

ISSUED AUGUST 7, 1996

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

HERMILIO M. DIAZ	)	AB-6611
dba El Tapatio	)	
4639 East Third Street	)	File: 40-237214
Los Angeles, CA 90022,	)	Reg: 94031043
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Leslie H. Greenfield
THE DEPARTMENT OF ALCOHOLIC	)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 1, 1996
	)	Irvine, CA
	)	

Hermilio M. Diaz, doing business as El Tapatio (appellant), appealed from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which unconditionally revoked appellant's on-sale beer license for employing or permitting three persons to solicit drinks under a commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy; and for employing or permitting those persons to loiter in the licensed premises for the purpose of begging or soliciting patrons to purchase alcoholic beverages; being contrary to the universal and generic public welfare and morals provisions of the California Constitution, Article XX, §22, arising from a violation of Business and Professions Code §§24200.5, subdivision (b), and 25657, subdivision

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<sup>1</sup>The decision of the department dated November 21, 1995, is set forth in the appendix.

(b), and Penal Code §303a.

Appearances on appeal included appellant Hermilio M. Diaz, appearing through his counsel, Ralph B. Saltsman; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

#### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on September 29, 1989. Thereafter, the department instituted a 15-count accusation against appellant's license on August 12, 1994. The accusation charged that three women solicited drinks from an undercover police officer and five counts were brought with regard to each solicitation as violations of Business and Professions Code §§24200.5, subdivision (b), and 25657, subdivision (b), Penal Code 303a, and California Code of Regulations, Title 4, Chapter 1, §143 (Rule 143).<sup>2</sup>

An administrative hearing was held on April 11, 1995, at which time oral and documentary evidence was presented. Following the hearing, the administrative law judge (ALJ) who presided at the hearing issued his proposed decision finding that none of the counts were "established, by credible non-hearsay evidence" [P.D. 1-3] and recommending that the accusation be dismissed. The department rejected that proposed decision pursuant to Government Code §11517, subdivision (c), which allows the department to reject a proposed decision in whole or in part. The department issued its own decision, finding sufficient evidence to sustain counts 1,2, 3, 11, 12, and 13, but insufficient evidence to sustain counts 4, 5, 6, 7, 8, 9, 10, 14,

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<sup>2</sup>The relevant text of the statutes and rule are set forth in the appendix.

and 15, and unconditionally revoking appellant's license.<sup>3</sup>

Appellant thereafter filed a timely notice of appeal, listing as issues the generic grounds for appeal stated in Business and Professions Code §23084.

In the present matter, written notice of the opportunity to file briefs in support of the appellant's position was given on February 8, 1996. No brief has been filed by appellant. We have reviewed the notice of appeal and have found nothing 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 the appellant. It was the duty of the appellant to show to the appeals board that the claimed error existed. Without such assistance by appellant, the appeals board may deem the general 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.<sup>4</sup>

RAY T. BLAIR, JR., CHAIRMAN  
JOHN B. TSU, MEMBER

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<sup>3</sup>The counts for which insufficient evidence was found were all those that alleged violations of Rule 143 and all those that involved a woman named Reina Rivera.

<sup>4</sup>This 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.

BEN DAVIDIAN, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD