

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

AB-9260

File: 48-392034 Reg: 11075163

CHRISTOPHER MARTIN FIERRO, dba Canteena
6067 Skyway, Paradise, CA 91760,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: January 3, 2012
Sacramento, CA

ISSUED FEBRUARY 5, 2013

Christopher Martin Fierro, doing business as Canteena (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 30 days for permitting his premises to become a disorderly house and law enforcement problem, in violation of Business and Professions Code sections 25601 and 24200, subdivision (a).

Appearances on appeal included only the Department of Alcoholic Beverage Control, appearing through its counsel, Tamara Colson; appellant Christopher Martin Fierro, did not appear.

¹The decision of the Department, dated April 18, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on December 30, 2002. On May 26, 2011, the Department instituted an accusation against appellant charging that appellant permitted his premises to become a disorderly house and law enforcement problem, in violation of Business and Professions Code sections 25601, and 24200, subdivision (a).

At the administrative hearing held on January 31, 2012, documentary evidence was received and testimony concerning the violations charged was presented by Lillian Booth, the Communications Records Supervisor for the Paradise Police Department (PPD); Gregory Ketel, Joseph Gebbia, Robert Haskins, Patrick Feaster, Robert Nichols, Timothy DeNecochea, and Robert Pickering, PPD officers; John Bruschi, an Oroville Police officer; and Paul Tupey, a Department Investigator.

Testimony established that during the period from January 14, 2010 to January 2, 2011, the PPD was called to the premises on 54 occasions, constituting a drain on police resources and a law enforcement problem for the PPD. Substantial evidence was presented regarding incidents involving public intoxication, fights, and assaults in and around the premises, and the continued serving of alcohol to inebriated patrons – all supportive of the charge of maintaining a disorderly house.

Subsequent to the hearing, the Department issued its decision which determined that the violations charged were proven and no defense was established.

Appellant filed a timely appeal, and written notice of the opportunity to file briefs in support of appellant's position was given on October 1, 2012. However, no brief was

filed by appellant,² and appellant did not appear at oral argument.

DISCUSSION

The Notice of Appeal lacks sufficient information for this Board to ascertain the basis for appellant's appeal. The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that some 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]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880].)

The Board has reviewed the record, and finds no basis for rejecting the decision of the Department.

ORDER

The Motion to Dismiss is granted, and the decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²The Department filed a Motion to Dismiss for failure to file a brief on November 26, 2012. We are always reluctant to grant such a motion until appellant has had an opportunity to appear at oral argument, particularly when appellant is not represented by counsel. Since appellant did not appear, that motion is granted.

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.