

ISSUED MARCH 11, 1997

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

SALVADOR M. QUEZEDA and SERAPIA	)	AB-6663
QUEZEDA,)	
dba Don Quixote East Nightclub	)	File: 47-110093
2811 East Olympic Blvd.	)	Reg: 94030149
Los Angeles, CA 90032,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	John A. Willd
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	January 8, 1997
	)	Los Angeles, CA
)	

Salvador M. Quezeda and Serapia Quezeda, doing business as Don Quixote East Nightclub (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellants' on-sale general eating place license for 45 days, with 15 days of said suspension stayed for a probationary period of one year, for having sold alcoholic beverages to persons under the age of 21 and to persons obviously intoxicated, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations

¹The decision of the Department, dated April 4, 1996, is set forth in the appendix.

of Business and Professions Code §25658, subdivisions (a) and (b); §25602, subdivision (a); and §25662.

Appearances on appeal include appellants Salvador M. Quezeda and Serapia Quezeda, appearing through their counsel, Stephen L. Dobbs; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on February 25, 1983. Prior thereto, appellants were licensed as an on-sale beer and wine public eating place. On March 2, 1995, the Department instituted an amended accusation alleging in 12 counts that appellants sold or furnished alcoholic beverages to minors, in violation of Business and Professions Code §25658, subdivisions (a) and (b) (Counts 1,2,3,4,5,9, and 11); permitted a minor to possess alcoholic beverages in violation of Business and Professions Code §25662 (Count 12); and sold or furnished alcoholic beverages to persons who were obviously intoxicated, in violation of Business and Professions Code §25602 (Counts 6, 7, 8 and 10).

An administrative hearing was commenced on August 1, 1995, continued twice, and concluded on February 21, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the matters alleged in the accusation. Subsequent to the hearing, the Department issued its decision which determined that the Department had sustained the allegations in Count

2 (sale of alcoholic beverage on November 6, 1993, to 16-year-old minor); Count 4 (permitting consumption of alcoholic beverage by a 16-year-old minor on November 6, 1993); Count 6 (sale on November 20, 1993, of alcoholic beverage to person obviously intoxicated); Count 9 (sale on March 26, 1994, of alcoholic beverage to 20-year-old minor); and Count 12 (permitting a 17-year old minor to possess an alcoholic beverage on October 23, 1994). Counts 1,3, and 5 were dismissed on motion of the Department, and Counts 7,8,10 and 11 of the accusation were dismissed by the Administrative Law Judge (ALJ). Appellants thereafter filed a timely notice of appeal.

In their appeal, appellants raise, in summary fashion, a total of seven issues: (1) the rules and regulations of the Department violate the due process clauses of the United States and California constitutions by failing to accord appellants any procedural protection; (2) the ALJ violated due process safeguards in recommending suspension of the license; (3) the ALJ abused his discretion, since the findings are not supported by the evidence; (4) the time lapse between the violations and the hearing prejudiced appellants' ability to defend themselves; (5) the ALJ failed to follow the procedure specified by the Government Code; (6) the ALJ failed to furnish appellants with evidence; and (7) the Department engaged in discriminatory enforcement.

All of these purported issues are raised in conclusory fashion, with not a single citation to the record; appellants discuss only two issues in the body of their brief, again without reference to any support in the record. 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 appellants 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. Game! (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

DISCUSSION

At the outset, we should note that we have reviewed the hearing transcript, and are satisfied that there is no basis for appellants' broadside attack on the ALJ and his conduct of the hearing. The counts of the accusation sustained by the ALJ were supported by substantial evidence, and the proceedings were conducted fairly by the ALJ. Against that background, we address only briefly the two issues touched upon in the body of appellants' brief.

I

Appellants contend that Business and Professions Code §25658.5, subdivisions (a), (b) and (c) are vague in that the term "knowingly permitted" is not defined. Since §25658.5 pertains to an offense committed by a minor who purchases alcohol, a charge not involved in this case, we must assume that appellants' reference is intended to be to §25658, subdivision (a), which prohibits sales to minors. However, that code provision does not contain the "knowingly permitted" language, and the California

Supreme Court has ruled that a violation of that section can occur despite the seller's lack of knowledge that the purchaser is under the age of 21. (See Provigo v. Alcoholic Beverage Control Appeals Board (1994) 7 Cal.4th 561, 564-565 [28 Cal.Rptr.2d 638].)

In Provigo, the Supreme Court pointed out that while the seller's lack of knowledge was no defense, liability was not absolute, because the seller was able to protect himself by relying on bona fide evidence of majority and identity.

Appellants made no attempt to establish the bona fide reliance defense.

II

Appellants charge that the Department has pursued an enforcement policy which discriminates against minority groups, asking the Board to take judicial notice that the majority of arrests involve minority groups. We find this contention to be totally without merit.

Appellants have offered no evidence whatsoever for this very serious accusation. In effect, appellants have accused the Department of violations of state and federal civil rights laws without the slightest justification. We have carefully reviewed the transcript of the record in this case and find not a scintilla of evidence to support appellants' charge.

Appellants' brief has raised other broad issues that, aside from not having been raised below, are either not present in the record, are without basis in fact or are simply unintelligible. None of them has merit. Finally, it should be noted that appellants' brief

did not address the sale-to-minor, consumption on premises and obvious intoxication issues raised by the accusation and established by the evidence. By their failure to address these issues, we deem them abandoned, and the underlying violations thereby admitted.

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

² This final order is filed as provided in 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.