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

AB-9103
File: 21-397498 Reg: 09071186

MUSA MUSA SALEH, dba Bob's Liquor & Grocery
2999 Harrison Street, San Francisco, CA 94110,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: April 7, 2011
San Francisco, CA

ISSUED APRIL 28, 2011

Musa Musa Saleh, doing business as Bob's Liquor & Grocery (appellant),

appeals from a decision of the Department of Alcoholic Beverage Control[1] which

revoked his license for his clerk having sold alcoholic beverages to three underage

purchasers, a violation of Business and Professions Code section 25658, subdivision

(a). The sales were appellant's third to minors within a 36-month period.

Appearances on appeal include appellant Musa Musa Saleh, appearing through

his counsel, Richard D. Warren, and the Department of Alcoholic Beverage Control,

appearing through its counsel, Kelly Vent.

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[1]The decision of the Department, dated April 7, 2010, is set forth in the appendix, together with the proposed decision of the administrative law judge (ALJ) .

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on April 18, 2003. On May 28, 2009, the Department instituted an accusation against appellant charging that, on October 10, 2008, appellant's clerk sold alcoholic beverages to three underage purchasers in violation of Business and Professions Code section 25658, subdivision (a). Appellant had incurred two previous violations within the same 36-month period.

An administrative hearing was held on October 20, 2009, at which time documentary evidence was received and testimony concerning the transactions in question was presented.

Subsequent to the hearing, the ALJ issued his proposed decision in which he concluded that the sales had occurred as alleged, that the Department had failed to introduce evidence of any prior disciplinary action, and that an appropriate penalty was a 15-day suspension. The Department made its own decision pursuant to Government Code section 11517, subdivision (c), by adopting Findings of Fact 1, 2, and 4 through 15 of the proposed decision, exercising its powers to take official notice of prior acts of the Department and to take additional evidence upon rejection and review of a proposed decision, and, finding that appellant's license had been disciplined for sales to minors on two prior occasions, ordered the license revoked.

Written notice of the opportunity to file briefs in support of the appellant's appeal was given on December 10, 2010. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the

Appeals Board that the claimed error existed. Without such assistance by appellant,

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] and *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Our own review of the record satisfies us that the Department's decision should be affirmed.

ORDER

The decision of the Department is affirmed.[2]

> FRED ARMENDARIZ, CHAIRMAN
> TINA FRANK, MEMBER
> MICHAEL A. PROSIO, MEMBER
> ALCOHOLIC BEVERAGE CONTROL
> APPEALS BOARD

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[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.