

ISSUED MARCH 29, 1996

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

| | | |
|-----------------------------------|---|--------------------------|
| SCOTT RANDOLPH SHINEDLING and |) | AB-6558 |
| ERIC SLOAN SOKOL |) | |
| dba Rack 'Em Up |) | File: 40-279427 |
| 15025-15029 East Imperial Highway |) | Reg: 94031012 |
| La Mirada, CA 90638 |) | |
| Licensees/Appellants, |) | Administrative Law Judge |
| |) | at the Dept. Hearing: |
| v. |) | David B. Rosenman |
| |) | |
| DEPARTMENT OF ALCOHOLIC |) | Date and Place of the |
| BEVERAGE CONTROL, |) | Appeals Board Hearing: |
| Respondent. |) | February 8, 1996 |
| |) | Los Angeles, CA |

Scott Randolph Shinedling and Eric Sloan Sokol, doing business as Rack 'Em Up, (appellants), appealed from a decision of the Department of Alcoholic Beverage Control¹ which suspended their on-sale beer license for 20 days, with 15 days of that suspension stayed on conditions including a one-year probationary period, for violating a condition on the license which required that the front and back doors of the premises must be closed at all times except in cases of emergency and to permit deliveries.

Appearances on appeal included Scott Randolph Shinedling and Eric Sloan Sokol, appellants; and John P. McCarthy, counsel for the department.

¹The decision of the department dated July 27, 1995 is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued March 16, 1993, for the sale of beer in their pool hall premises. Thereafter, the department instituted an accusation against appellants on August 13, 1994, alleging a violation of condition 6 on the license which required the premises' doors to remain closed.

An administrative hearing was held on July 11, 1995, at which time oral and documentary evidence was received.

At that hearing, it was determined that appellants knowingly and intentionally violated the condition. Appellant argued that on the day previous to the violation, one of their three air conditioners failed. On the day of the violation, in the afternoon, the second air conditioner failed. As the weather was hot, appellants purchased several fans to help keep the premises cool. Thereafter, in the evening, the doors were opened to allow the night air to come into the premises. The air conditioners were repaired the following day at considerable cost.

Subsequent to the hearing, the department issued its decision which suspended appellants' license for 20 days, with 15 days of the suspension stayed. Appellants thereafter filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of the appellant's position was given on October 19, 1995. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The appeals board is not required to make an independent search of the record

for error not pointed out by appellants. It was the duty of appellants to show to the appeals board that the claimed error existed. Without such assistance by appellants, the appeals board may deem the general contentions waived or abandoned. See Horowitz v. Noble (1978) 79 Cal.App.3d 120, 129, 144 Cal.Rptr. 710; and Sutter v. Game! (1962) 210 Cal.App.2d 529, 531, 26 Cal.Rptr. 880, 881. With reluctance, we deem the contentions waived or abandoned. While the appeals board grudgingly considers the violations to have occurred, they are extremely technical, considering the unfortunate facts as set forth in the record. However, the violations did occur and the penalty appears within reason under the department's discretion.

CONCLUSION

The decision of the department is affirmed.²

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.