

ISSUED JANUARY 18, 2001

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

JESSIE M. ALBERT, et al.	)	AB-7485
Appellants/Protestants,)	
	)	File: 41-342144
v.	)	Reg: 98045144
)	
APPG L.L.C.	)	Administrative Law Judge
dba Terra Brazilis Bistro	)	at the Dept. Hearing:
602 Hayes Street	)	Robert R. Coffman
San Francisco, CA 94102,)	
Respondent/Applicant, and	)	Date and Place of the
	)	Appeals Board Hearing:
DEPARTMENT OF ALCOHOLIC	)	September 22, 2000
BEVERAGE CONTROL,	)	San Francisco, CA
Respondent.)	
)	

Jessie M. Albert, et al., being members of the Neighborhood Baptist Church (protestants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which overruled their protests against the issuance of an on-sale beer and wine bona fide public eating place license to APPG L.L.C., doing business as Terra Brazilis Bistro (applicant).

Appearances on appeal include appellant s/protestants Jessie M. Albert, et

¹The decision of the Department, dated July 16, 1999, and the proposed decision dated January 29, 1999, are set forth in the appendix.

al., appearing through their spokesman, Pastor Lane Hawkins of the Neighborhood Baptist Church; APPG L.L.C., appearing through its counsel, Stephen M. Sirota; and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas Loehr.

FACTS AND PROCEDURAL HISTORY

Applicant on May 8, 1998, filed an application with the Department for the issuance of an on-sale beer and wine bona fide public eating place license.

Thereafter, 120 protests were filed against the issuance of the license (two protests being from nearby residents, and 118 from members of the Neighborhood Baptist Church). The two residents' protests were subsequently withdrawn.

An administrative hearing was held on January 27, 1999, at which time oral and documentary evidence was received. Subsequent to the hearing, the Administrative Law Judge (ALJ) issued his proposed decision which denied the application for license. The Department did not adopt that proposed decision and thereafter, issued its decision pursuant to Government Code §11517, subdivision (c), which overruled the protests and granted the issuance of the license. Protestants thereafter filed a timely notice of appeal.

The Appeals Board on March 21, 2000, notified protestants' counsel in writing, of the opportunity to file briefs in support of protestants' cause. On April 20, 2000, counsel for protestants withdrew his representation of protestants. Pastor Lane Hawkins (a protestant also) of the Neighborhood Baptist Church advised that no brief would be forthcoming as the protestants, being members of

his church, did not wish to pursue the matter. No brief has been filed by any protestant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by protestants. It is the duty of protestants to advise the Appeals Board that the claimed error exists. Without such assistance by protestants, 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].)

ORDER

The decision of the Department is affirmed.²

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

²This 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.