

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

MARCELINO HERNANDEZ	)	AB-7034a
dba La Estrella)	
166 West Kern Street	)	File: 42-226963
McFarland, CA 93250,	)	Reg: 97040557
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	April 6, 2000
	)	Los Angeles, CA

Marcelino Hernandez, doing business as La Estrella (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended her license for 30 days, with 15 days thereof conditionally stayed, subject to a one- year period of discipline-free operation, for one of her waitresses having solicited and accepted a drink from an undercover Department investigator, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of 4 Cal. Code Regs. §143 (Department Rule 143.)

¹*The Department's Decision Following Appeals Board Decision, dated September 2, 1999, is set forth in the appendix.*

Appearances on appeal include appellant Marcelino Hernandez, appearing through her counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Appeals Board sustained the Department's determination that Rule 143 had been violated, but reversed that part of the decision finding a violation of Business and Professions Code §25657, subdivision (a). The Board also reversed the penalty, and remanded the matter to the Department for reconsideration of the penalty.

The Department originally revoked appellant's license, staying revocation conditionally, subject to a three-year period of discipline-free operation. Following the Board's remand, the Department ordered the suspension which is the subject of this appeal.

Written notice of the opportunity to file briefs in support of the appellant's position was given on January 7, 2000. 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. GameI (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Nonetheless, we have reviewed the record, and are satisfied that the order

entered by the Department upon remand is a valid exercise of discretion, in keeping with the Board's order of remand.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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 final 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.