

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

AB-9021

File: 47-458388 Reg: 08068998

MATTHEW HENRY LOVETT, dba Pinky's Bar & Grill
6985 Garden Highway, Nicolaus, CA 95659,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Nicholas R. Loehr

Appeals Board Hearing: October 7, 2010
San Francisco, CA

ISSUED NOVEMBER 22, 2010

Matthew Henry Lovett, doing business as Pinky's Bar & Grill (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his on-sale general public eating place license for 15 days for, through his employees, having permitted a person under 21 years of age to consume an alcoholic beverage in the licensed premises, a violation of Business and Professions Code section 25658, subdivision (b).

Appearances on appeal include appellant Matthew Henry Lovett, appearing in propria persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

¹The decision of the Department, dated March 26, 2009, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on January 3, 2008. An accusation was filed by the Department alleging that, on or about January 12, 2009, appellant, through his employees, permitted Ashleigh Funches, a person under the age of 21, to consume an alcoholic beverage in the licensed premises, in violation of Business and Professions Code section 25658, subdivision (b).

An administrative hearing was held on January 30, 2009, at which time documentary evidence was received and testimony concerning the violation charged was presented by Department investigators Kalystra Cruz and David Bickel, and Funches, the minor. The evidence established that Funches consumed two "Long Island Iced Tea" drinks, one furnished by appellant's bartender, and another by a male patron. Department investigator Bickel testified, based upon his training and experience, that the drink he seized from Funches contained alcohol.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established.

Appellant has filed a timely notice of appeal, but has not filed a brief. His notice of appeal asserted that he disagreed with the decision and that he had been denied legal representation.

Appellant was advised by the Notice of Hearing in this matter that he was free to retain counsel at his own expense. He chose not to do so. The fact that he disagrees with the Department's decision is not a valid ground for an appeal.

Appellant argued at the Board hearing that the drinks furnished to Funches were not tested for alcoholic content. This is true. However, an experienced investigator testified that he smelled the drink that was seized from Funches, and, based upon his

experience, the drink contained an alcoholic beverage. Appellant also argued that Funches had sneaked into the premises, an argument unsupported by any record evidence.

We are satisfied that the decision is supported by the evidence.

ORDER

The decision of the Department is affirmed.²

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

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

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