

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

MARTA ISABEL ALVAREZ	)	AB-6600
dba La Trampa)	
4149 Foothill Boulevard	)	File: 42-269656
Oakland, CA 94601,	)	Reg: 95031920
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Marguerite C. Geftakys
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	September 4, 1996
	)	San Francisco, CA

Marta Isabel Alvarez, doing business as La Trampa (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which conditionally revoked her on-sale beer and wine public premises license, with the revocation stayed for a two-year period on conditions including an actual suspension of 30 days, for permitting a live band to play music for entertainment inside the licensed premises without a cabaret permit; for allowing the licensed premises to be used in a manner which created a law enforcement problem; for allowing her employee to purchase beer for

¹The decision of the Department dated October 19, 1995, is set forth in the appendix.

resale from another retailer; for possessing cigarettes for resale which were not stamped with tax stamps; and for employing a manager for the licensed premises whose qualifications had not been determined by the Department; all being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§23402; 23788.5; and 24200, subdivisions (a) and (b); and California Revenue and Taxation Code §30474.

Appearances on appeal include Marta Isabel Alvarez, represented by her counsel, Eduardo A. Gonzalez; and the Department of Alcoholic Beverage Control, represented by its counsel, John R. Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on April 2, 1992. Thereafter, the Department instituted an accusation against appellant's license on October 6, 1994, and appellant requested a hearing.

An administrative hearing was held on August 22, 1995. Neither appellant nor her representative appeared at the hearing, so the hearing was conducted as a default proceeding pursuant to Government Code §11520. At that time, oral and documentary evidence was received on behalf of the Department.

Subsequent to the hearing, the Department issued its decision which conditionally revoked appellant's license, with the revocation being stayed for a two-year period on conditions which included an actual suspension of the license for 30 days. Appellant filed a timely appeal.

In her appeal, appellant raises the following issues: (1) the determinations on all counts, particularly Count 1 and the Aggravation Finding, violated appellant's procedural due process rights; and (2) the findings were not supported by substantial evidence.

DISCUSSION

I

Appellant contends that her right to procedural due process was violated because she was misled by the accusation and the notice of hearing. Appellant argues that the accusation was misleading because it did not include an aggravation charge and the notice was misleading because it stated that the hearing would take place over a three-day period.

Appellant is correct in stating that the accusation did not include a charge of aggravation. However, "aggravation" has to do with the penalty, and the penalty is, of course, not mentioned in an accusation; the issue of aggravation does not arise until evidence is presented at the hearing that shows aggravation. In any case, appellant has not explained how she was prejudiced by this since, in any case, she did not appear at the hearing.

The notice of hearing clearly stated that the hearing would be held on "August 22, 23, 24, 1995" (emphasis in original). Appellant has not explained how this misled her into believing that she did not need to appear on the 22nd of August. This contention is rejected.

II

Appellant argues, essentially, that no substantial evidence was produced to support any of the counts in the accusation. Appellant contends that there was insufficient evidence showing that the alleged violations had occurred and no evidence showing that appellant had permitted them to occur.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].) Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr. 658].)

At the hearing, an Oakland Police Department Officer testified as a percipient witness to several of the violations and a former officer testified as to the volume of reports involving appellant's premises. Twenty-six police reports, covering a 25-month period, were introduced into evidence at the hearing.

Appellant questions details of some of the police reports, but the evidence presented with regard to the charged violations certainly qualifies as substantial. Not

only is it clear that the violations occurred, and that appellant permitted them to occur, but, in many instances, the violations were wilful and intentional. This contention is rejected.

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.