

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

AB-7643

JUAN MANUEL MERCADO and MARIA DE JESUS MERCADO dba Mazatlan Bar
3800 Hammel Street, Los Angeles, CA 90063,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 61-351199 Reg: 99047454

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: April 5, 2001
Los Angeles, CA

ISSUED JUNE 21, 2001

Juan Manuel Mercado and Maria De Jesus Mercado, doing business as Mazatlan Bar (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 days, with ten days thereof stayed, conditioned upon a two-year period of discipline-free operation, for having permitted, through their bartender, dancing by patrons, in violation of a condition upon their license, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

Appearances on appeal include appellants Juan Manuel Mercado and Maria De Jesus Mercado, appearing through their counsel, Edward A. Esqueda, and the Department of Alcoholic Beverage Control, appearing through its counsel, Michele

¹The decision of the Department, dated May 18, 2000, is set forth in the appendix.

Wong.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer public premises license was issued on July 13, 1999. Thereafter, the Department instituted an accusation against appellants charging a violation of a condition on their license which prohibited dancing and live entertainment.

An administrative hearing was held on April 11 and 18, 2000, at which time oral and documentary evidence was received. At that hearing, Department investigator Anthony Pacheco testified that, in the course of an investigation on August 21, 1999, he observed two couples dancing in plain view of appellant's bartender, Martha Guerrero. He further testified that Guerrero confirmed to him that she was aware of the license condition, but took no action when he instructed her to halt the dancing. Guerrero also testified. Although she agreed that Pacheco had told her dancing was not permitted, she denied seeing anyone dancing. She said that, just before Pacheco approached her and spoke about the license condition, a patron had attempted to force a waitress to dance with him, and that the waitress protested because of the license condition.

Subsequent to the hearing, the Department issued its decision which determined that the facts were as described by Pacheco, that Guerrero's testimony lacked credibility, and that appellant's license should be suspended.

Appellants thereafter filed a timely appeal in which they contend that the decision of the Department is not supported by substantial evidence.

DISCUSSION

When, as in the instant matter, the findings are attacked on the ground that

there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

Appellants ignore the findings of the Administrative Law Judge (ALJ) and assume instead that their version of the facts is controlling, despite the fact that the ALJ chose to believe the testimony of investigator Pacheco rather than that of Martha Guerrero, the sole witness presented by appellants.

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) It is obvious that the ALJ chose not to accept appellants' description of the incident. It is not the Board's function to substitute its judgment of credibility for that of the ALJ.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.