

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

| | | |
|---------------------------|---|--------------------------|
| NAM SUP LEE & STELLA LEE |) | AB-6715 |
| dba C & H Driftwood Dairy |) | |
| 735 East Baseline |) | File: 20-220786 |
| San Bernardino, CA 92401, |) | Reg: 96035713 |
| Appellants/Licensees, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | John A. Willd |
| DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | Date and Place of the |
| Respondent. |) | Appeals Board Hearing: |
| |) | April 2, 1997 |
| |) | Los Angeles, CA |
| |) | |

Nam Sup Lee and Stella Lee, doing business as C & H Driftwood Dairy (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale beer and wine license for 30 days, with suspension of 10 days thereof stayed for a probationary period of one year, for their employee having on two occasions sold alcoholic beverages to motorists or passengers in a motor vehicle in violation of a condition on the license, being contrary to the universal and generic public welfare and morals provisions of the

¹ The decision of the Department dated August 8, 1996, is set forth in the appendix.

California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

Appearances on appeal include appellants Nam Sup Lee and Stella Lee; and the Department of Alcoholic Beverage Control, appearing through its counsel David Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on or about July 26, 1988. Thereafter, the Department instituted an accusation on April 2, 1996, alleging that on two separate occasions an employee of appellants² sold an alcoholic beverage to a customer while the customer remained in a motor vehicle, in violation of a condition on the Dairy's license.

An administrative hearing was held on June 18, 1996. At the hearing, two Department investigators testified about purchases they made at appellants' premises, one while the driver of a motor vehicle, the other while a passenger in a motor vehicle. In neither case did the investigator exit the motor vehicle. A condition on appellants' license prohibits sales to any person while in a motor vehicle.³ Following the conclusion of the hearing, the Administrative Law Judge (ALJ) submitted his proposed decision, later adopted by the Department,

² As to one of the incidents, this person was later identified as appellant Nam Sup Lee [RT 21-22].

³ Condition 4 to the license provides: "No alcoholic beverages shall be sold to any person while such person is in a motor vehicle."

suspending appellants' license for 30 days, with 10 days of the suspension stayed subject to there being no violations during the ensuing one-year period. Appellants filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of appellants' position was given on November 15, 1996. No brief has been filed by appellants.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellants. It was the duty of appellants to show to the Appeals Board that the claimed error existed. Without such assistance by appellants, 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].)

Appellants operate a drive-through milk store, at which they also sell beer. Because of the drive-through nature of the business, special conditions were required before the license could issue. (See exhibit 2, the Petition for Conditional License.) Condition 4 was one of those special conditions.

In their notice of appeal, appellants assert that there was not sufficient evidence to support the accusation. At the administrative hearing, appellant Stella Lee contended appellants were the victims of trickery, but offered no evidence to support her contention. In the hearing before this Board, appellants complain they were not told about the violation immediately after it took place. None of these

claims has any merit. Indeed, at the administrative hearing, appellant Stella Lee acknowledged that the violations probably occurred [RT 34-35], stating that their customers resented being asked to leave their vehicle to make purchases of alcoholic beverages, and, as a result, the customers are sometimes not required to do so. As for their claim that they should have been warned, it should be noted that appellants have been cited on two previous occasions for violation of the same condition. (See Findings of Fact IV, Licensed History.)

CONCLUSION

The decision of the Department is affirmed.⁴

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

JOHN B. TSU ABSTAINS

⁴ This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this decision as provided by §23090.7 of said Code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.