

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

AB-7713

CLUB AFRIQUE, INC. dba High Society
12000 South Western Avenue, Los Angeles, CA 90047,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 47-308210 Reg: 00048147

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: August 17, 2001
Los Angeles, CA

ISSUED OCTOBER 24, 2001

Club Afrique, Inc., doing business as High Society (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license, but stayed revocation subject to appellant serving a 36-month probationary period and an actual suspension of 20 days, for her employees having sold, served, and permitted consumption of alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m., and permitting an entertainer to engage in lewd and dissolute conduct, 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 §§25631 and 25632, and Rule 143.3.

Appearances on appeal include appellant Club Afrique, Inc., appearing through its president, Rose Marie Temisanren, and the Department of Alcoholic Beverage

¹The decision of the Department, dated September 28, 2000, is set forth in the appendix.

Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on April 30, 1996. Thereafter, the Department instituted an accusation against appellant charging sales during prohibited hours and conduct violative of Rule 143.3.

An administrative hearing was held on June 7, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented by two Department investigators regarding the offenses charged in the accusation, and by Rose Marie Temisanren, Amelia Gleinster, and Jesse Louis Hunter on behalf of appellant.

Subsequent to the hearing, the Department issued its decision which determined that, with the exception of two counts of the accusation, the Department had established the violations charged in the accusation.

Appellant thereafter filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of the appellant's position was given to appellant's then-counsel, Roger Jon Diamond, on March 20, 2001.² No brief has been filed by appellant. 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 appellant. It was the duty of appellant to show to the Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz

² Mr. Diamond's appearance was withdrawn by letter dated March 23, 2001.

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].)

We have, however, reviewed the transcript of hearing, and are satisfied that there is more than ample evidence to support the findings and decision of the Department.

Appellant apparently entrusted the operation of her business to others, both during her travels abroad, and while she was in this country. That she may have misplaced her trust in her managers is unfortunate, but the law holds her responsible for their actions, and their inactions. The entertainer conduct clearly crossed the line between exotic and obscene, and the hours of service violations were equally clear.

The penalty, more lenient than the Department recommended, reflected the Administrative Law Judge's sympathy with appellant's position, coupled with the need for stern discipline.

ORDER

The decision of the Department is affirmed.³

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

³ 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.