

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

MARIA LUISA ALYEA	)	AB-7185
dba Copa Cabana)	
201 Grand Avenue	)	File: 42-315512
South San Francisco, CA 94080,	)	Reg: 98042578
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Lee Tyler
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 22, 1999
	)	San Francisco, CA
_____)	

Maria Luisa Alyea, doing business as Copa Cabana (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her on-sale beer and public premises license after determining that her bartender, Martha Oroza, had sold two beers each to Miguel Estrada and Manuel Martinez Ramirez, both of whom were at the time minors under the age of 21, and had permitted them to remain in the premises without any lawful purpose, 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 §§25658, subdivision (a), and 25665.

Appearances on appeal include appellant Maria Luisa Alyea, appearing

¹The decision of the Department, dated July 2, 1998, is set forth in the appendix.

through her counsel, Guadalupe Gamino, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert M. Murphy.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on April 25, 1996. Thereafter, the Department instituted an accusation against appellant charging the violations referred to above. An administrative hearing was held on April 29, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Officer Keith Wall of the South San Francisco Police Department in which he described his discovery of the two minors drinking beer in appellant's bar. When he first asked their age, each told him they were 22. Upon further questioning, both admitted they were only 19 years of age. Appellant's bartender, Oroza, who did not testify, claimed to the officer that she had been shown identification to the effect they were of lawful age; each of the minors, who also testified, denied having been asked their age or for identification.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established. The decision cited two prior violations of the same code provisions: the first, based upon an accusation filed June 18, 1996, resulted in a fine in lieu of a 15-day suspension; the second, following an accusation dated February 19, 1997, resulted in a 25-day suspension, with 10 days stayed.²

² *This information was initially set forth in the accusation, the accuracy of which was stipulated by appellant's counsel. [See RFS].*

Appellant has filed a timely notice of appeal, and challenges the penalty as excessive.

DISCUSSION

Appellant's challenge to the penalty as excessive is based on a number of factors: each of the three violations which led to the revocation order occurred in her absence; the first and second violations were committed by the bartender who had been employed at the premises prior to her ownership, and whom she fired after the second violation; she fired the bartender who committed the third violation; she had instituted a policy of requiring bartenders to check all ID's, a policy violated by Oroza; the minors appeared to be over 21; appellant herself did nothing to cause the violations to occur.

With regard to this latter contention, appellant cites the decision in Laube v. Stroh (1992) 2 Cal.App.4th 364 [3 Cal.Rptr.2d 779], and argues she was improperly held to a standard of strict liability. Her reliance upon Laube v. Stroh is misplaced. That case dealt with the extent to which a licensee would be held responsible for acts of patrons which had taken place without its knowledge. In this case, it was appellant's bartender who committed the unlawful acts, conduct which has uniformly been imputed to the licensee under the doctrine of respondeat superior, regardless of his or her knowledge or participation. (See Mercurio v. Department of Alcoholic Beverage Control (1956) 144 Cal.App.2d 626 [301 P.2d 474, 478] ("The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license").)

The Appeals Board will not disturb the Department's penalty orders in the

absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where, as here, an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

We have considered the various points raised by appellant. Essentially, appellant's position is that it is not her fault that the violations have occurred. On the other hand, the Department was confronted with a business which had committed three sale-to-minor violations within a relatively short time span. The Legislature has made it clear to the Department that three sale-to-minor violations within a 36-month period is sufficient support for an order of revocation. Here, appellant accumulated three violations in less than half that amount of time.³ Considering all these factors, the appropriateness of the penalty must be left to the discretion of the Department. The Department having exercised its discretion reasonably, the Appeals Board will not disturb the penalty.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN

³ We think it worthy of note that, from what we are able to discern from the record, none of the three violations involved a sale to a decy.

⁴ 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.

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