

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

AB-8726

File: 21-336914 Reg: 06063935

OSAMA AL SWEITI, dba Van Ness Food Company
1356 Van Ness Avenue, San Francisco, CA 94109,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stewart A. Judson

Appeals Board Hearing: October 1, 2009
San Francisco, CA

ISSUED: JANUARY 5, 2010

Osama Al Sweiti, doing business as Van Ness Food Company (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for he and an employee having purchased cigarettes and distilled spirits believing them to have been stolen, a violation of Penal Code section 664/496.

Appearances on appeal include appellant Osama Al Sweiti, appearing through his counsel, Richard D. Warren, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on December 19, 1997.

¹The decision of the Department, dated August 31, 2007, is set forth in the appendix.

Thereafter, the Department instituted an accusation against appellant charging he and an employee had purchased cigarettes and distilled spirits believing them to have been stolen.

An administrative hearing was held on December 20, 2006, at which time documentary evidence was received and testimony concerning the violation charged was presented. Department investigator Brian Bautista testified that on June 6, 2006, an employee-nephew of appellant named Namer purchased two cases of cigarettes, and two 200 ml bottles and two 375 ml bottles of Hennessy whisky from him for \$60. Bautista told the employee he had stolen the cigarettes and whisky, and that the employee should "keep cool" about it. The employee told Bautista he had other "hook-ups," and knew how to be cool.

Bautista returned to the premises on June 22, 2006. Namer was not present, and Bautista met with appellant. Bautista told appellant of his prior transaction with Namer, and appellant asked Bautista what he had to offer. After some bargaining, appellant paid \$40 for two cartons of Marlboro Red cigarettes and two bottles of Martell Cognac. Bautista told appellant the items were stolen and that he should be cool. Appellant said he could be cool, and paid Bautista with money from the register.

Bautista returned to the premises on July 27, 2006, and sold appellant three cartons of purportedly stolen Marlboro Red cigarettes for \$60.

At the July 27 meeting, appellant expressed an interest in purchasing more cigarettes, and Bautista returned on October 3, 2006, and sold appellant 24 cartons of

Newport cigarettes for \$48,² again informing appellant the cigarettes were stolen.

When Bautista left the premises he informed waiting law enforcement agents of the transaction, who then entered the premises and placed appellant under arrest.

Appellant asserted the Fifth Amendment when the Department attempted to call him as a witness, and did not testify. Bautista's testimony stood unrefuted.

Subsequent to the hearing, the Department issued its decision which determined that the unlawful transactions had occurred as alleged, and ordered appellant's license revoked.

Appellant filed a timely notice of appeal, but has not filed a brief.

DISCUSSION

Written notice of the opportunity to file briefs in support of the appellant's position was given on July 7, 2009. 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 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].)

² This appears to be a typographical error in the finding, as the testimony discloses that the two agreed to a \$20 per carton price.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, 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.