

ISSUED DECEMBER 18, 1996

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

LEONARD Y. CHAN	)	AB-6614
dba Happy Liquor Store)	
1010 F Street	)	File: 21-229723
Fresno, CA 93706,	)	Reg: 94031268
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	M. Amanda Behe
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	September 4, 1996
	)	Sacramento, CA

Leonard Y. Chan, doing business as Happy Liquor Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 20 days, for selling an alcoholic beverage, beer, to a person under age 21, 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 §25658, subdivision (a).

Appearances on appeal include appellant Leonard Y. Chan; and the Department

¹The decision of the Department dated December 14, 1995, is set forth in the appendix.

of Alcoholic Beverage Control, appearing through its counsel, John R. Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on March 15, 1989. Thereafter, the Department instituted an Accusation against appellant on October 24, 1994. Appellant requested a hearing.

An administrative hearing was held on September 27, 1995, at which time oral and documentary evidence was received. After that hearing, the Administrative Law Judge (ALJ) issued a proposed decision in which it was determined that appellant sold a six-pack of beer to Marina Zertuche, who was nineteen years old at the time of sale, and who was acting as a minor decoy as part of a "sting" operation being conducted by the Fresno Police Department, and that appellant did not ask Ms. Zertuche for any identification before making the sale to her.

Subsequent to the hearing, the Department issued its decision which suspended appellant's license for 20 days.

In his appeal, appellant contends that he was unable to "clarify" his innocence because of his "language capability and lack of defense ability."

Written notice of the opportunity to file briefs in support of the appellant's position was given on April 29, 1996. 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 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 general contentions waived or abandoned. (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].)

At the hearing before the Appeals Board, appellant presented arguments that essentially repeated the arguments that he made before the ALJ and disputed the testimony upon which the Department based its findings. This Board, however is limited in its power to review the decisions of the Department and is prohibited from taking testimony or reweighing the evidence presented to the Department. If the decision of the Department is supported by substantial evidence, we must sustain it. On the record before us, we conclude that the decision of the Department was supported by substantial evidence.

CONCLUSION

The decision of the Department is affirmed.²

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

Abstaining: JOHN B. TSU, MEMBER

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.