 99 Cal.App.3d 665, 688 [160 Cal.Rptr. 583]; Kirby v. Alcoholic Bev. Control Appeals Bd (Lopez) (1969) 3 Cal.App.3d 209, 218 [83 Cal.Rptr. 89]; see also Robinson v. State Personnel Board. (1979) 97 Cal.App.3d 994, 1003-1004 [159 Cal.Rptr. 222].) "Proper findings 'direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action.' (Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836, 522 P.2d 12].)" (Department of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. *supra.*)

With these principles in mind, we will examine each of the determinations listed above to see if they are supported by the findings and if the findings upon which they are based are supported by substantial evidence.

1. Applicants failed to show that operation of the business would not interfere with the quiet enjoyment of nearby residents (Determination III) –

Department Rule 61.4 (4 Cal. Code Regs. §61.4) prohibits issuance of a retail license where a premises, or its parking area, is located within 100 feet of a residence, unless the applicant establishes that operation of the business would not interfere with the quiet enjoyment of their property by the residents. In Determination of Issues III, the ALJ, after reciting Rule 61.4, stated:

"Even though the [applicants] are willing to accept several conditions which they feel will help to alleviate the concerns of the nearby residents, the [applicants] have not met the requirement of the rule stated above by reasons of Findings III and VII."

Finding III noted that four of the ten residents living within one hundred feet of the premises filed protests and recited the concerns of two of those protestants that if a license were granted, there would be a recurrence of the problems of loitering, littering, and urination in the alley which occurred when the premises was licensed previously under a different operator. Finding VII states:

"Petitioner, Laith Arabo, Sr., testified that he completely renovated the premises at a cost in excess of one hundred fifty thousand dollars, that he and two employees frequently walk around the building to check for litter and graffiti, that the Petitioners are willing to accept several conditions to alleviate the concerns of the Protestants in this matter and that they want the premises to remain a family market. The market has a produce department and a meat department with a full time butcher. However, the Petitioners feel that they have lost business because they cannot provide a one stop market to their customers without offering beer and wine as well as groceries. The closest grocery store with a full line of groceries is located a half mile away."

We are at a loss to know how Findings III and VII lead to the conclusion that appellants failed to show that operation of the business would not interfere with the quiet enjoyment of nearby residents. The decision provides no analysis to indicate how the ALJ got from those facts and law to that determination. Findings III and VII actually

support a determination that appellants did show that operation of the business would not interfere with the nearby residents' quiet enjoyment of their properties, since Finding III sets out the concerns of the protestants, and Finding VII shows how appellants are addressing those concerns.³

In addition, Determination III is directly contradicted by Determination VII, which states it was *not* established "that issuance of the applied-for license would necessarily create a litter problem, and/or a loitering problem in the area where the premises are located." Determination III is not supported by the findings said to be relied on, and, with no way of knowing the analysis used by the ALJ to reach Determination III, we cannot say that the Department has shown good cause for this determination.

2. Issuance of the license would result in or add to an undue concentration of licenses and it was not established that public convenience or necessity would be served by issuance of the license (Determination VI) –

Business and Professions Code §23958 provides, in part, that the Department "shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4." Undue concentration is deemed to exist when the area in which the applicant premises is located has a specified greater-than-average number of reported crimes or the ratio of

³The decision does not mention the conditions appellants specifically agreed they would accept, but the record shows that they include restrictions on the bottle size and quantities of beer, a prohibition on the sale of fortified wine, and restrictions on advertising and displays of alcoholic beverages. These are conditions this Board has often seen imposed on licenses to help discourage purchases of alcoholic beverages by persons looking for a "cheap high," who might be inclined to disturb the nearby residents by littering, loitering, or urinating in the alley.

certain licenses to the census-tract population exceeds the ratio of similar licenses to the county's population. (Bus. & Prof. Code §23958.4, subd. (a).) Where undue concentration exists, a license may still be granted if the applicant shows that public convenience or necessity would be served by issuance of the license. (Bus. & Prof. Code §23958.4, subd. (b)(2).)

Determination VI states that

"It was established by the preponderance of the evidence that the issuance of the applied-for license to [applicants] would result in or add to an undue concentration of licenses due to the high crime rate in the area where the premises are located and it was not established that the public convenience or necessity would be served by the issuance of the applied-for license."

This Determination does not refer to any findings, so both appellants and this Board are left to guess at its basis. We can see fairly readily that the police crime statistics, showing that the beat in which appellants' market lies has a higher number of crimes and arrests than the average for National City, formed the basis for the determination of undue concentration. However, we are again at a loss to know either the facts or the analysis used to determine that public convenience or necessity was not established.

The decision contains no explanation for the determination that public convenience or necessity was not established, although the findings include elements that typically would support a determination of public convenience or necessity,⁴ and

⁴Finding VII – "The market has a produce department and a meat department with a full time butcher. However, the [applicants] feel that they have lost business because they cannot provide a one stop market to their customers without offering beer and wine as well as groceries. The closest grocery store with a full line of groceries is located a half mile away." Finding VIII – "Manuel Lopez . . . testified that in his opinion the premises have enhanced the area and that the premises provide a full service market which caters to the Latin community in the area." Finding III – "Protestant, Troy Owens, . . . patronizes the premises and wants it to stay open"

the record itself contains others.⁵ With no way of knowing the analysis used by the ALJ to go from the record to the findings and from the findings to Determination VI, we cannot say that the Department has shown good cause for this determination.

3. The Department could deny the application because the proposed premises is located within 600 feet of two churches (Determination IX) –

Determination IX states:

"The department is specifically authorized to refuse the issuance, other than renewal or ownership transfer, of any retail license for premises located within the immediate vicinity of churches and hospitals.' Business and Professions Code Section 23789(a). Because the [appellants'] market is located within 600 feet of two churches one of which filed a protest in this matter, the Department was well within its discretion to deny the [appellants'] application."

The existence of two churches within 600 feet of the proposed premises was established by testimony and documentary evidence and the fact was included in Finding V. Finding V also recited the days and times of services at one of the churches and the pastor's testimony that litter and loitering problems around the church decreased in the time that the market was not licensed.

Again, there is no analysis or explanation that would help appellants or this Board understand how the determination was reached. Section 23789 is quoted, but no case law involving that section is examined. This is a critical omission, because many cases have held that mere proximity to a church does not, by itself establish good

⁵ Protestant Owens stated in her testimony how nice the store is, how much she liked it, and how much things had improved since appellants had opened the market [RT 39, 43, 47-48, 49]. Protestant Jose Arevalo agreed that the general condition of the neighborhood had improved since appellants opened the market [RT 83]. Protestant Majul stated that she would withdraw her protest if conditions were placed on the license prohibiting sales of individual containers [RT 108] and that, far from impeding the use and enjoyment of her home, operation of the market "has increased the enjoyment because now we can run down there and buy what we want" [RT 109].

cause for denial of a license. (See e.g., Martin v. Alcoholic Bev. etc. Appeals Board. (1961) 55 Cal.2d 867, 875 [13 Cal.Rptr. 513, 362 P.2d 337]; Reimel v. Alcoholic Bev. etc. App. Board. (1967) 255 Cal.App.2d 40, 49 [62 Cal.Rptr. 778]; Koss v. Dept. Alcoholic Beverage Control (1963) 215 Cal.App.2d 489, 495 [30 Cal.Rptr. 219].) Since it was not established that litter and loitering will be caused by issuance of the license (Determination VII), bases other than the churches' proximity to the market do not appear to exist. Perhaps the ALJ had some other problem in mind, but we cannot know this because he did not tell us how he reached his conclusion in Determination IX. Under these circumstances, we cannot say that the Department had good cause for this determination.

4. Issuance of the license would tend to create a law enforcement problem (Determination V) –

Determination V states, in its entirety: "It was established by a preponderance of the evidence that the issuance of the applied-for license to the [appellants] would tend to create a law enforcement problem by reason of Finding IV." Finding IV-B states:

"The crime statistics provided by the National City Police Department indicate that the premises are located in a high crime area. Additionally, Sergeant Lanny [O'Roark] of the National City Police Department testified that he was familiar with the premises when it was previously licensed by the Department of Alcoholic Beverage Control, that he became aware of police problems in the area of the premises when the premises were previously licensed and that there has been a significant reduction in the need for police services in the area of the premises since the premises were last licensed. Sergeant [O'Roark] also testified that there are about five active gangs in National City, that two or three of these gangs have frequented the area where the premises are located, that the premises border a disputed gang territory and that this causes a concern for the police department. However, an injunction was issued in April of 1998 prohibiting gang activity in certain areas of the City including the area where the premises are located."

The police crime statistics are applicable when determining whether undue concentration exists under the §23958.4 formula, but, as this Board has observed, they are not helpful in determining the existence of a law enforcement problem:

"The problem with census tract statistics is that it is difficult to connect the crimes and arrests with a particular location. These type of statistics are designed for supporting rule 61.3 (a rule of the department which goes to the question of an undue concentration of licenses within a particular area—an issue not part of the present matter) and have little value for showing police problems, not knowing the extent, size, or configuration of the census tract."

(American High, Inc. v. Sanders (1996) AB-6540.)

The term "law enforcement problem" in §23958, while it could be read broadly, must be interpreted "in light of the constitutional requirement of 'good cause' for the denial of a license" (Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board, supra, 122 Cal.App.3d at 556.) In the case just cited, the court reviewed what had been found to constitute "police problems" in prior cases. "In all of them, there was repeated or on-going criminal conduct of legitimate and substantial concern to law enforcement agencies, not a mere expectation that 'disturbances would sometimes occur.'"⁶ (Id. at 556-557 (fn. 6).)

In contrast, in the present case there is no finding and, indeed, no evidence, of crime problems such as those described in the case above. While O'Roark testified to

⁶ Examples given of "police problems" included "a long-standing, 'continuous police problem' . . . referring to 'the difficulty of controlling the idle, the dissolute and the criminal element of a city tending to congregate at a designated place'" (in Parente v. State Board of Equalization (1934) 1 Cal.App.2d 238 [36 P.2d 437]); "the added difficulty of enforcing liquor control laws in an area of 'undue concentration' of licensed establishments in which 75 arrests were made each week for public drunkenness and other offenses" (in Torres v. Dept. of Alcoholic Bev. Control (1961) 192 Cal.App.2d 541 [13 Cal.Rptr. 531]; intoxicated persons were arrested at premises "almost daily" (in Harris v. Alcoholic Bev. Control Appeals Board. (1963) 212 Cal.App.2d 106 [28 Cal.Rptr. 74]).

a decrease in the need for "police attention" since the prior license was surrendered, there is no evidence suggesting that issuance of the presently applied-for license would cause an increase in the need for police attention so as to create a law enforcement problem. No evidence was presented about the types of crimes that have occurred in the immediate area of the proposed premises, nor any about the types of crimes the officer anticipated occurring should this license issue. While O'Roark testified that there were gangs in the area, the only crime mentioned in connection with the gangs was vandalism by graffiti. O'Roark was asked what law enforcement concern was created by this location being at a border between gang territories. He responded [RT 92]:

"Because of the fact that it is right at a point where gang territory is being disputed and often fought over and because it borders on a gang territory, you have an inherent rivalry in that area, and because of that rivalry you have incidents that are being perpetrated not by just one gang but by possibly two or three gangs."

The vague comment that the "gang territory is . . . often fought over" does not describe a "crime problem" that issuance of this license would tend to create or aggravate. Similarly, the statement that "inherent rivalry" in the area results in "incidents . . . being perpetrated not by just one gang but by possibly two or three gangs," is too vague and indefinite to support a finding that issuance of the license would tend to create a law enforcement problem. There is no evidence of how big "the area" referred to is nor what "incidents" are perpetrated. While common sense would certainly acknowledge that the "incidents" are not tea parties, we do not know if the incidents are minor, such as graffiti, or major, such as fatal shootings, or somewhere in

between. There is no way to tell, from the findings or the evidence, what the "law enforcement problem" might consist of.⁷

There is also no explanation of how issuance of this license would tend to create, or even aggravate, a law enforcement problem. Nothing in O'Roark's testimony connects any present or anticipated law enforcement concerns with the sale of alcoholic beverages. The problems connected to alcoholic beverages testified to by other witnesses at the hearing were generally broken bottles and drinking and urinating in the alley, although Ms. Owens, when asked whether there had been a problem with graffiti in the past, responded [RT 40]: "Yes. The gangs used to come around and spray paint. They get a little happy and a little drunk, and every time you turn around you always have to call the graffiti busters to paint over it."

Again, simple common sense and general knowledge tells us that there is a connection between alcohol consumption and crime. But what that connection is here is unknown. As far as the testimony goes, the only "law enforcement problems" that have been connected to alcohol consumption in the area of appellants' market are littering, loitering, urinating, and graffiti. This does not begin to compare to the "crime problems" described earlier (ante, fn. 3).

The finding in question here, Finding IV-B, does no more than describe the testimony of Sergeant O'Roark, so it cannot be said that the finding is not supported by the evidence. However, the finding does not support the determination that issuance of

⁷As noted by the ALJ in Finding IV-B, an injunction was in effect prohibiting certain gang activities in certain areas of the city, including the area around the premises. Officer O'Roark testified that an injunction prohibited gang members from being within 100 yards of the Hi-Bev Liquor Store, across the street from appellants' market. [RT 104.]

the license would tend to create a law enforcement problem, and the record provides no other basis for the determination.⁸ In addition, the decision does not demonstrate the analysis used to reach this determination. Under these circumstances, we cannot say that the Department has shown good cause for this determination.

Besides the defects noted above, we also are troubled by the Department's complete failure to consider issuance of the license with conditions. Appellants made it clear that they are willing to accept a number of conditions on the license (see fn. 3, supra). We know that off-sale licenses are often issued with conditions similar to those acceptable to appellants, and we must assume such conditions have proven effective in preventing or minimizing anticipated problems, or the Department would have discontinued their use long ago. Yet the ALJ does not even describe the conditions proposed by appellants, much less discuss them. There may have been good reasons why these conditions, or others which could have been imposed, would not make this license more acceptable to the Department and the police.⁹ However, this Board does not know what those reasons might be, or even if they exist, because conditions were

⁸The protest by Police Chief DiCerchio stated only that it was based on an over concentration of licenses and a higher-than-average crime rate in the reporting district. (Exhibit 1.)

⁹Both the police department representative and Department counsel stated, without any explanation, that the imposition of conditions would not satisfy their concerns over issuance of the license. [RT 155, 158.] However, one of the individual protestants, Ms. Ayne Majul, testified that she would withdraw her protest entirely if conditions were imposed on the license limiting the size and quantity of alcoholic beverages sold at the market. [RT 108.] Another protestant, Mr. Jose Arevalo, Jr., also appeared to be more amenable to issuance of the license if there were size and quantity restrictions imposed, since the people he observed drinking in the alley were drinking from single containers in brown bags. [RT 83.] Other individual protestants were not asked about the effect conditions might have on their protests.

not considered in the decision. It is one thing for the ALJ to conclude that the conditions would be ineffective, and explain why. It is still another to ignore them completely.

This decision is clearly deficient. It appears that the Department has simply rubber-stamped the protests of the police and a few individuals without doing any analysis of the situation. If that is not the case, the decision should have made that clear. It may be that there is a legitimate law enforcement problem here, but this decision does not provide any basis for reaching such a conclusion. The same can be said about the other determinations made by the ALJ. There is not substantial evidence to support the findings and the findings do not support the critical determinations. With no analysis or explanation, we can only conclude that the Department has acted arbitrarily in denying this application.

ORDER

The decision of the Department is reversed.¹⁰

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

¹⁰This 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.