

ISSUED JULY 14, 2000

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

COUNTY CORK ENTERPRISES, LLC	)	AB-7446
dba Paddy O's	)	
20320 S. Western Avenue	)	File: 41-333794
Los Angeles, CA 90501,	)	Reg: 99046137
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	June 6, 2000
	)	Los Angeles, CA

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County Cork Enterprises, LLC, doing business as Paddy O's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended its on-sale beer and wine public eating place license for 25 days, with 10 days thereof stayed, the stay conditioned upon one year of discipline-free operation, for having permitted the consumption of alcoholic beverages on its patio after the hour of 10:00 p.m., in violation of a condition on its license, and contrary

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

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.

Appearances on appeal include appellant County Cork Enterprises, LLC, appearing through its counsel, Benjamin Wasserman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

#### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public eating place license was issued on October 22, 1997. Thereafter, the Department instituted an accusation against appellant charging that it allowed the consumption of alcoholic beverages on its patio after 10:00 p.m., in violation of a condition on its license.<sup>2</sup>

An administrative hearing was held on June 16, 1999, at which time oral and documentary evidence was received. The testimony of Department investigator Brandie Morita, corroborated by the admission of appellant's bartender, Hallie Beattie, established that alcoholic beverages were consumed by Morita and another investigator, and additional alcoholic beverages served to them on appellant's patio after the hour of 10:00 p.m. Subsequent to the hearing, the Department issued its decision which sustained the charge of the accusation.

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<sup>2</sup> Condition 02 of the license reads as follows: Sales, service and consumption of alcoholic beverages on the patio shall be permitted only between the hours of 11:00 a.m. and 10:00 p.m. each day of the week. (Emphasis in original.)

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the Department lacked good cause to suspend appellant's license; (2) appellant was the victim of entrapment; and (3) the penalty is excessive.

## DISCUSSION

### I

Appellant contends that the Department lacked good cause to suspend its license. Citing Schaub's Inc. v. Department of Alcoholic Beverage Control (1957) 153 Cal.App.2d 858 [315 P.2d 459]; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113; and Yu v. Alcoholic Beverage Control Appeals Board (1980) 3 Cal.4th 286 [4 Cal.Rptr.2d 280], appellant contends there was no showing that the violation was contrary to public morals, or that it constituted a nuisance; therefore, according to appellant, there was no good cause for the suspension.

Appellant's argument overlooks the express language of Business and Professions Code §23804, which provides:

"A violation of a condition placed upon a license pursuant to this article shall constitute the exercising of a privilege or the performing of an act for which a license is required without the authority thereof and shall be grounds for the suspension or revocation of such license."

Since appellant has not contended the condition was not violated, it is clear that the suspension was authorized under §23804.

The authorities cited by appellant deal with unrelated issues, and have no

application to this case.

## II

Appellant contends it was the victim of entrapment. It asserts the following as the conduct of the investigators which supposedly gives rise to the defense of entrapment:

“Up until January 22, 1999, appellant had a clear record. On the night of the alleged incident, there were few people present on the business patio after 10:00 p.m. when two of the Department’s undercover investigative officers entered the patio area. ... One of the investigative officers generated the illegal intent in [appellant’s] mind when, after 10pm, she verbalized her intention to order an alcoholic beverage while on the patio. ... Consequently, another customer who heard the investigative officer’s comment, responded by purchasing the beverage for her. ... [Appellant], not realizing the time, then served the beverage to the investigative officer, who was still on the patio. ... In this way, the [appellant] was entrapped by the investigative officer. ...

“In the case at bar, the Alcoholic Beverage Control was on a mission to find violations. In their determination to find violations, they actually enticed [appellant] into illegal activity.”<sup>3</sup>

The test for an entrapment defense is whether the conduct of the public agent was such that a normally law-abiding person would be induced to commit the prohibited act. Official conduct that does no more than offer an opportunity to act unlawfully is permissible. (People v. Barraza (1979) 23 Cal.3d 675 [153 Cal.Rptr. 459].)

Even appellant’s version of the facts shows no more than that an opportunity

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<sup>3</sup> Appellant’s brief at pages 6-7 (citations to record omitted.)

was offered to appellant's bartender, one she could and should have declined to take advantage of. There is no evidence in the record of any "overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime." (People v. Barraza, supra, 23 Cal.3d at 689-690).

That appellant's bartender may not have realized the time is no defense. It is appellant's responsibility to comply with the condition, and, therefore, to be diligent in observing the time when it becomes applicable.

### III

Appellant asserts that the penalty is excessive. It cites the fact that this was its first violation, and contends that a delay in the consideration of their request to the Department that it modify the condition by extending the hours during which such sales can be made somehow justifies a lesser penalty.

The Appeals Board may not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr 183].)

As represented by Department counsel at the hearing, the 25-day suspension with 10 days thereof stayed is the customary penalty imposed by the Department for a first violation of a condition. That this was appellant's first violation is hardly

remarkable, or a factor in mitigation, appellant having been licensed only 15 months at the time of the violation.

Since we cannot say that the Department has abused its discretion, we must reject appellant's contention.

ORDER

The decision of the Department is affirmed.<sup>4</sup>

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

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<sup>4</sup> 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.