

ISSUED DECEMBER 30, 1998

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

| | | |
|------------------------------------|---|--------------------------|
| R.I.P. ROCAS, INC. |) | AB-7063 |
| dba Playtime Bar |) | |
| 13324 Sherman Way |) | File: 48-158499 |
| North Hollywood, California 91605, |) | Reg: 97040214 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | John P. McCarthy |
| DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | Date and Place of the |
| Respondent. |) | Appeals Board Hearing: |
| |) | October 7, 1998 |
| |) | Los Angeles, CA |

R.I.P. Rocas, Inc., dba Playtime Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its on-sale general license for 20 days, for its waitress/bartender having served an alcoholic beverage (Budweiser beer) to a patron named Nalbandian, who at the time was obviously intoxicated, 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 §§25602, subdivision (a), and 24200, subdivision (a).

Appearances on appeal include appellant R.I.P. Rocas, Inc., appearing through

¹ *The decision of the Department, dated March 19, 1998, is set forth in the appendix.*

its counsel, Karineh Avanesian, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general license was issued on July 25, 1984. On February 24, 1997, the Department instituted an accusation against appellant charging violations of Business and Professions Code §25602, subdivision (a), for appellant's waitress/bartender having served beer to two obviously intoxicated persons.

An administrative hearing was held on May 16, 1997, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been sustained with respect to one of the two patrons.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the general issues outlined in Business and Professions Code §23084, and specifically contends: (1) the Department has no authority to impose discipline against a corporation where the alleged violation occurred while its corporate powers had been suspended, but which were restored prior to the filing of the accusation; (2) since the corporation had no power to act during the period its rights were suspended, it could not exercise the rights or privileges under its license; therefore, the acts of the natural persons who could be charged with a violation of §25602 cannot be charged to the corporation; and (3) the Department failed to meet its burden of proof that patron Nalbandian was obviously intoxicated. The first two issues which appellant has raised are interrelated, and will be addressed as one.

DISCUSSION

I

Appellant challenges the power of the Department to institute disciplinary proceedings against a corporate licensee for failing to maintain its corporate good standing by becoming or remaining delinquent in payment of its franchise taxes, in violation of Revenue and Taxation Code §§23301 and 23302, if the corporation has obtained a certificate of revivor from the Franchise Tax Board pursuant to Revenue and Taxation Code §23305. Appellant claims, in addition, that since it had no power to act during the period of delinquency and suspension of corporate rights, it cannot be held liable for the acts of the natural persons who sold, or served, an alcoholic beverage to an obviously intoxicated person.

There are two principal reasons for rejecting appellant's contentions. First, there is absolutely nothing in the record of the administrative hearing to suggest the issue was then raised, and there is an absence of any evidence with respect to appellant's corporate standing at any given time. Second, appellant's position, once understood, fails to satisfy law or logic, and borders on the absurd.

Appellant is saying, in effect, that all through the suspension period, it had no power to act as a corporation, and, therefore, no power to act as a licensee; consequently any sale or service of liquor by natural persons in its employ, and any violations of the Alcoholic Beverage Control Act, could only have been committed by someone else.

Were this Board to accept this argument, it would also have to accept the notion that the natural persons purportedly managing, or employed by, this powerless entity acted as unlicensed sellers of alcoholic beverages for the ten or so years the

corporation was delinquent in its franchise tax obligations.

It is apparent from the record that appellant was selling alcohol from the premises. That appellant may have violated other laws by operating while its corporate powers were suspended, it certainly does not follow that its violations of the Alcoholic Beverage Control Act must be ignored.

II

Appellant contends that the Department failed to meet its burden of proof as to whether Nalbandian was obviously intoxicated.

Los Angeles police officer Lorenzo Barbosa testified that he observed Nalbandian walk with an obvious, staggering gait, with long, uneven, steps while returning from the restroom. During his return, Nalbandian shouted remarks concerning a dancer's breasts, was boisterous, and his voice was slurred. A wet spot in his groin area led Barbosa to believe Nalbandian had urinated on himself. According to Barbosa, the waitress/bartender was in a position to observe Nalbandian's behavior.

Appellant argues that there is no evidence or insufficient evidence that the bartender had sufficient opportunity to observe Nalbandian's gait, or that she could hear what had been shouted at the dancer. Appellant contends, further, that Barbosa's opinion that Nalbandian was obviously intoxicated was improperly admitted, and its admission constituted reversible error.²

Appellant's claim that the Department failed to meet its burden of proof is, essentially, a claim that there is no substantial evidence to support the findings.

² *As the Department points out in its brief, the cases upon which appellant relies for this contention were expressly overruled by the court in Paez v. Alcoholic Beverage Control Appeals Board (1990) 222 Cal.App.3d 1025 [272 Cal.Rptr.272].*

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

Officer Barbosa's testimony was accepted by the Administrative Law Judge. It follows that the count charging the sale to an obviously intoxicated person must also be sustained. The symptoms of obvious intoxication described by him would have been readily apparent to the waitress/bartender, who was standing no farther than 15 feet from Nalbandian during the time he was observed by Barbosa, and was looking in Nalbandian's direction. Therefore, she should not have served him the beer.

ORDER

The decision of the Department is affirmed.³

³ *This 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 order as provided by §23090.7 of said code.*

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

JOHN B. TSU, MEMBER, did not participate in the oral argument or decision in this matter.

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