

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

|                            |   |                          |
|----------------------------|---|--------------------------|
| PABLO CERVANTES PEREZ      | ) | AB-7182                  |
| dba New Hollyway           | ) |                          |
| 1616 West Sunset Boulevard | ) | File: 48-306730          |
| Los Angeles, CA 90026,     | ) | Reg: 97042081            |
| 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.                | ) | July 1, 1999             |
|                            | ) | Los Angeles, CA          |
| _____                      | ) |                          |

Pablo Cervantes Perez, doing business as New Hollyway (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended his on-sale general public premises license for 45 days, with 20 days thereof stayed, for violating certain conditions on his license, contrary to the universal and generic public welfare and morals provisions of the California

Constitution, article XX, §22, and violative of Business and Professions Code §23804.

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<sup>1</sup>The decision of the Department, dated July 9, 1998, is set forth in the appendix.

Appearances on appeal include appellant Pablo Cervantes Perez, appearing through his counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Lewis.

### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on May 25, 1995. Thereafter, the Department instituted an accusation against appellant charging the violation of conditions on his license concerning amplified music, door closure, lighting conditions, and control of litter.<sup>2</sup>

An administrative hearing was held on April 17, 1998, at which time oral and documentary evidence was received regarding the matters at issue. Subsequent to the hearing, the Department issued its decision which determined that three of the conditions had been violated, those relating to amplified music, door closure, and lighting conditions.

Appellant has filed a timely notice of appeal, and now raises the following issues: (1) the condition relating to the requirement of door closure was not violated - since the condition permitted doors to be open for the delivery of full cartons into the premises, the condition should be construed to permit a door to remain open for the removal of empty cartons; (2) the lighting condition was not

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<sup>2</sup> *The conditions in question are as follows:*

*"03. Amplified music shall not be audible beyond that portion of the premises controlled by the licensee.*

*"04. All doors shall be kept closed at all times during the operation of the premises except in the case of emergency, to permit deliveries and for normal passage of persons when gaining admittance or exiting the location.*

*"06. The rear entrance of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons entering or exiting the location.*

*"08. The petitioner shall be responsible for maintaining free of litter the area adjacent to the premises over which he has control."*

violated since there was no testimony the officers could not see the appearance or conduct of the patrons they saw entering or exiting; and (3), the matter should be remanded for imposition of a penalty consistent with a determination of a violation only of a single condition, that relating to amplified music, appellant conceding the correctness of that determination.

## DISCUSSION

### I

Appellant contends there was no violation of the door closure condition, since the door was being held open only to permit empty cartons to be removed to the outside area.

Julie Covarrubias, a Department investigator, testified that, in the course of a daytime visit to the premises on September 24, 1997, in response to a number of complaints which had been received by the Department, she observed the rear door to the premises being held open by a rope tied to a railing on the stairwell leading up to the entrance [RT 9]. Although the condition requiring the doors to remain closed permits them to be open for deliveries, she observed no deliveries being made during the "no more than half an hour" she was at the premises [RT 10].

Appellant Perez testified that the door would have been kept open while he and an employee were cleaning the premises, to permit them to go in and out [RT 46]. He testified that, as part of the cleaning process, a number of cartons - 35 to 40 - were stacked against or near the rear entrance.<sup>3</sup>

According to Investigator Covarrubias, the cartons were already situated outside the rear entrance. From this, it could be inferred that the need for the door to be open -

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<sup>3</sup> *These cartons, which contained empty beer bottles, were the basis for the charge that the condition requiring control of litter had been violated, a charge which the Department concluded was not sustained.*

which the Administrative Law Judge (ALJ) thought “reasonable” [Determination of Issues V] - had passed, and the door should have been closed.

The exception for deliveries contained in the condition requiring all doors to remain closed would, as the ALJ seems to have believed, logically permit the removal of cartons of empty bottles to be delivered to a recycler, as appellant testified.

The ALJ determined that the condition had been violated, although precisely how he reached that conclusion is far from clear. He stated, in Determination of Issues IV, “Keeping the rear door open, itself a violation of a condition, corroborates the [appellant’s] testimony that he was cleaning the premises.” This suggests that he based his determination on the investigator’s testimony about the length of time the door was open without any deliveries taking place. However, that remark was made in the course of addressing the alleged litter violation. When addressing the alleged door violation, he appears simply to have concluded that to have the door tied open violated the condition, regardless of the presence or absence of any activity.

Given a record with sufficient factual support for finding a condition violation, and given the ultimate finding of a condition violation, it should follow that this aspect of the decision must be affirmed. Nonetheless, we think it appropriate to remind the administrative law judges that it is their duty to communicate the basis for their findings and determinations in a clear, coherent, and consistent manner, if they wish their decisions to survive appellate review.

## II

Appellant challenges the determination that the lighting condition was violated, contending there was no testimony that the investigators could not see the “appearance or conduct” of the patrons they saw entering and exiting.

Appellant’s contention is contrary to the record evidence.

Investigator Covarrubias visited the premises a second time, late in the evening of October 2, 1997. She testified as follows [RT 15]:

Q: What, if anything else, did you observe while you were there on October 2nd?

A: The persons that were entering and exiting the location, we were unable to tell what the activity was going on there at the door, or to know who these people were, whether they were male or females, or what activity was going on at the rear door area.

Q: And why is that?

A: The lighting. It was not sufficient to tell what was going on.

Later, asked once again about the lighting conditions, investigator Covarrubias confirmed that she was unable to determine whether the patrons were male or female or the color of clothing they were wearing [RT 21].

### III

We close this decision with comments which do not bear on the merits of this case, but which we feel must be made and communicated to the attorneys and representatives who appear before this Appeals Board. In this and several other cases which were heard by this Board at its July meeting, appellants' opening briefs were filed more than a month after the date they were due. This resulted in the inability of the Department to file timely its reply briefs, as well as any closing brief those appellants may have hoped to file. Such delinquent filing not only manifests disrespect for the briefing schedules set by this Board, it puts an added burden on the Board and its staff, who must review the records and transcripts without the aid of the parties' counsel or representatives.

ORDER

The decision of the Department is affirmed.<sup>4</sup>

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

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<sup>4</sup> *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.*