

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

AB-8995

File: 40-429368 Reg: 08069091

ARNOLDO ADAME ESQUIVEL, dba Halcon Café Bar
10325 Garvey Avenue, El Monte, CA 91733-2135,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: June 3, 2010
Los Angeles, CA

ISSUED AUGUST 16, 2010

Arnoldo Adame Esquivel, doing business as Halcon Café Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for permitting various drink solicitation activities in violation of Business and Professions Code sections 24200.5, subdivision (b); 25657, subdivision (b); and Department rule 143 (4 Cal. Code Regs., § 143).

Appearances on appeal include appellant Arnoldo Adame Esquivel, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated December 29, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on September 7, 2005. On June 27, 2008, the Department filed an accusation charging that appellant had permitted various drink solicitation violations. At the administrative hearing held on October 28, 2008, documentary evidence was received and testimony was presented concerning the violations charged.²

Subsequent to the hearing, the Department issued its decision which dismissed counts 3, 6, 9, and 13, and determined that the other violations charged were proved.

Appellant filed a timely appeal in which he contends that the Department failed to advise him of his right to counsel as required by Government Code section 11505.

DISCUSSION

Appellant contends that the Department failed to notify him, in the Notice of Defense, that he was entitled to be represented by counsel in the administrative proceedings. Government Code section 11505, appellant asserts, requires the Department to advise a licensee of his right to counsel in the Notice of Defense, but the only reference to an attorney in the Notice of Defense he received is in the section dealing with the date for the administrative hearing: "List dates which you and/or your attorney will not be available for trial" Appellant asserts that this does not comply with the section 11505 requirement of advising the licensee of his right to counsel, and it is an abuse of the Department's discretion to fail to comply with section 11505.

Government Code section 11505 does require the Department to notify a licensee of his or her right to counsel. However, that section requires the notification in the **accusation**, not the Notice of Defense:

²A summary of the evidence presented is not needed to resolve this appeal.

(a) Upon the filing of the accusation the agency shall serve a copy thereof on the respondent The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense The copy of *the accusation shall include or be accompanied by* (1) *a statement that respondent may request a hearing by filing a notice of defense . . . and* (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) *The statement to respondent shall be substantially in the following form:*

Unless a written request for a hearing . . . is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, [the agency] may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense *You may, but need not, be represented by counsel at any or all stages of these proceedings.*

(*Ibid.*, italics added.)

The accusation in this matter included the following statement:

At any and all stages of these proceedings, you have the right to be represented by counsel at your own expense or to represent yourself without legal counsel. You are not entitled to the appointment of an attorney to represent you.

The Department complied with the requirement of section 11505, and appellant's contention must be rejected.

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.