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Alcoholic Beverage Control

10
11 **BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**
12 **OF THE STATE OF CALIFORNIA**

13
14 **IN THE MATTER OF THE APPEAL OF:**

15 Lawrence Carr, et al, Protestants

16
17 **Against issuance of a license to:**

18
19 Relic Wine Cellars, LLC
20 Db: Relic Wine Cellars
2400 Soda Canyon Road
21 Napa, CA 94558

AB No. 9587

File No. 02-548261

Reg. No. 15082334

DEPARTMENT'S BRIEF

Date: December 7, 2017

Time: 9:00 a.m.

Location: Sacramento, CA

22
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24 **I. INTRODUCTION**

25 This an appeal of a Department decision to issue a Type 02 Winery license to
26 Relic Wine Cellars LLC to operate a winery on Soda Canyon Road in Napa, California.
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1 **STATEMENT OF FACTS**

2 Respondent Relic Wine Cellars LLC applied for a type 02 Winery License in
3 August 2014. This application was protested by eleven people who requested a hearing
4 on the application. The hearing was presided over by Administrative Law Judge (ALJ)
5 David Sakamoto. The hearing itself took five days in July and August 2015 and February
6 2016 at which testimony and evidence was provided concerning several protest issues:

- 7 1. Whether the operation of the premises would interfere with the quiet
8 enjoyment of nearby residents;
9 2. Whether issuance of the license would add to traffic;
10 3. Whether issuance of the license would create increased fire risk; and
11 4. Whether winery operations at the premises violated local zoning.
12

13 On the first day of hearing, July 16, 2015, Judy Anne Barrett, a licensing
14 representative employed by the Department, testified as to the Relic Wine’s license
15 application and her investigation into whether the license should be issued. Courtney
16 Throckmorton testified as an owner of Relic Wine Cellars in support of their license
17 application. Lastly, Amber Dawn Manfree testified as an expert witness on behalf of
18 appellants regarding the geography of Soda Canyon and the areas served by Soda Canyon
19 Road.

20 The second day of hearing, November 16, 2015, was occupied by a motion to
21 continue made by appellants and subsequently granted by the administrative law judge.

22 On day three, February 9, 2016, four witnesses testified on behalf of appellants.
23 Diane Shepp, a neighbor, testified as to the condition of Soda Canyon Road and to her
24 concerns regarding how the operation of the winery might affect the quiet enjoyment of
25 her residence. Amber Manfree was called to the stand again to testify as to traffic
26 statistics. Ann Palotas, another neighbor, also testified as to the road’s condition. Lastly,
27 Anthony Arger, who served as both a witness and attorney for appellants, testified as to
28 details about Soda Canyon Road and its traffic.

1 Day four, February 10, 2016 (noted as “Day 3” on the reporter’s transcript), saw
2 eight more witnesses on behalf of appellants. Lynn Hallett testified about construction of
3 the winery buildings, quiet enjoyment, fire safety, and the conditions of Soda Canyon
4 Road. William Hocker, who has a weekend home at the top of Soda Canyon Road,
5 testified as to the perceived commercialization of the road. Alan Shepp, also a resident,
6 testified to traffic and the changing nature of the area due to the presence of two wineries
7 on the road. Cynthia Grupp, who lives across the street from Relic Wine, testified as to
8 traffic and traffic incidents on the road. Yeoryios Apallas testified as to traffic and traffic
9 incidents. Lisa Hirayama, who protested but doesn’t live on Soda Canyon Road, testified
10 as to her concerns regarding traffic and fire safety on the road. Glenn Schreuder testified
11 briefly as to traffic and the effect of weather on Soda Canyon Road. Finally, Judy Barrett,
12 the Department’s Licensing Representative, was recalled by appellants to testify further
13 about the extent of her licensing investigation.

14 Day five, February 11, 2016, continued Ms. Barrett’s testimony. David Heitzman
15 testified as to fire safety on Soda Canyon Road. Lastly, there was further testimony from
16 Lynn Hallett and Courtenay Throckmorton, who offered rebuttal testimony on behalf of
17 respondents.

18 On March 21, 2016, the Department sent a copy of a proposed decision to all
19 parties pursuant to the Department’s comment procedure. Appellants filed lengthy
20 comments on April 1, 2016. On April 15, 2016, the Department adopted the decision.
21 Appellants filed a Petition for Reconsideration on May 10, 2016. The Department denied
22 the petition on May 27, 2017. This appeal followed.

23 II. ARGUMENT

24 A. Appellants are Asking the Board to Improperly Reweigh the Evidence.

25 The gist of appellant’s argument is that the Department, in its analysis of the
26 evidence presented at hearing, came to the wrong conclusion. Assuming that the
27 Department had the authority to decide the local issues presented at the hearing (see
28 section D below), appellant’s arguments generally fall outside a reviewing board’s or
court’s scope of review. The Department’s findings and conclusions as to questions of

1 fact are conclusive and final and not subject to review, and a reviewing court may not
2 disregard or overturn the Department's findings of fact merely because it concludes that
3 contrary findings would be equally or more reasonable. (*Department of Alcoholic*
4 *Beverage Control v. Alcoholic Beverage Control Appeals Board (Schieffelin)* (2005) 128
5 Cal.App.4th 1195, 1205-1206.) Similarly, the Board cannot reweigh the evidence in the
6 record to reach a conclusion it considers more reasonable. (*Harris v. Alcoholic Beverage*
7 *Control Appeals Board* (1963) 212 Cal.App.2d 106, 119.)

8 Without further analysis, appellant's requests should be denied. Further analysis,
9 however, shows that the Department did not improperly exclude evidence nor did it act in
10 excess of its jurisdiction. To the contrary, the Department considered extensive evidence
11 presented by appellants and acted well within its jurisdiction to the extent that it deferred
12 several significant matters related to the winery at issue to local authorities better versed
13 in the issues raised.

14 **B. The ALJ Did Not Improperly Exclude Evidence.**

15 Appellants claim that the Administrative Law Judge improperly excluded relevant
16 evidence from the hearing in this matter. This evidence in question, however, is a
17 previous Department decision from 1999: *In the Matter of the Protest of Fletcher Benton,*
18 *et al* (referred to as "*Astrale e Terra*" in appellants' brief and similarly here). It is *not*, as
19 appellant claims a legal precedent for this case or for any other case. Pursuant to
20 Government Code section 11425.60(a), a decision of the Department may be relied upon
21 as precedent if it has been designated as precedent by the Department. *Astrale e Terra*
22 was never designated as precedent and thus has absolutely no precedential value in this
23 unrelated case.

24 As far as the relevance of the prior decision, the parties argued that issue at the
25 hearing when it was offered by appellants. (RT Feb. 9, 2016, pp. 166-170.) ALJ
26 Sakamoto ultimately determined the document wasn't relevant for several reasons. Most
27 significantly, he felt it wasn't going to help him "decide the case one way or the other."
28 (*Id.* at 170:1-2.) Other reasons he cited were the fact that it was from 1999, it involved

1 different parties, it was not precedential (as stated above), and it was not a record or
2 document related to the present application. (*Id.* at 169.)

3 The other evidence mentioned in appellants' brief, at pages 26-27, is similarly not
4 relevant to the question of whether or not the license should issue. They provided
5 multiple photographs of the Soda Canyon Road; a photo of an accident which, the ALJ
6 accurately pointed out, could have happened from a variety of causes unrelated to either
7 alcohol or the winery (RT Feb. 9 at 30); evidence of fires, at least one of which occurred
8 in 2011, five years before the hearing (RT Feb. 10 at 50); photos of discarded beer bottles
9 which showed only littering which was not an issue in the protest (RT Feb. 9 at 36-37)¹;
10 photos of trucks taken at the time the winery was under construction and which the ALJ
11 found to be no probative or relevant to the protest issues (RT Feb. 10 at 146, 149-150);
12 and finally, a video of cars driving on Soda Canyon Road (which is not apparently
13 discussed in the record at the citation provided by appellants). All of these were
14 considered by the ALJ and found to be cumulative, duplicative, or not probative.
15 Furthermore, given ALJ Sakamoto's decision regarding traffic and fire safety (discussed
16 below), it is hard to imagine how the exclusion of this mass of evidence could create
17 error, especially considering that multiple witnesses testified as to what the photos and
18 video contained. This testimony, which was considered by the ALJ, is far more useful
19 and probative than a stack of photographs going back several years.

20 21 **C. Appellants' Claim of Newly-Discovered Evidence Must be Rejected**

22 For a party to introduce newly-discovered evidence in a case already before the
23 Appeals Board, that party must comply with the requirements of 4 Cal. Code. Reg. 198
24 (Rule 198). The Rule has two components that are not fulfilled by appellants' request: the
25 evidence must be something that could not have been produced at the hearing despite the
26 exercise of due diligence; and it must not be cumulative. Appellants' proposed evidence
27 fails both these requirements.

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¹ And one must wonder what the relevance of beer bottles is to a license application for a winery.

1 The newly-discovered evidence appellants want to introduce is not, as claimed,
2 newly-discovered. It is, according to appellants' own words, evidence that "could not
3 have been produced at the hearing... because the bulk of the incidents and accidents that
4 comprise these reports had not yet occurred..." In other words, appellants seek to
5 introduce evidence of things that happened *after* the hearing happened.

6 Rule 198's language allowing for newly discovered evidence echoes that of the
7 Code of Civil Procedure section 657(4) which provides for a new trial when there is
8 "Newly discovered evidence, material for the party making the application, which he
9 could not, with reasonable diligence, have discovered and produced at trial." California
10 courts have long held that newly-discovered evidence generally must be in existence at
11 the time of the trial (*Cansdale v. Board of Administration* (1976) 59 Cal.App.3d 656,
12 667) and that if a new trial is requested based on evidence discovered after the trial, "the
13 moving party must make a strong case" (*Nebelung v. Norman* (1939) 14 Cal.2d 647,
14 655).

15 Newly-discovered evidence must also not be cumulative. Part of the newly-
16 discovered evidence here is updated accident and incident reports for Soda Canyon Road.
17 However, by appellants' admission, older versions of accident and incident reports were
18 previously produced. (Appellants' Opening Brief, pp.27, Exhibits P-VI, G1-4, H1-6.) The
19 remaining newly-discovered evidence consists of accident and incident reports from the
20 Napa County Sheriff's Department.

21 There has been no strong showing as to why this evidence should serve to remand
22 this case. The updated reports merely supplement the evidence and testimony already
23 presented during a five-day hearing. This, if they were admitted, they would be
24 cumulative to the evidence already been admitted (and considered by the Department)
25 and provide no further insight or evidentiary value to this case. They add nothing to the
26 record.

27 The Sheriff's Department records similarly add nothing to the case. Furthermore,
28 if appellants wanted evidence from the Napa Sheriff's Department as part of the
evidence, they could have elicited testimony from a member of the Sheriff's Department

1 on any one of the days of hearing. Testimony from a local sheriff would have served to
2 establish that there were calls for service on Soda Canyon Road. And appellants had the
3 same right to subpoena and call witnesses that the Department and respondent had. That
4 they chose not to use this right does not then entitle them to reopen the record or pile
5 additional documents into an already thick stack of exhibits.

6 Finally, appellants have completely failed to comply with the procedural
7 requirements set forth in Rule 198 for bringing a claim before the Board based on an
8 assertion of newly discovered evidence. That failure alone should bar their claims raised
9 on those grounds. Accordingly, for all of the foregoing reasons, appellants' request to
10 produce additional evidence must be denied.

11 **D. The Department Properly Deferred to Local Authorities and Experts**

12 Although the Department has significant authority over matters related to the
13 licensing of alcoholic beverages, it must sometimes defer to local government and
14 expertise in evaluating whether to issue a license. "Of necessity, in appraising the
15 likelihood of future harm to public welfare, the Department must be guided to a large
16 extent by past experience and the opinion of experts." (*Kirby v. Alcoholic Beverage*
17 *Appeals Board (Schaeffer)* (1972) 7 Cal.3d 433, 441.) This deference to "the opinion of
18 experts" is exactly how the Department proceeded in this matter.

19 Regarding appellants' concerns over traffic safety on Soda Canyon Road, the
20 Department considered the evidence presented and, in its Conclusions of Law 5 stated:

21 "While the Department has broad discretion in deciding upon the
22 issuance of a license, its scope of expertise is focused on alcoholic
23 beverages, and is much less equipped to reasonably address issues of road
24 design, road construction, road capacity, road routing, vehicle traffic
25 patterns, and projected road usage. Rather, city and county governments
26 have more expertise in that arena and are much better equipped than the
27 Department to determine if the effect of a business's vehicle traffic on a
28 road, in the context of a specific setting, is acceptable, not acceptable, or
allowable with certain revisions, accommodations, or adjustments to the
road itself or upon a proposed business' projected use of the road. ... In this
particular case, Applicant completed a full county zoning application and
hearing process that specifically addressed the road use of Applicant's
winery and it issued a conditional use permit to conduct that business."

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2 Regarding appellants' concerns over fire safety, the Department came to the same
3 conclusion. The Department doesn't have expertise over the many aspects of fire
4 prevention and safety, and neither the local Fire Marshall nor the Napa Fire Department
5 had any fire-related concerns regarding respondent's premises. (Decision, Conclusions of
6 Law 6, pp. 8.)

7 In both of these instances, appellants would have the Department overrule local
8 experts and, in the case of the road issue, reverse decisions made locally after a hearing
9 on the issue. Since local government and local experts have addressed these issues, the
10 Department has properly declined to extend its authority into them.

11 The same holds true for the Department's decision as to zoning. A Type 02 license
12 is at issue here and is a non-retail license. The Department is only required to look into
13 zoning if a retail license is at issue. (Business and Professions Code section 23790.)
14 Thus, there was no need to investigate zoning. The Department, however, went one step
15 further in its analysis. Assuming that an investigation into zoning was necessary,
16 respondent obtained a Conditional Use Permit (CUP) from the county allowing the
17 premises to be used for winery operations. The issuance of the CUP by local government
18 satisfies the zoning requirement for a retail license. Again, the Department has deferred a
19 local decision to local authorities and not overriding their authority.

20 The last such issue dealt with in the decision is that of quiet enjoyment of local
21 residents' property. Again, we are presented with a requirement for a retail license (4 Cal.
22 Code Reg. section 61.4) which appellants want the Department to apply to a non-retail
23 license. Nonetheless, the Department gave some consideration to respondent's neighbors
24 and determined that the winery's operations would not *unreasonably* interfere with the
25 neighbor's quiet enjoyment. The operative term here is "unreasonable." Appellants argue
26 a standard that is closer to *no interference in the slightest*, but that is not the legal
27 standard set forth by the Rule 61.4 (assuming, *arguendo*, that it even applied in this sort
28 of situation).

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III. CONCLUSION

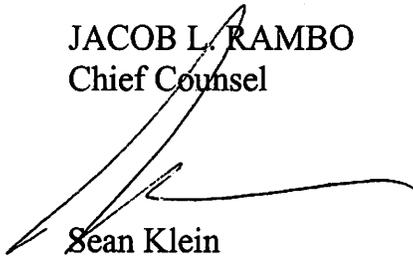
The big picture here is that appellants are asking this Board to reweigh the evidence considered by the Department, to override local decisions, and to apply standards to a non-retail license that only apply to retail licenses. The Board may not do so. Substantial evidence supports the Department's decision. That is all that is required to uphold the decision, and appellants may not request that this Board reweigh the evidence all over again.

Further, while the Department has great discretion and authority over the issuance of licenses, that discretion and authority is sometimes limited by local government and by subject matter outside the Department's expertise that is best handled by those versed in those subjects. That is the situation presented here. The Department has deferred to determinations made at the local level and decided not to override them. Accordingly, the Department's decision should be upheld.

Dated: September 18, 2017

Respectfully Submitted,

JACOB L. RAMBO
Chief Counsel



Sean Klein
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Attorneys for Respondent
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1 PROOF OF SERVICE BY MAIL
2 (CCP §§ 1013(A), 2015.5)

3 I, the undersigned, hereby certify as follows:

4 I am a citizen of the United States and employed in the County of Sacramento, California. I am
5 over the age of eighteen (18) years and I am not a party to the above-captioned action. My
6 business address is 3927 Lennane Drive, Suite 100, Sacramento, CA 95834.

6 On September 18, 2017, I mailed from Sacramento:

- 7 • DEPARTMENT'S BRIEF

8 ■ **BY MAIL** - I served the documents by enclosing them in an envelope and:

9 depositing the sealed envelope with the United States Postal Service with postage
10 fully prepaid.

11 ■ placing the envelope for collection and mailing following our ordinary business
12 practices. I am readily familiar with this business's practice for collecting and processing
13 correspondence for mailing. On the same day that correspondence is placed for collection and
14 mailing, it is deposited in the ordinary course of business with the United States Postal
15 Service in a sealed envelope with postage fully prepaid.

13 The envelope was addressed and mailed as follows:

14 ABC Appeals Board
15 1325 J Street, Suite 1560,
16 Sacramento, CA 95814
17 **Hand Delivered**

Sean Klein
Headquarters, OLS
Interoffice Mail

17 Relic Wine Cellars, LLC
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8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

9 Dated: September 18, 2017



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11 Legal Analyst
12 Department of Alcoholic Beverage Control
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