

ISSUED JANUARY 17, 2001

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

SALVA DOR SANCHEZ	)	AB-7468
dba El Camino Real Restaurant Bar)	
800 East 12 th Street	)	File: 41-333728
Los Angeles, CA, 90021	)	Reg: 98044260
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:
	)	September 7, 2000
	)	Los Angeles, CA

Salvador Sanchez, doing business as El Camino Real Restaurant Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his on-sale beer and wine eating place license for permitting an employee or agent, and a patron, to possess cocaine, for sale, within in the premises, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and business and Professions Code §24200, subdivision (a), arising from a violation of Health and

¹The Department's Decision Under Government Code Section 11517(c), dated July 29, 1999, and the Proposed Decision, dated January 22, 1999, are set forth in the appendix.

Safety Code §11351.

Appearances on appeal include appellant Salvador Sanchez, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on August 1, 1997. Thereafter, the Department instituted an accusation against appellant charging violations of the Health and Safety Code. An administrative hearing was held on December 21, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Administrative Law Judge issued his decision which conditionally revoked the license with a probationary period of 36 months and a 15-day suspension. The Department rejected that proposed decision and issued its own decision which revoked the license.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) the findings are not supported by substantial evidence, and (2) there is newly discovered evidence on the issue of the credibility of police officer Hill which should cause the matter to be returned to the Department for further hearings.

DISCUSSION

I

Appellant contends the findings are not supported by substantial evidence, arguing that the crucial testimony of police officer Hill was hearsay as to ownership by Francisco Gonzalez, as well as the employment status of Maria Arrellano.

Los Angeles police officers raided the premises based on a tip of narcotic

activity within the premises. Gonzalez was seen on the patron side of the bar counter and Arrellano on the service side of the bar counter [RT 11-12, 37-38].² Gonzalez and Arrellano were handling small bags (bindles) of a white powdery substance [RT 13, 17-18, 40]. Patrons within the premises, estimated at about 10 persons, all left the premises after entry of the police, and permission to leave was granted by the police [RT 15, 40, 43].

Officer Hill's testimony contained the crucial evidence in the matter. The premises was closed and doors locked by the police officers by means of keys found somewhere on the bar counter or in the possession of Gonzalez, depending on which portion of the testimony of the officer is more persuasive [RT 59].

Gonzalez was thereafter convicted in the Superior Court of possession of a controlled substance, for sale [Exhibit 3].³

A. Maria Arrellano

The only possible theory that Arrellano was a barmaid or employee, was that at the time of the entry of the police, Arrellano was standing on the "service" side of the bar counter, but it is unknown whether she was near or at any corner or end of the bar counter. Evidence that Arrellano was a barmaid or employee at the premises, as speculatively implied by the testimony, is non-existent [RT 11, 14].

²There is no evidence as to configuration of the bar counter or the intended use of the area around that counter. There is only a speculative idea of whether Arrellano was acting as an employee due to her being across from the patron side, across from Gonzalez.

³The decision of the Department appears factually unsupported [Finding X] that the conviction of Gonzalez was for possession of cocaine "at the premises." The conviction was for possession on the same date as the date of the raid. It would appear reasonable to infer the arrest at the premises and the subsequent conviction, concerned the same narcotics. However, such imprecision of a finding seems to be in keeping with the rest of the case and the testimony.

Implying employment or agency on the state of this record is highly speculative.

B. Gonzalez

The accusation charges Gonzalez as being only a patron at the premises, but the decision expanded that into showing Gonzalez in charge, because he said he was the owner (hearsay), and in charge (hearsay). [Finding VIII-B.]

C. Control of the Premises

Finding VIII-C makes an illogical “leap” concluding that both Arrellano and Gonzalez were in charge, based possibly on the position of Arrellano behind the bar counter, and Gonzalez’s hearsay statements of ownership and control. It would appear that the Department, faced with no evidence of anyone in control, concluded that one of the two, or both, must be in control. This is highly speculative and the unacceptable kind of “judicial” fantasy. The record shows that at the time the police entered the premises, there were 10 patrons in the premises. They were allowed to leave when the police secured the premises. The possibility exists that one of those released patrons could have been the person in charge, who practically, could have left the premises, for his own safety, under the circumstances.

The case of Monarrez (1996) AB-6535, is a case in point. In that matter, two uniformed police officers entered the premises. They observed two [apparent] patrons drinking beer and playing pool. One of the “patrons” was in fact, the bartender who was in charge of the premises. The brother (a non-employee) of the bartender was seen in a drug transaction as the brother was behind the bar counter across from an unknown patron. At seeing the officers, the two patrons (one of whom was really the bartender) playing pool left the premises by the rear door.

Possession of the keys to the premises in this matter, is an issue which at the beginning of officer Hill's testimony seemed to imply that Gonzalez had possession of the premises' keys. But as the examination of the officer progressed, it was apparent Hill did not remember if the keys came from Gonzalez, or if they were found somewhere on the bar counter [RT 58-60].

To revoke a citizen's license on such speculative evidence and with findings so devoid of clear thinking, cannot be tolerated.

II

Appellant contends there is newly discovered evidence on the issue of the credibility of police officer Hill which should cause the matter to be returned to the Department for further hearings.

In a recent and different case by the Department against this appellant, an accusation was processed and heard on three different dates from December 1999 to April 2000 (almost a year after the hearing in the present appeal). Officer Hill, the police officer whose testimony is the entire foundation of the Department's case in the present appeal, gave testimony in the subsequent case concerning allegations of serious misconduct by appellant. The case was dismissed and the Department adopted that dismissal, apparently, according to papers submitted by appellant, because it was found by the Administrative Law Judge that significant testimony by officer Hill on an issue directly concerning appellant's alleged illegal conduct, was false. These are very serious allegations. The present matter rests solely on officer Hill's testimony, and now his credibility is in question.

According to our intended disposition of the appeal, further consideration and resolution of this issue, at this time, is not necessary.

ORDER

The decision of the Department is reversed.⁴

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

⁴This 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.