

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

AB-8737

File: 47-232924 Reg: 05059317

LINDA L. RICHARDS and THOMAS C. RICHARDS, dba Jack London Lodge
13740 Arnold Drive, Glen Ellen, CA 95442,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: October 2, 2008
San Francisco, CA

ISSUED JANUARY 15, 2009

Linda L. Richards and Thomas C. Richards, doing business as Jack London Lodge (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 30 days for their bartender serving alcoholic beverages to a person under the age of 21, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Linda L. Richards and Thomas C. Richards, appearing through their counsel, John A. Hinman, Beth Aboulafia, and Kristen Techel, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

¹The decision of the Department, dated August 10, 2007, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general bona fide public eating place license was issued on August 24, 1989. On April 5, 2005, the Department instituted an accusation against appellants charging that their bartender served alcoholic beverages to 20-year-old Robin Morris on the night of December 14-15, 2004.

At the administrative hearing held on December 11, 12, and 13, 2006, documentary evidence was received and testimony concerning the violation charged was presented. Subsequent to the hearing, the Department issued its decision which determined that the violation was proved and no defense was established.

Appellants have filed an appeal making the following contentions: (1) The Department engaged in prohibited ex parte communications and (2) the penalty is excessive. Appellants have also filed a motion to augment the record by the addition of any Form 104 or report of hearing which may be in the file, as well as any documents available for review in the decision consideration process.

DISCUSSION

The Department has requested, in the interest of judicial economy, that this matter be returned to the Department for further hearing on the issue of ex parte communication, without prejudice to its right to argue the facts and evidence as to any other issue should the matter return to the Board after such hearing.

Based upon our review of the record, the Department's request appears to be reasonable and appropriate. Therefore, we will remand this matter to the Department for an evidentiary hearing on the ex parte communication issue, without prejudice to the Department's right to argue the facts and evidence as to any other issue should the matter return to the Board after such hearing.

ORDER

This matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.