

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

AB-9014

File: 21-247974 Reg: 08069361

USHA and PREM S. ARORA, dba Bottoms Up Liquor & Groceries
1024 Fitzuren Road, Antioch, CA 94509,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: July 1, 2010
San Francisco, CA

ISSUED AUGUST 11, 2010

Usha and Prem S. Arora, doing business as Bottoms Up Liquor & Groceries (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 35 days for failure to create a limited-access area for display of "harmful matter" and for co-appellant Prem S. Arora willfully resisting, delaying, or obstructing peace officers in the discharge of their duties, violations of Business and Professions Code section 25612.5, subdivision (c)(9), and Penal Code section 148, subdivision (a)(1).

Appearances on appeal include appellants Usha and Prem S. Arora, appearing through Prem S. Arora, in propia persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

¹The decision of the Department, dated March 20, 2009, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on July 13, 1990. In 2008 the Department instituted an accusation against appellants charging that they had failed to create a limited-access area for display of "harmful matter."

At the administrative hearing held on January 22, 2009, the Department moved to amend the accusation to add a second count charging that co-appellant Prem S. Arora (hereafter referred to as "Arora" or "appellant") willfully resisted, delayed, or obstructed peace officers in the discharge of their duties. The amendment was allowed and appellants were offered the opportunity to continue the matter because of the amendment. Appellant declined the continuance and insisted the hearing proceed. Thereafter, documentary evidence was received and testimony concerning the violations charged was presented by Department investigator Salvador Martinez, Antioch police officer Clifford Rezendes, and appellant.

In March 2008 investigator Martinez observed openly displayed sexually explicit DVD's and videos in appellants' premises. Martinez advised appellant that the display violated Business and Professions Code section 25612.5,² which requires the creation

²Subdivision (c)(9) of section 25612.5 provides:

Every licensed retailer who sells or rents video recordings of harmful matter, as defined by Section 313 of the Penal Code, shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The licensed retailer shall make reasonable efforts to arrange the video recordings in this area in such a way that minors may not readily access the video recordings or view the video box covers. The failure to create and label the "adults only" area is an infraction punishable by a fine of not more than one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction.

and labeling of an "adults only" area for "harmful matter" as defined in Penal Code section 313.³ Martinez did not issue a citation since appellant said he would take care of the problem.

On April 29, 2008, when officers re-inspected appellants' premises, the violation observed in March had not been corrected. There were several display racks of sexually explicit materials near the checkout counter and next to snack and greeting card displays. The covers of the adult videos and DVD's were uncovered and depicted male and female genitalia and various sex acts.

When the officers told appellant they were going to issue a citation for failure to correct the violation, appellant became upset, verbally abusive, and impeded the officers' investigation. The officers decided to arrest appellant, but he pulled away from one of them and it required two officers to handcuff him.

Appellant testified that he felt he was in compliance because he had placed a small sign saying "18 or older beyond this point" on the end of one of the displays of sexually explicit video recordings.

Subsequent to the hearing, the Department issued its decision which determined that the violations charged were established. Appellants filed a notice of appeal, and written notice of the opportunity to file briefs in support of their position was given on March 26, 2010. Appellants have not filed a brief. We have reviewed the notice of appeal but it lacks sufficient information to ascertain the basis for appellant's appeal.

³Subdivision (a) of this section defines "harmful matter" as "matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors."

DISCUSSION

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellants. It was appellants' duty to show the Board that 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]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

A review of the file, including the hearing exhibits and transcript, does not reveal any error that would support reversal or remand of the matter.

ORDER

The decision of the Department is affirmed.⁴

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

⁴This 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.