

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

ANTHONY A. ARNEBECK	)	AB-7098
dba Sidelines)	
2801 McHenry Ave., Suites 1 & 2	)	File: 47-322695
Modesto, CA 95350,	)	Reg: 97040934
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeffrey Fine
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 4, 1999
	)	Los Angeles, CA
)	

Anthony A. Arnebeck, doing business as Sidelines (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 15 days, with 5 days of the suspension stayed for a probationary period of one year, for appellant selling an alcoholic beverage in an unlicensed outside patio, 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 §§23300, 23355, and 24040.

¹The decision of the Department, dated March 26, 1998, is set forth in the appendix.

Appearances on appeal include appellant Anthony A. Arnebeck and the Department of Alcoholic Beverage Control, appearing through its counsel, John Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on December 30, 1996. Thereafter, the Department instituted an accusation against appellant charging that he had sold an alcoholic beverage, beer, to a Department investigator while the investigator was seated at a table in an outside seating area that was not part of the licensed premises.

An administrative hearing was held on January 21, 1998, at which time the Department presented documentary evidence and testimony by the Department investigators involved. Appellant, although notified of the hearing, did not appear.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven.

Appellant thereafter filed a timely notice of appeal. Written notice of the opportunity to file briefs in support of appellant's position was given on October 22, 1998. No brief has been filed by appellant. The notice of appeal filed by appellant provides only an explanation for his absence at the administrative hearing and a request for a new hearing date to present his position.

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 the Appeals Board that an 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. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Appellant alleges that he missed his Department hearing because he confused the date of that hearing with the date of a municipal court hearing related to the same incident. At the oral argument before this Board, appellant attempted to argue his case as if the Board were a trier of fact. However, the scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

The Appeals Board is not a trier of fact. Appellant's opportunity to present his evidence was at the hearing before the Administrative Law Judge. Having examined the record in the default hearing, we find no reason to question the decision of the Department.

ORDER

²The California Constitution, article XX, §22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

The decision of the Department is affirmed.³

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

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.*

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.