

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

AB-9957

File: 2/03/06-541480; Reg: 22091734

SNOW-LINE PRESERVATION ASSOCIATION,
LLC, STEVEN GLASS AND CAROL GLASS, as
TRUSTEES OF THE GLASS LIVING TRUST
DATED APRIL 3, 2012, STEPHEN MILLER,
GARY A. FRITZSCHE, DEANNA R.
FRITZSCHE, JAMES AND MARY HACKETT,
as TRUSTEES OF THE JAMES & MARY
LIVING TRUST 1992, DONALD AND TEDI
ANDERSON, as TRUSTEES OF THE
ANDERSON REVOCABLE TRUST, and KEVIN
M. CHARNESKY and JERRI G. CHARNESKY,
as TRUSTEES OF THE CHARNESKY TRUST
DATED FEBRUARY 12, 2020
Appellants/Petitioners

v.

SNOW-LINE ORCHARD, LLC,
dba SNOW-LINE ORCHARD, and;

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondents

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: April 14, 2023
Telephonic

ISSUED APRIL 17, 2023

Appearances: *Appellants:* Andrew C. Harris, of GORDON RESS SCULLY
MANSUKHANI, LLP, as counsel for Snow-Line Preservation
Association, LLC, *et al.*

Respondents: Erin K. Oyama, as counsel for Snow-Line Orchard,
LLC, and

Kellie Brady, as counsel for the Department of Alcoholic Beverage
Control.

OPINION

Snow-Line Preservation, LLC, *et. al.*¹ (“appellants”) appeal from a decision of the Department of Alcoholic Beverage Control² dismissing their complaint against Snow-Line Orchard, LLC, dba Snow-Line Orchard, (hereinafter “Snow-Line”). Appellants’ complaint sought to discipline Snow-Line for allegedly failing to comply with Business and Professions Code³ section 23358(a)(4), relating to bona fide eating places, failing to comply with the production requirements in section 23358(c), and creating excessive noise.

FACTS AND PROCEDURAL HISTORY

Snow-Line holds a type 02 winegrower license, a type 03 brandy manufacturer license, and a type 06 still license. All three licenses are non-retail licenses and were issued on July 25, 2014 for the licensed premises. There is no prior record of departmental discipline against any of Snow-Line’s licenses.

On November 11, 2021, appellants submitted a complaint against Snow-Line to the Department under section 24201, which provides, “[a]ccusations may be made to the department by any person against any licensee.” Based on appellants’ complaint, the

¹ The Department, in its Reply Brief, asks the Board to dismiss all appellants other than Snow-Line Preservation, LLC for lack of standing, as they are not “listed in the amended accusation nor recognized in the Final Decision.” (Department’s Reply Brief at p. 8.) However, since at least one of the appellants has standing, and dismissing others would have no practical effect on the present appeal, the Board declines to rule on the requested dismissal.

² The decision of the Department, dated December 6, 2022, is set forth in the appendix.

³ All statutory references are to the California Business and Professions Code unless otherwise stated.

Department filed an accusation against Snow-Line on January 5, 2022. The matter was argued and submitted for decision on August 10, 2022.

Appellants' original complaint listed a number of alleged violations of sections 23985.5, 23986, and rule 61.4.⁴ However, since these provisions only apply to retail licenses, and Snow-Line does not hold any retail licenses, the allegations were dismissed. Further, the original complaint also alleged a violation of section 23790 on the basis that Snow-Line had violated zoning ordinances of San Bernardino County. At the hearing, the administrative law judge (ALJ) held that the alleged zoning violations were beyond the scope of the hearing because: 1) there is nothing in section 23790 which authorizes the Department to enforce local zoning ordinances or gives the Department jurisdiction over specific zoning code violations, and; 2) zoning code enforcement is the purview of San Bernardino County, which promulgated the code. The remaining allegations in the complaint related to section 23358(a)(4) (bona fide eating place), section 23358(c) (fifty percent production requirement), and noise.

At the hearing on August 10, 2022, oral evidence, documentary evidence, and evidence by oral stipulation on the record was received. Steven Glass and Don Anderson, who live near the licensed premises, testified on appellants' behalf. Licensing representative, Sadie Gomez, testified on behalf of the Department.

Evidence established that the licensed premises is in a rural section of Oak Glen, which is zoned for agriculture and residential. The licensed premises is surrounded by a series of residences, which are all accessible via a private road. The licensed premises consists of an apple orchard, a barn, a cider mill, and a picnic area. A still and four vats

⁴ All rules referenced herein are contained in title 4 of the California Code of Regulations unless otherwise stated.

are located inside the buildings. When apples are in season, the licensed premises and the surrounding area have a large influx of tourists. Historically, crowds were smaller during the off-season.

Ms. Gomez, who works for the Department, testified regarding the privileges of each of Snow-Line's licenses. Snow-Line is authorized to produce wine (grape or apple), brandy, and hard cider. Snow-Line is not permitted to produce beer. Ms. Gomez indicated that any bottles of wine sold at the licensed premises must be made on site, although the fruit to make the wine may be grown elsewhere. Ms. Gomez testified that Snow-Line could maintain a bona fide eating place on the licensed premises, but was not required to.

Ms. Gomez visited the licensed premises on August 4, 2022, which was a weekday. She entered the barn and observed retail items for sale. She also observed a cooler containing bottles of Snow-Line wine and a menu listing a variety of snack items for sale. In the picnic area outside the barn, there were three or four families picking berries and having lunch. She walked over to the other picnic area between the barn and the mill, where she saw people eating doughnuts. Ms. Gomez walked over to the cider mill and saw where the cider and wine was being produced. She was informed that the grapes to make the wine were from other locations in California. There was no live music being played during Ms. Gomez' visit, and she did not hear any loud noises while at the licensed premises. Ms. Gomez did not see any beer being sold or dispensed and did not see any beer spigots.

Mr. Glass testified that he lives on one of the properties which abut the licensed premises. In recent years, Mr. Glass noticed that some of the orchard was removed to provide additional parking. Mr. Glass first learned that Snow-Line received an alcoholic

beverage license around 2016 when he saw a shed and a compressor being installed. The noise from the compressor, which runs twenty-four hours a day, seven days a week, is loud enough that Mr. Glass can hear it inside his residence.

Since being licensed, Snow-Line has hosted a variety of events, such as weddings, and has played amplified music in connection with these events, particularly on weekends. Mr. Glass testified that there has been a substantial increase in patronage at the licensed premises year-round, resulting in additional traffic and parking issues.

Mr. Glass testified that he has seen beer spigots on the licensed premises. Mr. Glass has never seen any grapes being grown on site and has also never seen an on-site eating establishment. Mr. Glass complained to the Department about the licensed premises, such as Snow-Line's sale of wine by the glass, wine fights, consumption on the premises, and the lack of a bona fide eating place.

Dr. Anderson lives on another property which abuts the licensed premises. When he moved into his home in 1986, Snow-Line's property consisted of an apple orchard, an old barn, and a press. Raspberry bushes were added later. Dr. Anderson testified that he typically buys non-alcoholic cider from Snow-Line.

A few years ago, Dr. Anderson learned that Snow-Line sold alcoholic beverages. According to Dr. Anderson, operations at the license premises have become problematic. There is a lot of noise emanating from the licensed premises, including amplified music which can be heard all over the valley, traffic congestion, and parking problems. Patronage at the licensed premises is no longer seasonal, but year-round. Vehicles have come onto Dr. Anderson's property and caused damage. Patrons have come onto Dr. Anderson's property and pick his produce, which caused him to erect barriers to keep

them off. At some point, Snow-Line posted signs, which have helped a little, but are insufficient.

On October 28, 2028, the ALJ, Matthew G. Ainley, issued a proposed decision recommending that appellants' complaint be dismissed. The Department adopted the proposed decision on December 1, 2022, and issued a certificate of decision on December 6, 2022. Appellants filed a timely appeal contending that the Department's decision: 1) failed to consider the San Bernardino County zoning violations and lack of necessary approvals; 2) is not supported by the findings, and the findings are not supported by substantial evidence, and; 3) misapplies the Beverage Control Act's purpose and constitutional mandate.

DISCUSSION

I

SAN BERNARDINO COUNTY ZONING VIOLATIONS

Appellants argue that the Department incorrectly concluded that "only the County of San Bernardino had jurisdiction over zoning issues, and therefore the [zoning issues] were 'beyond the scope of the hearing in this matter.'" (Appellants' Opening Brief (AOB) at p. 14.) The Department, appellants contend, have jurisdiction under section 24200(c) to determine whether Snow-Line "falsely represented the property address indicated on its license applications where alcohol would be sold, were in fact properly zoned an approved for use as a commercial alcohol production and sale venue at the time the application was made and granted." (*Ibid.*) The appellants analogize the present matter to *Jack P. Meyers, Inc. v. Alcoholic Beverage Control Appeals Bd.* (1965) 238 Cal.App.2d 869, 876, which "affirmed the Department's authority to suspend a license based on misrepresentations about the suitability of a license applicant." (*Ibid.*)

Section 24201 states that:

Accusations may be made to the department by any person against any licensee. Accusations shall be in writing and shall state one or more grounds which would authorize the department to suspend or revoke the license or licenses of the licensee against whom the accusation is made.

California Government Code section states that “[a] hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned *shall* be initiated by filing an accusation ... (emphasis added).” In administrative proceedings, “the courts are more interested with fair notice to the accused than they are to adherence to the technical rules of pleading.” (*Nelson v. Dep’t of Alcoholic Beverage Control* (1959) 166 Cal. App. 2d 783, 787 [333 P.2d 771, 774].)

Appellants submitted an accusation to the Department on November 11, 2021, which Snow-Line was given notice of on January 7, 2022. (State’s Exhibit 1.) In the accusation, appellants allege, in pertinent part, that:

In or about July of 2014, the Department of Alcohol [*sic*] Beverage Control issued a[] Type II liquor license to Snow-Line Orchard, and its owners. [Appellants] believes the Department erroneously issued the license to a property within a residential area and surrounded by residential properties in violation of Section 23789 and Rule 61.4 based upon false representations made to it by Snow-Line Orchard and its owners.^[fn] Snow-Line Orchard at no time prior to or subsequent to the issuance of this license obtained the required conditional use permits authorizing the operations to proceed. [...]

Snow-Line Orchard, however, continues to manufacture and sell wine at its location without having obtained permits for the expanded operations or conditional use permits from San Bernardino County. [Appellants] has performed a check of the County records and confirmed with the County agencies that no permits, building or conditional use, have been issued to Snow-Line Orchard by any county agency since the late 1980s. [...]

(State Exh. 1.)

Appellants supplemented their accusation on February 16, 2022 to include an allegation that Snow-Line “failed to provide the residents in the area with the required

notices under California Business and Professions Code section 23985.5 in a manner provided for under section 23986.” (State’s Exh. 1.) The supplemental accusation also adds considerable detail to appellants’ initial allegations regarding Snow-Line’s continuing violation of various sections of San Bernardino’s County Code, as well as the Oak Glen Community Plan. (*Ibid.*)

Based on a reasonable reading of appellants’ accusation and supplemental accusation, there are four (4) primary allegations against Snow-Line: 1) misrepresentations by Snow-Line to the Department causing issuance of a license in close proximity to residential properties in violation of section 23789 and Rule 61.4; 2) Snow-Line’s failure to obtain required conditional use permits from San Bernardino County prior to issuance of the license; 3) Snow-Line’s continuing operation without permits for expanded operations or conditional use permits from San Bernardino County, and; 4) Snow-Line’s failure to provide adequate notice to nearby residences under section 23985.5 prior to the issuance of its license.

In regard to allegations one, three, and four, we agree with Snow-Line and the Department that the allegations were properly dismissed. The first allegation states that the Department’s issuance of Snow-Line’s license violated section 23789⁵ and rule 61.4,⁶ because the licensed premises is located within 100 feet of a residential property. The fourth allegation alleges that Snow-Line was required to provide notice to nearby residents regarding the possible issuance of its retail license, before the license was issued.

⁵ Authorizing the Department to refuse issuance of a retail license within the immediate vicinity of churches or hospitals, or within 600 feet of schools, public playgrounds, or nonprofit youth facilities.

⁶ Prohibiting the issuance of a retail license within 100 feet of a residence.

Allegations one and four fail to state grounds which would authorize the Department to suspend or revoke Snow-Line's licenses. The issuance of Snow-Line's license could not have violated sections 23789, 23985.5, or rule 61.4 as a matter of law, because those provisions only apply to retail licenses, and the evidence in the record clearly shows the Department did not issue Snow-Line a retail license. (Reporter's Transcript at pp. 128:16-129:9.)

Similarly, regarding allegation three, appellants have not shown that the Department has jurisdiction or authority to discipline Snow-Line's alleged continuing violations of San Bernardino County Codes or the Oak Glen Community Plan. In their brief, appellants contend the basis for the Department's jurisdiction over Snow-Line's alleged violations comes from section 24200(c); whether Snow-Line "falsely represented the property address indicated on its license applications where alcohol would be sold, were in fact properly zoned and approved for use as a commercial alcohol production and sale venue at the time the application was made and granted." However, false representations are only actionable *at the time the application was made or granted*. (*Ibid* (emphasis added).) Alleged violations of county codes or plans that occurred *after* the Department issued a license, have no bearing on any alleged misrepresentations that occurred before the issuance of said license. Appellants have not offered any legal authority to the contrary.

Notwithstanding the above, appellants' second allegation, that Snow-Line failed to obtain required conditional use permits from San Bernardino County *prior* to issuance of the license, would authorize the Department to suspend or revoke Snow-Line's licenses. Appellants allege that "Snow-Line Orchard at no time prior to or subsequent to the issuance of this license obtained the required conditional use permits authorizing the

operations to proceed.” (State’s Exh. 1.) Inasmuch as appellants allege that the Department has jurisdiction over its second allegation based on section 24200(c), a reasonable inference is that appellants allege that Snow-Line misrepresented that it was “properly zoned and approved for use as a commercial alcohol production and sale venue at the time the application was made and granted.” A review of the record confirms that the Report on Application for License, dated July 18, 2014 (States Exh. 2), indicates that the “[p]remises complies with local zoning requirements,” and that a “conditional use permit” is not required. (*Id.*; ABC-0027.) This is the very thing that appellants are challenging in their accusation. Thus, to the extent that San Bernardino County Zoning requirements are relevant to that allegation, appellants should have been able to offer evidence, and the Department erred by not allowing them to do so.

II

SUBSTANTIAL EVIDENCE

Appellants contend that the Department’s decision is not supported by substantial evidence. (AOB at pp. 16-18.) Specifically, appellants argue that the record establishes that: 1) Snow-Line was “serving beer and other spirits out of spigots during huge public events creating a drunken-fueled party” (*id.* at p. 17), and; 2) Snow-Line’s “increased alcohol production and sales, as well as the large public drinking and music events being hosted, disrupted the peace and enjoyment of the Oak Glen community so as to constitute a nuisance under the Beverage Control Act, as well as local San Bernardino County law” (*ibid*). Finally, appellants argue that the Department erred by requiring them to prove, as a matter of law, “that late-night noise by the compressor exceeded some

specific decibel threshold in order to establish that [Snow-Line's] liquor sales created a nuisance of the Beverage Control Act." (*Id.* at pp. 17-18.)⁷

Here, the Department rejected appellants' allegations that Snow-Line was producing or selling beer (Conclusions of Law ¶¶ 6), and that its operations disrupted the peace and enjoyment of the Oak Glen community (*Id.* at ¶¶ 9-11). Therefore, this Board is required to defer to those findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] ["In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]"; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] ["When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department."].) "Substantial evidence" is "evidence of ponderable legal significance, which is 'reasonable in nature, credible and of solid value.'" (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

⁷ In its closing brief, appellants make the point that Ms. Gomez' investigation of the licensed premises, which consisted of a single visit on a weekday during the off-season "confirmed the lack of diligence and thoroughness of her investigation." (Appellants' Closing Brief at p. 5.)

In its decision, the Department rejected appellants' arguments that Snow-Line was producing or selling beer on the licensed premises. The Department found:

6. [...] There is a clear conflict in the testimony of Steven Glass and LR S. Gomez—he testified that he saw beer spigots, while she testified that she did not. Regardless, there is no evidence that [Snow-Line] was selling beer. Accordingly, there is no evidence that [Snow-Line] was exceeding its licensed authority.

(Conclusions of Law ¶ 6.) Additionally, the Department rejected appellants' claim that Snow-Line's operations rose to the level of a nuisance. The Department held:

9. [...] Every business which involves some kind of manufacturing process generates some noise, as does every business which brings customers to its property. Even before it was licensed, [Snow-Line] produced cider on its property and attracted customers, mostly in the fall.

10. It is clear that the level of noise has increased in the last few years. In addition to the production of wine and hard cider, [Snow-Line's] business now operates year round. The simple fact that the Licensed Premises now draws more customers than before is not actionable. Similarly, the noise produced by such customers, in and of itself, is not actionable unless it rises to the level of a nuisance.

11. The evidence established that noise in the form of amplified music could be heard throughout the valley. The evidence established that noise from the compressor could be heard by at least one nearby resident. However, there is no evidence of any late-night noise (other than the compressor, which runs constantly) or that the noise is unduly loud (e.g., decibel readings above any statutory or regulatory limits). Certainly, there is no evidence that the noise in question rises to the level of a nuisance.

(Conclusions of Law ¶¶ 9-11.) As noted above, "we are bound to construe the evidence in the light most favorable to the ALJ's decision" and will uphold the findings so long as they are supported by substantial evidence. (*Southland, supra*, 103 Cal.App.4th at 1087.)

To support its findings, the Department considered the testimony of Mr. Glass, Ms. Gomez, and Dr. Anderson. (Findings of Fact, ¶¶ 7-15.) A video of the compressor running at night was also offered into evidence by the appellants. (Exh. P-12.)

The Board notes that it was appellants' burden to prove its allegations at the hearing. (See *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113, [179 Cal.Rptr. 351] ("It is axiomatic, in disciplinary administrative proceedings, that the burden of proving the charges rests upon the party making the charges.") In this vein, appellants' attacks on the testimony of Ms. Gomez and the sufficiency of her single visit to the licensed premises are misplaced. It was their burden to offer evidence to substantiate the allegations in the accusation. The Board can infer from the Department's decision that the ALJ simply did not believe Mr. Glass' testimony about the beer spigots. (Findings of Fact ¶ 6 ("[T]here is no evidence that [Snow-Line] was selling beer.")) Mr. Glass was the only witness appellants produced who testified to the issue of whether Snow-Line was producing or selling beer, in contravention to the privileges of its licenses.

It is the province of the ALJ, as trier of fact, to make determinations as to witness credibility. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) "The trier of fact . . . is the sole judge of the credibility of the witnesses [and] may disbelieve them even though they are uncontradicted if there is any rational ground for doing so . . ." (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971 [191 Cal.Rptr. 415].) The Appeals Board may not interfere with an ALJ's credibility determinations absent a clear showing of abuse of discretion, which appellants have not shown.

Similarly, the Department did not abuse its discretion in failing to afford Mr. Glass and Dr. Anderson's testimony greater weight as to the noise emanating from the licensed premises. Two individuals' dissatisfaction with the amount of noise emanating from the licensed premises does not *per se* constitute a nuisance. Coupled with the fact that Ms.

Gomez did not note any unusual levels of noise emanating from the licensed premises,⁸ the Department was reasonable in finding that appellants failed to establish that Snow-Line's operations disrupted the peace and enjoyment of the Oak Glen community.

Based on the above, the Department's findings must stand. Ultimately, appellants are asking this Board to second-guess the Department and the ALJ in order to reach a different result. Extensive legal authority prohibits this Board from doing so. (*Southland, supra*, 103 Cal.App.4th at 1094.)

III

BEVERAGE CONTROL ACT

Appellants argue that the Department erred by concluding that "the zoning restrictions in Business and Professions Code section 23790 did not apply because [Snow-Line held] commercial, 'non-retail' licenses." (AOB at p. 18.) This is important, appellants contend, because "[t]o the extent that any incidental, small-scale agricultural purposes could involve the production and sale of other non-apple based alcohol to the public, those incidental uses would require a retail liquor license type with a bona fide eating establishment" (*Id.* at p. 19.) Appellants' position is that the Department erred in failing to "consider whether the retail restrictions should apply to [Snow-Line] regardless of the current type of license held" (*Id.* at p. 20.)

As explained above, appellants' position is rejected. Appellants have offered no legal authority that statutes applying to retail licenses should extend to non-retail licenses. Further, their claims that Snow-Line was exceeding the scope of its license, acting as a

⁸ It was also worth noting that, while appellants claim Ms. Gomez' site visit was insufficient, as she visited the licensed premises on a weekday during the off-season, they also allege that the compressor runs twenty-four hours a day, seven days a week, and fifty-two weeks a year. Thus, by appellants' own allegations, the compressor would have been just as loud during Ms. Gomez' visit, as it would any other day of the year.

retail licensee, were rejected by the Department and those findings were supported by substantial evidence.

ORDER

The decision of the Department is remanded for determination whether Snow-Line misrepresented that it was “properly zoned and approved for use as a commercial alcohol production and sale venue at the time the application was made and granted.” The decision is affirmed in all other respects.⁹

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁹ This order of remand is filed in accordance with section 23085 and does not constitute a final order within the meaning of Business and Professions Code section 23089.

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE CITIZEN
ACCUSATION AGAINST:**

SNOW-LINE ORCHARD, LLC
SNOW LINE ORCHARD
39400 OAK GLEN ROAD
OAK GLEN, CA 92399-9752

WINEGROWER - LICENSE

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

RIVERSIDE DISTRICT OFFICE

File: 02-541480

Reg: 22091734

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on December 1, 2022. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

RECEIVED

DEC 06 2022

*Alcoholic Beverage Control
Office of Legal Services*

Sacramento, California

Dated: December 6, 2022



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION FILED BY:

Snow-Line Preservation Association, LLC	}	File: 02/03/06-541480
	}	
AGAINST THE WINEGROWER, BRANDY	}	Reg.:22091734
MANUFACTURER, AND STILL LICENSES HELD	}	
BY:	}	License Types: 02, 03, 06
	}	
Snow-Line Orchard, LLC	}	Word Count: 37,500
dba Snow-Line Orchard	}	
39400 Oak Glen Rd.	}	Reporter:
Oak Glen, California 92399-9752	}	Zoanne Williams
	}	iDepo
Respondent	}	
	}	
<u>Under the Alcoholic Beverage Control Act</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference on August 10, 2022.

Aridrew Harris, attorney-at-law, represented complainant Snow-Line Preservation Association, LLC.

Michael Cho, attorney-at-law, represented respondent Snow-Line Orchard, LLC.

Julie Weng-Gutierrez, Chief Counsel, represented the Department of Alcoholic Beverage Control.

The Complainant seeks to discipline the Respondent's licenses on the grounds that it failed to comply with the provisions of Business and Professions Code section 23358(a)(4) as they relate to bona fide eating places,¹ failed to comply with the production requirements set forth in section 23358(c), and created excessive noise. (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on August 10, 2022.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

PRELIMINARY MATTERS

1. This case arises from an accusation filed by the Complainant against the Respondent pursuant to section 24201, which provides that "[a]ccusations may be made to the department by any person against any licensee." Nominally, the parties in such a case are the Complainant and the Respondent. However, the Department has a key role in this process-it must conduct the hearing and adopt a decision using the procedures outlined in the Administrative Procedures Act. Moreover, it must enforce the terms of the decision as they relate to the Respondent. Accordingly, at the commencement of the hearing, the undersigned indicated that the Department was a party to the proceeding pursuant to Government Code section 11500(b) (both by definition and by the undersigned's exercise of his discretion). No one objected to this arrangement.
2. Also at the beginning of the hearing, the Department indicated that the Respondent held a type 02 winegrower license, a type 03 brandy manufacturer license, and a type 06 still license. The accusation, however, only listed the type 02. Accordingly, the parties agreed to amend the accusation by interlineation to reflect all three license types.
3. The original complaint listed a number of alleged violations of sections 23985.5, section 23986, and rule 61.4.² These provisions only apply to retail licenses. Since the Respondent does not hold any retail licenses, these allegations were dismissed.
4. The original complaint also alleged a violation of section 23790 on the basis that the Respondent had violated the zoning ordinances of the County of San Bernardino. At the beginning of the hearing, the undersigned indicated that there is nothing in section 23790 which authorizes the Department to enforce local zoning ordinances and there is no case law which provides that the Department has jurisdiction over specific zoning code violations. Rather, zoning code enforcement is the purview of the governing body which promulgated the code-in this case, the County of San Bernardino. As such, the alleged zoning violations forum were beyond the scope of the hearing in this matter.
5. The remaining allegations are those described above relating to section 23358(a)(4) (bona fide eating place), section 23358(c) (50% production requirement), and noise.

FINDINGS OF FACT

1. On November 11, 2021, the Complainant submitted a complaint against the Respondent to the Department. The Department filed the complaint on January 5, 2022.

² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

2. The Department issued a type 02, winegrowers license, a type 03, brandy manufacturer license, and a type 06, still license to the Respondent for the above-described location on July 25, 2014 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. The Licensed Premises is located in a rural section of Oak Glen which is zoned for agricultural and residential uses. The Licensed Premises is surrounded by a series of residences. The Licensed Premises and the residences are accessible via a private road which connects to Oak Glen Rd.
5. The Licensed Premises consists of an apple orchard, a barn, a cider mill, and a picnic area. A still and four vats are located inside the buildings. There is also a section of the orchard devoted to growing raspberries. When apples are in season, the Licensed Premises and the surrounding area have a large influx of tourists. Historically, crowds were smaller during the off-season.
6. Licensing Representative S. Gomez identified the Department's licensing file r_elating to the Respondent. (Exhibit D2.) She identified the three types of licenses issued to the Respondent and described the privileges of each. The Respondent is authorized to produce wine (grape or apple), brandy, and hard cider. It is not permitted to produce beer. She indicated that any bottles of wine sold at the Licensed Premises must be made on site, although the fruit to make the wine may be grown elsewhere. She also indicated that the Respondent could maintain a bona fide eating place on the Licensed Premises, but was not required to.
7. On August 4, 2022 (a weekday), LR Gomez visited the Licensed Premises. She entered the barn and observed retail items for sale. She also observed a cooler containing bottles of Snow-Line wine. A menu listed a variety of snack items for sale. In the picnic area outside the barn, there were three or four families. They were picking berries and having lunch. She walked over to the other picnic area (between the barn and the mill), where she saw people eating doughnuts.
8. LR Gomez walked over to the cider mill and saw where the cider and wine was being produced. She was informed that the grapes to make the wine were from other locations in California. She did not go over to the wine compressor.
9. When LR Gomez was at the Licensed Premises, there was no live music being played and she did not hear any loud noises. She did not see any beer being sold or dispensed and did not see any spigots. LR Gomez did not visit the Licensed Premises on a weekend.

10. Steven Glass lives on one of the properties which abut the Licensed Premises. In the last few years, he noticed that some of the orchard has been removed to provide additional parking. He first learned that an alcoholic beverage license had been issued to the Respondent around 2016 when he saw a shed and a compressor being installed, which appears to be cooling various vats.

11. The noise from the compressor-which runs 24/7-is loud enough that Glass can hear it inside his residence. Since being licensed, the Respondent has been hosting a variety of events (e.g., weddings) and has been playing amplified music in connection with them, particularly on weekends. There has been a substantial increase in patronage year-round, resulting in additional traffic and parking issues. He has seen beer spigots on the Licensed Premises.

12. Glass has never seen any grapes being grown on site. He also has never seen an on-site eating place.

13. Glass complained to the Department about the conditions at the Licensed Premises.³ Among other things, he complained about the sale of wine by the glass, the wine flights being sold, consumption on the premises, and the lack of a bona fide eating place. He is aware that the Department contacted San Bernardino County, but does not believe that it fully investigated his complaint.

14. Dr. Donald Anderson lives on another of the properties which abuts the Licensed Premises. When he moved into his home in 1986, the Respondent's property consisted of an apple orchard, an old barn, and a press. Raspberry bushes were added later. He typically buys cider (non-alcoholic) from the Respondent.

15. A few years ago, he learned that the Respondent now sells alcoholic beverages. Since then, operations at the Licensed Premises have become problematic. There is a lot of noise, including amplified music which can be heard all over the valley, traffic congestion, and parking problems. Patronage is no longer seasonal, but year-round. Vehicles have come onto his property and caused damage (e.g., hit trees). People now come onto his property and pick his produce-he had to erect barriers to keep them off. At some point, the Respondent posted signs which have helped a little, but are insufficient.

16. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

³ He also complained to the County of San Bernardino about apparent violations of county ordinances. As noted above, these allegations-and San Bernardino's respons are outside the scope of this hearing.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license \Yould be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation o(the license.
3. Section 23358(a)(4) provides that "[l]icensed winegrowers, notwithstanding any other provisions of this division, may also exercise the following privileges: ... [s]ell all beers, wines, and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place as defined in Section 23038 of this code, which is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and which is operated by and for the licensee."
4. Section 23358(c) provides that a "winegrower shall actually produce on his or her licensed premises by conversion of grapes, berries, or other fruit, into wine, not less than 50 percent of all wines sold to consumers on his or her licensed premise or premises and any licensed branch premise or premises."
5. Cause for suspension or revocation of the Respondent's license does **not** exist for the violation of section 23358(a)(4) alleged in the complaint. The facts established that there is no bona fide eating place on the Licensed Premises. (Findings of Fact ,¶, ¶ 5 & 13.) However, section 23358(a)(4) clearly states that a licensee may also sell certain alcoholic beverages in a bona fide eating place. In other words, it provides a licensee with the option of maintaining a bona fide eating place and selling alcoholic beverages therein, but does not require it.
6. None of the licenses held by the Respondent permit the production of beer. Section 23358(a)(4), however, permits the Respondent to sell beer inside a bona fide eating place. There is a clear conflict in the testimony of Steven Glass and LR S. Gomez-he testified that he saw beer spigots, while she testified that she did not. Regardless, there is no evidence that the Respondent was selling beer. Accordingly, there is no evidence that the Respondent was exceeding its licensed authority.
7. Cause for suspension or revocation of the Respondent's license does **not** exist for the violation of section 23358(c) alleged in the complaint. The Complainant argued that, since no grapes were grown on the Licensed Premises (Findings of Fact ,¶, ¶ 5 & 7-8 & 12), none of the wine sold there qualified under this section-in other words, since 0% of the

wine sold was from grapes grown on site, the Respondent failed to comply with this section. This argument is rejected.

8. Section 23358(c) specifically provides that 50% of all wines sold on the Licensed Premises must be **produced** on the Licensed Premises. This section does not contain the word "grow" or any similar word. In short, it is the production of wine that matters, not the source of the grapes. The facts established that the Respondent had four vats on site which it used to produce wine and hard cider. (Findings of Fact, ¶¶ 5 & 10.) The record is devoid of any evidence regarding the production or sale of alcoholic beverages. The record is further devoid of any evidence regarding the amount of wine and cider produced on site or the amount or obtained elsewhere. As such, the Complainant has failed to meet its burden of proof on this issue.⁴

9. The final issue, excessive noise, is more complicated. There is no specific section of the ABC Act which deals with noise outside of the context of retail licenses (e.g., rule 61.4's protection of nearby residents' quiet enjoyment). Every business which involves some kind of manufacturing process generates some noise, as does every business which brings customers to its property. Even before it was licensed, the Respondent produced cider on its property and attracted customers, mostly in the Fall.

10. It is clear that the level of noise has increased in the last few years. In addition to the production of wine and hard cider, the Respondent's business now operates year round. The simple fact that the Licensed Premises now draws more customers than before is not actionable. Similarly, the noise produced by such customers, in and of itself, is not actionable unless it rises to the level of a nuisance.

11. The evidence established that noise in the form of amplified music could be heard throughout the valley. The evidence also established that noise from the compressor could be heard by at least one nearby resident. However, there is no evidence of any late-night noise (other than the compressor, which runs constantly) or that the noise is unduly loud (e.g., decibel readings above any statutory or regulatory limits). Certainly, there is no evidence that the noise in question rises to the level of a nuisance.

⁴ In light of this conclusion, it is unnecessary to determine if the 50% requirement applies to each product line individually (i.e., 50% of the wine must be produced on site and 50% of the cider must be produced on site) or if it applies collectively (i.e., 50% of all alcoholic beverages must be produced on site, regardless of the type of fruit used).

ORDER

The complaint is dismissed.

Dated: October 28, 2022

-l J:, 11 CL£

Matthew G. Ainley
Administrative Law Judge

d--

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <i>ZliQ</i> _____
Date: _____