

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

AB-8746

File: 48-356746 Reg: 06062833

BOARS CROSSN INC., dba Boars Crossn
390 Grand Avenue, Carlsbad, CA 92008,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

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

ISSUED FEBRUARY 27, 2009

Boars Crossn Inc., doing business as Boars Crossn (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days on each of three counts, the suspensions to run concurrently, for having permitted a minor, Nicole Voights, to enter and remain on the premises without lawful business therein, in violation of Business and Professions Code section 25665 (Count One); having given, directly or indirectly, a premium, gift, or free goods to Department investigators and others, in violation of Business and Professions Code section 25600 (Count Two); and, acting through its agent or employee, employing or using the services of Nicole Voights, then 20 years old, in a portion of the premises primarily

¹The decision of the Department, dated September 18, 2007, together with the proposed decision of the administrative law judge, is set forth in the appendix.

designed and used for the sale and service of alcoholic beverages for on premises consumption, in violation of Business and Professions Code section 25663, subdivision (a) (Count Three).

Appearances on appeal include appellant Boars Crossn Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Michael Akopyan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on June 29, 2000. On May 10, 2006, the Department instituted an accusation against appellant charging violations of various sections of the Business and Professions Code relating to a minor's unlawful presence on the premises, and the giving of premiums, gifts or free goods.

An administrative hearing was held on December 8, 2006, at which time documentary evidence was received and testimony concerning the violations charged was presented.

Subsequent to the hearing, the Administrative Law Judge issued a proposed decision which would have dismissed the accusation. The Department rejected the proposed decision and decided the case itself, pursuant to Government Code section 11517, subdivision (c). In its decision, the Department sustained each of the three counts of the accusation and ordered the suspensions from which this timely appeal was taken.

Appellant raises the following issues: (1) The Department lacked effective

screening measures sufficient to ensure that no attorney acts as both prosecutor and advisor to the decision maker; (2) the Department engaged in improper ex parte communications; (3) the Department lacked proper screening measures to ensure against the occurrence of ex parte communications; (4) the decision as to Count One is not supported by substantial evidence; (5) the decision under Count Two must be reversed because the Department sustained a violation under a different rule than charged in the accusation; (6) there is no evidence to support the decision under Count Two; and (7) there is no evidence to support the decision under Count Three.

Appellant has also filed a supplemental brief contending that the record is incomplete and improperly certified, and that the Hearing and Legal Unit violated the Department's General Order No. 2007-09. Appellant has also filed a motion to augment the record by the addition of the ABC Form 104, if any; any and all documents relating to ABC counsel's comments regarding the proposed decision; General Order No. 2007-09 and related documents; and documents relating to operational or structural modifications to the ABC attorney staff and/or legal counsel.

DISCUSSION

The Department, in its one-paragraph brief, states:

The Department of Alcoholic Beverage Control does not concede any of the issues raised in appellant's opening brief. However, a review of the file indicates that the matter should be remanded to the Department for the dismissal of the accusation.

There being no objection from appellant's counsel, we will remand this matter to the Department to be dismissed, in accordance with the Department's request.

ORDER

This matter is remanded to the Department for dismissal pursuant to the Department's request.²

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

² This 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.