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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

PI-AQUA, INC., Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B279663 (Los Angeles County Super. Ct. No. BS158021)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Law Offices of Joshua Kaplan and Joshua Kaplan for Plaintiff and Appellant.

Pollak, Vida & Barer, Daniel P. Barer and Anna L. Birenbaum for Defendants and Respondents.

Plaintiff and appellant Pi-Aqua, Inc. (Pi-Aqua), a lawful commercial sex venue (CSV), was cited for violating CSV Regulations, Item 7 (Rule 7), which prohibits a CSV from "permit[ting] a person to enter, be or remain in any part of a CSV while in possession of, or consuming, using or clearly under the influence of, any alcoholic beverage or illegal drug." Pi-Aqua challenged the citation, and both the administrative law judge and the trial court affirmed the citation. Pi-Aqua now appeals the trial court judgment denying its petition for writ of administrative mandate. Because substantial evidence supports the citation, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. *CSV Regulations*

A CSV is defined as "any establishment that charges patrons or members a fee for admission or membership and which as one of its primary purposes, allows, facilitates, and/or provides facilities for it patrons or members to engage in any high risk sexual contact while on the premises." (L.A. Mun. Code, § 11.04.310.) A Los Angeles County health officer may inspect a CSV to enforce the Municipal Code as often as necessary. (L.A. Mun. Code, § 11.04.370.) If a health officer finds that a CSV is not in compliance with CSV regulations, or with any law affecting public health or safety, the County of Los Angeles (County) may issue a notice of noncompliance to the CSV. The notice must include a statement of all deficiencies found and any mandatory corrective measures. (L.A. Mun. Code, § 11.04.350(B).)

The County may suspend or revoke a public health facility permit at any time for failure to comply with CSV regulations, the Los Angeles County Municipal Code, or the California Health and Safety Code. (L.A. Mun. Code, § 11.04.350(A).) That said,

the County may only issue a notice of revocation of a CSV license when the facility "in the past 12 months has been issued notices of suspension and/or notices of non-compliance" and the multiple violations over the past 12 months "constitute a pattern of violations" supporting the license revocation.

Pursuant to Rule 7, the use or sale of alcohol and illegal drugs at CSV's is prohibited. In a letter dated July 11, 2014, the County advised CSV owners that during a code inspection by the County health officer, "Discovery on premises of empty containers of alcohol or of used drug paraphernalia will be considered as evidence of non-compliance."

II. *Factual Background*

Pi-Aqua operates as a CSV, lawfully permitted pursuant to Los Angeles Municipal Code section 11.04.320. Peter Sykes (Sykes) is the owner of Pi-Aqua; Ernesto Diaz (Diaz) was the manager on duty at the relevant time.

In an effort to comply with Rule 7, Pi-Aqua maintains rules and protocols intended to preclude patrons from entering in possession of alcohol and from consuming it while at the venue. Management is trained to detect patrons who have consumed alcohol. Designated employees monitor patrons' conduct at regular intervals. The premises are monitored. And, there is a written warning, in large, bold, clear letters, advising that no alcohol is allowed in the premises and that bags will be searched upon entry.

Approximately three times per month, it excludes patrons from the premises because they are either attempting to bring alcohol into the premises, consuming alcohol in the premises, or under the influence of alcohol.

On July 10, 2015, County health inspectors Christian Sten (Sten) and Ray Samonte (Samonte) inspected Pi-Aqua. Diaz accompanied them during the inspection.

During their inspection, Sten and Samonte went up a staircase in the facility to a sun deck. Entering the sun deck from the staircase, there was a trashcan on the left-hand side. Sten shone his flashlight into the trashcan and saw a can at the bottom of the trash liner. When he read the can's label, he saw the words "Club Mudslide" and that the beverage was an alcoholic beverage. The can had a trace amount of liquid left in it. When Sten turned to his right, he saw a picnic table located on the deck. On the table were two clear plastic cups with clear liquid and ice cubes in them. The glasses were sweating. Sten picked up one cup and smelled it; based on his training as a police officer and as a public health inspector, he was able to identify the container as one containing an alcoholic beverage.

Diaz then picked up the two cups and the can retrieved from the trashcan; he took the three items back to the office. According to Diaz, the two cups at issue were the same two cups that two customers had requested, with water, before they walked into the CSV that day. While in the office, Sten wrote a report of noncompliance. The report provided: "Inspectors saw a 200ml can of 'The Club Mudslide' alcoholic beverage in trash can on sun deck and two mixed drinks that had a smell of an alcoholic beverage—no alcohol or evidence of alcohol is allowed on premises." It appears that this is the one and only notice of noncompliance issued to Pi-Aqua during the 2015 calendar year.

Neither Sykes nor Diaz permitted anyone to remain on the premises in possession of alcohol, or to consume alcohol, on July 10, 2015. In fact, Sten did not identify any person entering,

being in, or remaining in any part of the premises while in the possession of, consuming, using, or clearly under the influence of any alcoholic beverage. Sten did not see anyone drinking alcohol at Pi-Aqua.

No laboratory analysis was done of the liquid contents of the "Club Mudslide" can.

III. *Procedural Background*

On August 4, 2015, at Pi-Aqua's demand, the County held an administrative hearing to review Pi-Aqua's notice of noncompliance. Dr. Dawn Terashita served as the hearing officer. Various documents were admitted into evidence; Sykes, Diaz, and Sten testified.

On August 11, 2015, Dr. Terashita issued a written statement of decision. She summarized the testimony at the hearing: The County's inspectors observed an "empty" 200 milliliter can of "Club Mudslide," which was labeled as an alcoholic beverage, and two mixed drinks in clear plastic cups on a table on the sun deck, with the odor of an alcoholic beverage. She noted that Sten has experience in the detection of alcohol. She also summarized Pi-Aqua's legal arguments: (1) finding an empty container is not proof of permitting a person to enter the facility while in possession of alcohol; and (2) the Department of Public Health could not prove that an alcoholic beverage was found at Pi-Aqua because there was no seizure or testing of the containers found. Ultimately, Dr. Terashita found: "After reviewing all exhibits, documentation, and notes on testimony given during the hearing, I have concluded, based on the preponderance of evidence, that Pi-Aqua/North Hollywood Spa violated Part 7, Control of Alcohol and Illegal Drugs, of the CSV Regulations. The Notice of Non-Compliance is upheld."

Pi-Aqua then filed a petition for writ of administrative mandate against defendant and respondent County. Pi-Aqua and the County submitted trial briefs.

After considering the evidence and the parties' arguments, the trial court ruled in favor of the County. It found that, given the informal nature of the administrative hearing and the relatively "straightforward" allegations in the citation, Dr. Terashita's decision contained "minimally sufficient findings" to satisfy the requirement of *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 (*Topanga*). Applying substantial evidence review, the trial court found that the notice of noncompliance should be upheld. After all, there were two cups with alcohol in them and a can that all witnesses agreed smelled of alcohol. That evidence, coupled with the fact that three patrons per month were ejected from the facility for alcohol consumption or intoxication, supported the citation.

As for the steps that Pi-Aqua took to prevent alcohol possession and consumption at the facility, the trial court noted that the facility's procedures were inadequate, as evidenced by Sykes's testimony that he removed three patrons per month for alcohol consumption or intoxication. Thus, the trial court found that Pi-Aqua was insufficiently informing its patrons of its alcohol policy and inadequately enforcing that policy.

In so ruling, the trial court distinguished *Pereyda v. State Personnel Board* (1971) 15 Cal.App.3d 47 (*Pereyda*).

Judgment was entered in favor of the County, and Pi-Aqua timely appealed.

DISCUSSION

I. Standard of review

Just as in the trial court, we review the administrative decision for substantial evidence. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334–335.) Any conflicts in the evidence are resolved in favor of the administrative decision. (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1182.) All reasonable inferences are drawn in favor of that decision. (*Doe v. Regents of University of California* (2016) 5 Cal.App.5th 1055, 1074.)

We review the trial court's determination that the administrative decision was sufficient de novo. (*Topanga*, *supra*, 11 Cal.3d at p. 515.)

II. The citation for noncompliance issued to Pi-Aqua is supported by substantial evidence

At issue here is whether the citation issued to Pi-Aqua is supported by substantial evidence.

As set forth above, Rule 7 provides: "The business owner or the on-site manager shall not permit a person to enter, be or remain in any part of a CSV while in possession of, or consuming, using or clearly under the influence of, any alcoholic beverage or illegal drug."

Here, ample evidence supports the notice of noncompliance with Rule 7. Sten found a nearly empty container of "Club Mudslide," an alcoholic beverage in a trashcan on the sun deck of the facility. Diaz testified that the liquid in the can smelled of alcohol. Sten also found two cups with liquid that he identified as being alcohol based on its smell. This evidence is sufficient to uphold the citation.

In urging reversal, Pi-Aqua directs us to California Business and Professions Code section 23004, which defines an "alcoholic beverage" as "every liquid . . . which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes." According to Pi-Aqua, "[u]nless there is an alleged liquid which has been tested by a licensed laboratory chemist or determined by an expert to contain one-half of one percent or more of alcohol by volume, there can be no proof sufficient to establish that any alleged 'alcoholic beverage' was present" at Pi-Aqua. In other words, the County had to prove "by expert laboratory analysis" that Pi-Aqua permitted some person to enter the premises with an alcoholic beverage. In support, Pi-Aqua relies upon *People v. Rosseau* (1929) 100 Cal.App. 245 (*Rosseau*).

Rosseau does not apply for at least two reasons. First, this is not a criminal case. Pi-Aqua was not convicted of violating a criminal statute or levied a fine. It was merely given a citation that by itself carries no penalty. Pi-Aqua directs us to no legal authority that supports its supposition that the standard of proof required in a criminal case should be applied here. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].) Second, nothing in *Rosseau* supports Pi-Aqua's suggestion that scientific testing is required to prove that a container labeled as holding alcohol did in fact carry alcohol. Contrariwise, *Rosseau* recognized that witnesses familiar with liquor have testified as to the quality and character of liquors, "and such evidence ha[s] been upheld as sufficient to support the

[judgments of] convictions." (*Rosseau, supra,* 100 Cal.App. at p. 247.)

Pi-Aqua further asserts that a violation of Rule 7 requires that the owner or manager have knowledge that some person was in possession of, consuming, or under the influence of an alcoholic beverage. Because Sykes and Diaz did not know that anyone was consuming alcohol on July 10, 2015, the citation was wrongly issued. But Rule 7 says nothing of the owner or manager's knowledge. Thus, Pi-Aqua's interpretation of Rule 7 does not apply.

Pi-Aqua argues that there was no evidence that it permitted any person to enter the premises with an alcoholic beverage—neither Sykes nor Diaz had any knowledge that someone possessed alcohol on the premises and they would not have allowed anyone with alcohol to enter. And, Pi-Aqua takes steps to prevent persons from entering the premises with alcohol. According to Pi-Aqua, because it has done everything reasonably possible to prevent alcohol on its premises, the citation should not have been issued. In support, Pi-Aqua relies heavily upon *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 377 (*Laube*), which held "that a licensee must have knowledge, either actual or constructive, before he or she can be found to have 'permitted' unacceptable conduct on a licensed premises." The *Laube* court explained that even if a bar owner fails to take all reasonable preventative steps (the "*McFaddin* defense," from *McFaddin San Diego 1130 v. Stroh* (1989) 208 Cal.App.3d 1384), knowledge is required and strict liability may not be imposed. (*Laube*, *supra*, at pp. 378–379.)

Assuming without deciding that *Laube* applies, substantial evidence supports the trial court's determination that *Laube*'s

requirement of constructive knowledge has been established. Sykes's testimony that he removes around three people per month from the premises for alcohol consumption or intoxication coupled with the easily visible "Club Mudslide" can and the casual nature of the plastic cups left behind containing alcohol, gave Pi-Aqua constructive knowledge of a potential alcohol problem.

We also note that the procedural posture of the instant case is far different from that in *Laube*. The petitioners in *Laube* were "liquor licensees who suffered suspension or revocation of their liquor licenses because they allegedly 'permitted' drug sales in their establishments [even though] [n]either licensee knew or had reason to know of the drug trafficking." (*Laube*, *supra*, 2 Cal.App.4th at p. 366.) Here, the only possible consequence from the citation was that Pi-Aqua received one of several warnings that could have occurred in a calendar year, and which could have led to a license suspension only if the conduct continued in that calendar year. There is no evidence that it did.

Pi-Aqua further objects to the County's July 11, 2014, letter to the extent it "purports to assert an irrefutable presumption that 'discovery on premises of empty containers of alcohol . . . will be considered as evidence of non-compliance.'" This argument is flawed for the simple reason that the letter does not set forth any irrefutable presumption; it states that the discovery of empty containers of alcohol will be considered as evidence of noncompliance. That evidence, along with all of the other evidence, was considered by Sten before he issued the notice of noncompliance; and that evidence, along with evidence of Pi-Aqua's steps to prevent alcohol consumption on the premises, was

presented to Dr. Terashita and the trial court, both of whom found that the citation was appropriate.

Pi-Aqua's reliance upon *Pereyda* is misplaced. In *Pereyda*, a correctional officer was dismissed from his employment after he allegedly brought alcoholic beverages into a restricted area. (*Pereyda*, *supra*, 15 Cal.App.3d at p. 49.) In so ruling, the administrative body rejected the petitioner's explanation that he was simply hauling the washed-clean empty alcohol containers to the dump as a favor for a friend as "weird" and likely untrue. (*Id.* at p. 51.) The trial court granted a petition for administrative mandamus on the ground that the administrative decision was not supported by evidence, and the Court of Appeal agreed. (*Id.* at p. 53.) Although the petitioner's explanation could be viewed with suspicion, the Court of Appeal found that suspicion was not a substitute for proof. (*Ibid.*) And, absent proof that the containers had once held alcohol while in the area where alcohol was forbidden, the Board had insufficient grounds for terminating the petitioner's employment.

Unlike the situation in *Pereyda*, Pi-Aqua has offered no explanation for the empty container of alcohol and cups containing a substance that smelled of alcohol on the sun deck. And, unlike the containers in *Pereyda*, which had been washed clean, the "Club Mudslide" can contained a liquid that both Sten and Diaz agreed smelled like alcohol.

Finally, we reject Pi-Aqua's contention that Dr. Terashita's statement of decision is legally insufficient. Pi-Aqua has not shown, with a developed legal argument, why the statement of decision is deficient. (*Benach v. County of Los Angeles*, *supra*, 149 Cal.App.4th at p. 852.) Regardless, as found by the trial court, Dr. Terashita's statement of decision satisfies *Topanga*.

She summarized the evidence and three legal arguments raised by Pi-Aqua. She then concluded, based upon her review of "all exhibits, documentation, and notes on testimony given during the hearing," that Pi-Aqua violated Rule 7, thereby upholding the notice of noncompliance. We agree with the trial court that nothing more was required.

It follows that we reject Pi-Aqua's "post-hoc rationalization" argument. There is no evidence of a post-hoc rationalization. (Contra, *Bam, Inc. v. Board of Police Comrs.* (1992) 7 Cal.App.4th 1343, 1346 [rejecting a board's process of presenting findings after suspending a permit].) The parties participated in an administrative hearing. After the hearing, the hearing officer made a decision. The decision was provided to the parties. No further action resulted from the administrative decision.

DISPOSITION

The judgment is affirmed. The County is entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT