

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

AB-8727

File: 21-437285 Reg: 07064957

JOSE RODOLFO IBARRA and MARIA ANGELINA VEGA, dba Caesars Liquor
17426 South Woodruff Avenue, Bellflower, CA 90706,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: November 6, 2008
Los Angeles, CA

ISSUED FEBRUARY 19, 2009

Jose Rodolfo Ibarra and Maria Angelina Vega, doing business as Caesars Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for co-licensee Ibarra having purchased distilled spirits on three separate occasions, believing them to have been stolen, violations of Penal Code sections 664/496, subdivision (a), and for having been convicted, on his plea of nolo contendere, for having violated those same Penal Code sections.

Appearances on appeal include appellants Jose Rodolfo Ibarra and Maria Angelina Vega, appearing in propria persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated August 6, 2007, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on April 27, 2006. On January 31, 2007 the Department instituted an accusation against appellants charging that co-licensee Ibarra, on three separate occasions in November 2006, purchased distilled spirits believing them to have been stolen, in violation of Penal Code sections 664/496, subdivision (a). The accusation was amended at the hearing to add an additional count alleging that Ibarra had been convicted, on his plea of nolo contendere, for having violated those same Penal Code sections.

At the administrative hearing held on May 4, 2007, documentary evidence was received and testimony concerning the violation charged was presented by Manuel Avina, a Los Angeles County Sheriff's deputy, and Michael Wolfe, a Los Angeles County Sheriff's detective. Avina testified that three transactions occurred in 2006 in which co-licensee Ibarra purchased, at bargain prices, distilled spirits he was told had been stolen: on November 3, Ibarra purchased two bottles of Remy Martin cognac for \$30.00, against a normal price of \$34.00 a bottle; on November 9, he purchased two bottles of Jack Daniels whisky and a bottle of HPNOTIC Vodka for \$10.00 each after being told the bottles normally sold for \$20.00 each; and on November 10, Ibarra purchased two cases of Grey Goose vodka, six bottles of Crown Royal, and six bottles of HPNOTIC for a total of \$250.00.

Co-licensee Ibarra testified on behalf of appellants, claiming he was never told the items in question had been stolen. David McCabe, a real estate broker, testified that the business and accompanying real estate could be sold, but that without a liquor license, it would be much more difficult.

Detective Wolfe testified in rebuttal that Ibarra admitted when he was arrested

that he knew the items in question had been stolen. Ibarra claimed in response that he was only referring to what he had learned that day.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established, and the license should be revoked.

Appellants have appealed, raising the following issues in their notice of appeal: (1) evidence was obtained illegally; and (2) Ibarra was not required to take a class before being issued his license.

DISCUSSION

Written notice of the opportunity to file briefs in support of the appellants' position was given on July 9, 2008. No brief has been filed by appellants. 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 appellants. It was the duty of appellants to show to the Appeals Board that the claimed error existed. Without such assistance by appellants, 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].)

We do not understand the nature of appellants' claim in their notice of appeal that Ibarra was not required to take a class before the issuance of a license. If Ibarra means to suggest that he would have learned in such class, and did not know before, that it was a crime to purchase or attempt to purchase stolen property, we can only say the law does not recognize such a defense, nor should it. The principle that it is a crime

to purchase or attempt to purchase stolen property is so well embedded in the body of criminal law that ignorance of it can be no excuse.

We also find no support in the record for the claim that evidence was illegally acquired. Appellants have not explained what evidence they say was illegally acquired, nor how. Our own review of the record satisfies us that there is no basis for such a claim.

If appellants are contending they were the victims of entrapment, they have failed to meet the test for entrapment established by the California Supreme Court. That test is whether the conduct of the public agent was such that a normally law-abiding person would be induced to commit the prohibited act. Official conduct that does no more than offer an opportunity to act unlawfully is permissible. (*People v. Barraza* (1979) 23 Cal.3d 675 [153 Cal.Rptr. 459].) The record in this case does not meet that test.

ORDER

The decision of the Department is affirmed.²

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