

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

CLARA ROLON and	)	AB-6596
RAMIRO ROLON)	
3568 East Butler	)	File: 20-302964
Fresno, CA 93702	)	Reg: 95033223
Appellants/Applicants,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
)	
SERGEANT JIM LUSK,)	
Fresno Police Department, et al.,	)	Date and Place of the
Respondents/Protestants, and	)	Appeals Board Hearing:
	)	June 5, 1996
THE DEPARTMENT OF ALCOHOLIC	)	Sacramento, CA
BEVERAGE CONTROL,)	
Respondent.)	
_____)	

Clara Rolon and Ramiro Rolon (appellants) appealed from a decision of the Department of Alcoholic Beverage Control¹ which denied their application for an off-sale beer and wine license and sustained the protests filed against the issuance of the license on the grounds that issuance of the license would tend to aggravate an existing law enforcement problem and would result in or add to an undue concentration of licenses in the immediate vicinity of the proposed premises, being contrary to the

¹The decision of the department dated October 12, 1995 is set forth in the appendix.

generic public welfare and morals provisions of the California Constitution, Article XX, §22, and in violation of Business and Professions Code §§23789 and 23958.

Appearances on appeal included appellants Clara Rolon and Ramiro Rolon, appearing through their counsel, Mark D. Johnson; the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas R. Loehr; and protestants Sergeant Jim Lusk of the Fresno Police Department, Rev. Wayne Holman, and Bob Mugardechian.

FACTS AND PROCEDURAL HISTORY

Appellants filed an application for an off-sale beer and wine license with the department on December 2, 1994. On June 22, 1995, the department denied their application, citing undue concentration of licenses, a law enforcement problem area, proximity to churches and a school, a litter problem, and a residence within 100 feet of the proposed premises which caused the application to be subject to the California Code of Regulations, Title 4, §61.4 (rule 61.4). Appellants requested a hearing on the matter.

An administrative hearing was held on August 31, 1995, concerning the denial of the application and the protests to the issuance of the license, at which time oral and documentary evidence was received. At that hearing, it was established that the issuance of a license to appellants would result in an "undue concentration" of licenses and would tend to create a law enforcement problem for the nearby school and churches, and for the neighborhood in general. It was also established that appellants

did not meet their burden of proving that the department abused its discretion when it concluded that issuance of a license to them would be contrary to public welfare or morals.

Subsequent to the hearing, the department issued its decision which denied the petition for issuance of the license and sustained the protests. Appellants thereafter filed a timely notice of appeal.

In the present matter, written notice of the opportunity to file briefs in support of the appellant's position was given on January 24, 1996. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient points and authorities in that document that would aid this board's review.

The appeals board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the appeals board that the claimed error existed. Without such assistance by appellant, the appeals board may deem the contentions waived or abandoned. See Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139, 144 Cal.Rptr. 710; and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531, 26 Cal.Rptr. 880, 881. We so hold.

CONCLUSION

The decision of the department is affirmed.²

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.

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