

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

AB-8468

File: 41-354758 Reg: 04058146

ESTELA ALVAREZ, et al. dba El Sarape
11520 W. Pico Boulevard, Los Angeles, CA 90064,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: August 3, 2006
Los Angeles, CA

ISSUED DECEMBER 28, 2006

Estela Alvarez, Francisco Medina, Gloria Medina, and Jesus Medina, doing business as El Sarape (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for having permitted solicitation of drinks pursuant to a profit-sharing plan, in violation of Business and Professions Code section 24200.5, subdivision (b).²

¹The decision of the Department, dated August 4, 2005, is set forth in the appendix.

² Business and Professions Code section 24200. 5, subdivision (b), provides:

Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:

(b) If the licensee has employed or permitted any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under

(continued...)

Appearances on appeal include appellants Estela Alvarez, Francisco Medina, Gloria Medina, and Jesus Medina, appearing through their counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine public eating place license was issued on August 2, 1999. Thereafter, the Department instituted an accusation against appellants charging them with having permitted drink solicitation pursuant to a profit-sharing scheme.

An administrative hearing was held on April 15 and June 28, 2005, at which time oral and documentary evidence was received. At that hearing, testimony concerning instances of drink solicitation and sharing of profits was presented by Los Angeles police officers Ruben Quintanar and Victor Arellano. Appellants called no witnesses on their behalf.

The evidence established that certain females in the premises, one of whom was an employee, solicited drinks from the officers at several different times during two visits to the premises by the officers. The officers were charged \$3.75 for each beer purchased for themselves, and \$10 for beer purchased for the females.

Subsequent to the hearing, the Department issued its decision which determined that counts 1, 3, 5, and 7 of the accusation had been established, as well as count 9, charging a violation of Department Rule 143 (prohibition against drink solicitation by an

²(...continued)
any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy.

employee). Counts 2, 4, 6, and 8, charging that the licensees employed or permitted the four named women to loiter for the purpose of soliciting drinks, were dismissed for lack of sufficient evidence.

Appellants thereafter filed a timely appeal from the Department's order of revocation. Appellants contend there is not substantial evidence to support a finding that Ana Cruz was an employee, or that the licensees were aware of solicitation activity.

DISCUSSION

The Department presented its case through the testimony of Los Angeles police officers Ruben Quintanar and Victor Arellano. Each of these officers testified about drink solicitation they observed.

Officer Reuben Quintanar testified that he and Officer Arellano visited the bar in an undercover capacity on April 10, 2004. In the course of that visit, a woman named Karina asked him to buy her a beer. A woman named Ana Cruz took the order, brought two beers, charged Quintanar \$13.75, and gave an unknown amount of money to Karina. A woman named Evelyn then joined the group, and asked Arellano to buy her a drink. Cruz again retrieved a beer from the bartender, brought it to the table, gave Evelyn an unknown amount of money, and Arellano his change. [I RT 16-21].

Arellano's testimony was similar to that of Quintanar. Arellano testified that a woman named Evelyn asked him to buy her a drink. He agreed to do so, and was charged \$3.75 for his beer, and \$10 for the beer he bought for Evelyn.

Quintanar and Arellano visited the bar again on April 16, 2004. Cruz took their beer orders, and charged them \$3.75 per beer. Quintanar testified that he invited a woman named Mora to sit with him, and that Mora asked him to buy her a beer. He agreed to do so. Cruz took the order, brought two beers from the bar, and charged

Quintanar \$13.75. Cruz charged Quintanar \$10 for Mora's beer, and gave Mora \$5. Cruz then got change, and gave Mora an additional \$2.

Cruz was then invited to join the group. Cruz asked Arellano to buy her a beer, and he agreed to do so. Cruz went to the bar, got a beer, charged Arellano \$10, and put the \$10 in her purse. Uniformed officers then came in, and arrests followed. [I RT 22-29].

Arellano's testimony was consistent with that of Quintanar to the effect that Cruz solicited a beer and consumed part of it in his presence. [II RT 26-27].

Appellants argue that, since the police officers did not mention in their reports that they had seen Cruz acting as a waitress, they must not have observed any such activity. The Department argues that there are in fact, references in the officers' reports to the effect that Cruz was performing waitress duties, citing the testimony of Arellano that he was referring to Cruz when he described in his report the activity of an "older woman" walking around, taking orders, and going to the bar.

Since the officers' testimony, if believed, is evidence of Cruz's employment, the issue is really one of credibility, and the administrative law judge (ALJ) is the person who makes that determination. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) In this case, he clearly chose to accept the testimony of the police officers, and our own review of the record satisfies us that he made the right choice,

Little would be served by addressing each and every factual contention made by appellants. The ALJ clearly understood the substance of the testimony, and we cannot say that his resolution of the disputed facts was in any way erroneous.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, 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.