

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

AB-8807

File: 47-350965 Reg: 07064729

INLAND PACIFIC INVESTMENTS, LLC, dba Carlos O'Briens
440 West Court Street, San Bernardino, CA 92401,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: February 5, 2009
Los Angeles, CA

ISSUED JUNE 12, 2009

Inland Pacific Investments, LLC, doing business as Carlos O'Briens (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 20 days, with 10 days stayed for a probationary period of one year, for appellant's employee or agent selling or furnishing an alcoholic beverage to a person under the age of 21; permitting consumption of an alcoholic beverage in an unlicensed area of the premises; and permitting violation of a condition on its license, violations of Business and Professions Code² sections 25658, subdivision (a); 23300; 23355; and 23804.

¹The decision of the Department, dated January 8, 2008, is set forth in the appendix.

²Unless otherwise indicated, statutory references in this opinion are to the Business and Professions Code.

Appearances on appeal include appellant Inland Pacific Investments, LLC, appearing through its managing member, Oscar Chavez, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on November 20, 2000. The Department filed an accusation charging that appellant, through its employees or agents, sold and/or furnished an alcoholic beverage to a person under the age of 21 in violation of section 25658, subdivision (a); permitted consumption of an alcoholic beverage in an unlicensed area of the premises in violation of sections 23300 and 23355; and permitted violation of a condition on its license in violation of section 23804, on May 5, 2006.

At the administrative hearing held on September 20, 2007, documentary evidence was received and testimony concerning the violations charged was presented. Subsequent to the hearing, the Department issued its decision which determined that the charges were proved.

DISCUSSION

Appellant filed a notice of appeal stating only that the appeal was based on "insufficiency of evidence, violation of Due Process, and estoppel." Written notice of the opportunity to file a brief in support of appellant's position was given on November 5, 2008. An extension of time for filing an opening brief, until December 20, 2008, was granted on November 26, 2008. Appellant did not file a brief.

Oscar Chavez, appellant's managing partner, appeared for appellant at the Appeals Board hearing. He alleged that the Department had not proved a violation because all the evidence was hearsay, and findings cannot be based on hearsay.

The Appeals Board is not required to make an independent search of the record for error not pointed out by an appellant. It was appellant's duty to show the Board that the error existed. Without such assistance by appellant, the Board may deem the general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

We have reviewed the record and it is clear that the findings and decision were based on substantial evidence. While some evidence in the record was administrative hearsay, the non-hearsay evidence presented was more than sufficient to support the findings.

With no brief to inform the Department or the Appeals Board of the specifics of appellant's allegations and to point to the parts of the record that appellant believes support its position, we cannot say that any abuse of discretion has occurred.

ORDER

The decision of the Department is affirmed.³

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

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq.