

NO. 24263

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

LIFE'S A BEACH CLUB, INC. DBA LIFE'S A  
BEACH CLUB, Appellant-Appellant, v.  
LIQUOR CONTROL ADJUDICATION BOARD,  
AND COUNTY OF MAUI, Appellees-Appellees

APPEAL FROM THE SECOND CIRCUIT COURT  
(CIV. NO. 00-1-0172(1) (AGENCY APPEAL))

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Foley, JJ.)

Appellant Life's a Beach Club, Inc. dba Life's a Beach Club (Beach) appeals from the Order Affirming the Decision Rendered by Appellee Liquor Control Adjudication Board, County Of Maui (Order), entered on November 16, 2000 by the Circuit Court of the Second Circuit (the circuit court).<sup>1</sup> Beach contends (1) the circuit court erred in its ruling that the Board's decision was supported by the evidence; (2) the rules Beach was found to have violated are unconstitutionally void for vagueness; and (3) double jeopardy forbids multiple prosecutions for the same conduct. We disagree with Beach's contentions and affirm the November 16, 2000 Order of the circuit court.

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<sup>1</sup>The Honorable Artemio C. Baxa presided.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Beach's points of error as follows:

(1) Beach contends the circuit court erred in concluding that the Board's decision was based on reliable, probative, and substantial evidence. Beach also contends the Board failed to meet the requisite standard of proof under Hawaii Revised Statutes (HRS) 91-10(5) (1993). The Board found it more likely than not that Beach had violated:

(a) HRS § 281-78(b)(1)(B) (Supp. 2001), which provides in part:

**§281-78 Prohibitions.**

- . . . .
- (b) At no time under any circumstances shall any licensee or its employee:
- (1) Sell . . . or furnish any liquor to . . . :
- . . . .
- (B) Any person at the time under the influence of liquor[.]

(b) Section 08.01.60(b)(1)(B) of the Rules of the Liquor Commission, County of Maui, which provides in part:

**§08-01-60 Prohibitions.**

- . . . .
- (b) At no time under any circumstances shall any licensee or its employee:
- (1) Sell . . . or furnish any liquor to . . . :
- . . . .
- (B) Any person at the time under the influence of liquor, drugs, or any combination thereof[.]

(c) Section 08.01.60(b)(11) of the Rules of the Liquor Commission, County of Maui, which provides in part:

§08-01-60 Prohibitions.

· · ·  
(b) At no time under any circumstances shall any licensee or its employee:

· · ·  
(11) Fail to exercise due care in determining whether a person is under the influence of liquor[.]

The Board relied on substantial credible evidence that it was more likely than not (a preponderance of the evidence) Beach had failed to exercise due care in determining whether Delmar Whitley (Whitley) was intoxicated when Beach sold or furnished liquor to Whitley on its premises. Poe v. Hawai'i Labor Relations Bd., 87 Hawai'i 191, 195, 953 P.2d 569, 573 (1998); HRS § 91-14(g)(5) (1993). Beach's employees had noticed that Whitley was under the influence of liquor at the time he was served, and Whitley's erratic behavior in the bar was among the factors from which the Board could have determined whether Beach knew or reasonably should have known that Whitley was under the influence of liquor at the time he was served. Ono v. Applegate, 62 Haw. 131, 138, 612 P.2d 533, 539 (1980). The circuit court did not err in concluding that the Board's findings of fact that Beach violated HRS § 281-78(b)(1)(B) and §§ 08.01.60(b)(1)(B) and 08.01.60(b)(11) of the Rules of the Liquor Commission, County of Maui, were not clearly erroneous.

(2) Beach contends that the statutory definition of "under the influence of intoxicating liquor" is

unconstitutionally void for vagueness. Hawaii Revised Statutes § 281-1 (1993) and § 08.01.5 of the Rules of the Liquor Commission, County of Maui, provide the following definition:

"Under the influence of liquor" means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.

The statute accounts for differences in intoxication from person to person by focusing on the proscribed result and provides objective indicators to evaluate possible impairment. The statutory definition provides a reasonable degree of certainty and is sufficiently definite to give a person of common intelligence notice of what conduct is proscribed. State v. Kahalewai, 56 Haw. 481, 490-91, 541 P.2d 1020, 1026-27 (1975). Beach fails to meet the requisite burden of proof required to overcome the presumption of constitutionality. Bishop v. Mahiko, 35 Haw. 608, 641 (1940).

(3) Beach contends that double jeopardy protections prevent an administrative agency from punishing twice for the same conduct. The double jeopardy protections embodied in article 1, § 10, of the Hawai'i Constitution protect "individuals from multiple prosecutions for the same act." State v. Lessary, 75 Haw. 446, 459, 865 P.2d 150, 156 (1994). Beach was subjected to one administrative proceeding, not multiple prosecutions.

Therefore,

IT IS HEREBY ORDERED that the Circuit Court of the Second Circuit's Order Affirming the Decision Rendered by Appellee Liquor Control Adjudication Board, County of Maui, filed November 16, 2000 is affirmed.

DATED: Honolulu, Hawai'i, November 8, 2002.

On the briefs:

Richard L. Rost  
for appellant-appellant.

Chief Judge

Robert D. Rivera,  
Deputy Corporation Counsel,  
County of Maui,  
for appellees-appellees.

Associate Judge

Associate Judge