

ISSUED SEPTEMBER 11, 1998

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

JOSE L. PATINO	)	AB-6939
dba La Copa De Oro)	
15310 Parthenia Street	)	File: 40-211658
Sepulveda, California 91343,	)	Reg: 97039727
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 8, 1998
	)	Los Angeles, CA
)	

Jose L. Patino, doing business as La Copa De Oro (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for employing two females to solicit customers to buy them drinks, his and their conduct 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 §§24200.5, subdivision (b), 25657 subdivisions (a) and (b), Penal Code §303 and Rule 143 (4 Cal.Code Regs. 143).

¹The decision of the Department, dated August 28, 1997, is set forth in the appendix.

Appearances on appeal include appellant Jose L. Patino, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on March 7, 1988. On April 29, 1997, the Department instituted an accusation alleging that on March 21, 1997, two females, Reyna Gonzalez and Teresa Montez, solicited drinks from Department investigators Robert Rodriguez and Anthony Pacheco in violation of the above statutes and rule.

An administrative hearing was held on July 15, 1997. At that hearing, the two investigators described the incidents giving rise to the accusation. Appellant did not present any witnesses. Following the hearing, the Administrative Law Judge sustained eight of the ten counts of the accusation (1, 2, 4, 5, 6, 7, 9 and 10) and dismissed the remaining two counts (3 and 8), and in his proposed decision ordered appellant's on-sale beer license revoked. Appellant has filed a timely appeal from the Department's adoption of the proposed decision as its own.

DISCUSSION

Written notice of the opportunity to file briefs in support of the appellant's position was given on March 25, 1998. 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. Game! (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Nonetheless, where, as here, the Department has ordered revocation, it is our practice to review the record independently, so that we may be assured that such a drastic remedy is not the product of error of sufficient magnitude as to have deprived appellant of due process. We have done so here, and do not find such error.

The testimony of the Department investigators clearly demonstrated a drink solicitation scheme among appellant's waitress and two females, in which the investigators were charged \$3.75 for their own beer and \$8.75 for beer purchased for the women, who then received \$5 from the \$8.75 charge. Appellant's counsel vigorously cross-examined both investigators, but failed in his attempt to undermine their testimony concerning the manner in which they were solicited and the way the money was handled by the waitress and the two women.

Our review of the record has also persuaded us that there is no basis for the various issues which were presented in appellant's notice of appeal, but not briefed. The evidence is clearly substantial, there has been no abuse of discretion, the penalty is within the discretion accorded the Department under Business and Professions Code §24200.5, subdivision (b), and this Board lacks the power to declare a statute unconstitutional.

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 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 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.