

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

AB-9412

File: 48-450641 Reg: 13078731

THE LANDING STRIP, INC.,
dba The Landing Strip
16451-53 Vanowen Street, Van Nuys, CA 91406-4730,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: November 6, 2014
San Diego, CA

ISSUED DECEMBER 3, 2014

The Landing Strip, Inc., doing business as The Landing Strip (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license for permitting drink solicitation activity, in violation of Business and Professions Code sections 24200.5(b), 25657(a) and (b), and for license condition violations under section 23804.

Appearances on appeal include appellant The Landing Strip, Inc., appearing through its counsel, Ralph Barat Saltsman and Jennifer L. Carr of the law firm Solomon Saltsman & Jamieson, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated January 31, 2014, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on April 19, 2007. Appellant's license contained nine conditions, including condition 5, which required that "No employee shall solicit or accept any alcoholic or non-alcoholic beverage from any customer while in the premises." (Petition for Conditional License, Exhibit 3.) The validity of this condition is not at issue.

On October 10, 2010, appellant executed a stipulation and waiver resolving a 50-count accusation alleging solicitation activity in violation of sections 24200.5, subdivision (b) and 25657, subdivisions (a) and (b), as well as condition violations under section 23804 and additional drink violations under rule 143. (Stipulation and Waiver, Exhibit 2.) Appellant agreed to a penalty of revocation, conditionally stayed for three years provided no cause for disciplinary action occur within the stayed period, and 30 days' suspension. (Decision After Waiver of Hearing, Exhibit 2.) The conditional stay commenced on April 8, 2011, the effective date of the Department's decision, and was to end on April 7, 2014.

On June 20, 2013, however, the Department instituted a new 23-count accusation against appellant charging that, on six separate dates in 2012 and 2013, it permitted drink solicitation in violation of sections 24200.5, subdivision (b), and 25657, subdivisions (a) and (b), and violated the terms of a license condition under section 23804.

At the administrative hearing held on November 13 and 14, 2013, documentary evidence was received and testimony concerning the violation charged was presented by Officer Jose Monzon and Sergeant Liferlando Garcia of the Los Angeles Police Department (LAPD), and by Luz Alvarado, Victoria Perez, Marina Nolasco Solis, and

Jose Cornejo, all employed by appellant at the licensed premises.

Testimony established that on six separate dates in 2012 and 2013, LAPD officers visited the licensed premises, where they witnessed a number of solicitation and condition violations.

Counts 1 through 4

On October 19, 2012, Officers Monzon and Coreas entered the licensed premises and proceeded to the bar counter. They ordered two bottles of Corona beer from Luz Alvarado, one of the bartenders. Alvarado served them the beers and charged them a total of \$10.

Officer Coreas ordered a second beer. Alvarado served it to him and charged him \$5. Alvarado asked Officer Monzon if he wanted another beer. He told her he did not like to drink alone. Alvarado then asked Monzon to buy her a beer. He agreed and asked her what kind of beer she liked. She replied that she liked Bud Light. Monzon ordered a beer for himself and handed \$20 to Alvarado. Alvarado took the money to the register and obtained \$10 in change. She placed \$5 of the change in her own pocket and gave the other \$5 to Monzon. She obtained two beers, served one to Monzon, and kept the second for herself. She opened her beer and began to consume it. The officers then left the premises.

Counts 5 through 8

On October 26, 2012, Officers Monzon and Coreas returned to the licensed premises, took seats at the bar counter, and again ordered two Corona beers from Alvarado. She served them the beers and charged them a total of \$10.

Alvarado and Officer Monzon struck up a conversation. Monzon asked her why she wasn't drinking. She stated that no one had invited her to drink. Monzon asked her

what she wanted. She replied that she wanted a milk. Monzon got up and began to move to a nearby table. Alvarado stated that she wanted a Bud Light, so Monzon handed her a \$20 bill. Alvarado grabbed a beer and obtained \$15 in change. She kept \$5 for herself and handed the remaining \$10 to Monzon. The officers then left the premises.

Counts 9 through 11

On November 30, 2012, Officer Monzon returned to the licensed premises, this time accompanied by Sergeant Garcia. Garcia entered the premises first. Monzon followed and proceeded to the bar counter, where he ordered a shot of tequila from Alvarado. Alvarado served him the shot and charged him \$7.

Officer Monzon later returned to the bar counter and ordered another shot of tequila from Alvarado. Alvarado served it to him. Monzon paid with a \$20 bill and received some change.

Alvarado stated that she wanted a shot as well. Officer Monzon agreed and ordered a beer. Alvarado obtained the shot of tequila and the beer. She served the beer to Monzon and consumed the tequila. Monzon paid with a \$20 bill. Alvarado placed the money in the register and obtained \$11 in change. She placed \$6 of the change next to the register and handed the remaining \$5 to Monzon, indicating that the total cost of Alvarado's shot of tequila was \$10 (i.e., \$4 in the register and a \$6 commission). The officers then left the premises.

Counts 12 through 16

On December 7, 2012, Officer Monzon and Sergeant Garcia returned to the licensed premises. Officer Monzon entered first, followed by Sergeant Garcia. Two bartenders were working behind the counter: Alvarado and Victoria Perez. Garcia sat

at the bar counter and ordered a beer from Alvarado. He was charged \$5.

Sergeant Garcia consumed a portion of his beer. When he set the beer down, Arcelia, who was sitting next to him, asked if he needed another beer. He said that he did. She stated that she needed one too. They ordered two beers from Alvarado, who obtained a Modelo for Arcelia and a Tecate for Garcia. Garcia paid with a \$50 bill. Alvarado took the money to the register and obtained two \$20 bills as change. She handed one of the bills to Garcia and the other to Arcelia. As she did so, she said that Arcelia had to give him the rest of his change because she was out of small bills. Arcelia indicated that she needed her purse and asked Alvarado to get it for her. Alvarado grabbed a purse from a location behind the bar counter and handed it to Arcelia. Arcelia took \$15 out of her purse and handed it to Garcia. As she did so, she explained that her beer cost \$10.

Arcelia finished her first beer and stated that she needed another one. Sergeant Garcia agreed and stated that he needed another one as well. They placed their order with Alvarado, who served a Bud Light to Arcelia and a Tecate to Garcia. Garcia paid with a \$20 bill. Alvarado took the money and returned with \$10 in change. She gave \$5 to Arcelia and the other \$5 to Garcia.

Arcelia solicited a third beer from Sergeant Garcia. He agreed and paid with a \$20 bill. Alvarado obtained change from the register, \$5 of which she gave to Arcelia.

Arcelia solicited a fourth beer from Sergeant Garcia. He agreed. She ordered a beer from Perez, who served it to her. Garcia paid with a \$10 bill. Perez obtained \$5 in change, which she gave to Arcelia.

Counts 17 through 19

On December 13, 2012, Officer Monzon and Sergeant Garcia returned to the

licensed premises. Garcia entered first, and Monzon followed. Monzon went to the bar counter and ordered a Corona beer from Perez, who served it to him. He paid with a \$20 bill and received \$15 in change.

Officer Monzon asked Perez why she was not drinking, since he had seen her drink on other occasions. She replied that she had not been invited to a drink and asked him to buy her one. He agreed and she obtained a Corona beer. Monzon handed Perez a \$20 bill, which she took to the register. She obtained \$15 in change, \$5 of which she placed in a pile next to the register. She handed the remaining \$10 to Monzon. The officers then left the premises.

Counts 20 through 23

On January 19, 2013, Officer Monzon and Officer Coreas returned to the licensed premises. Later, Sergeant Garcia separately entered the premises. Finally, three female officers also entered the premises. Monzon and Coreas sat down at the bar counter and ordered two Corona beers, each of which cost \$5.

Officer Monzon noticed a woman, "Suzy," who was sitting by herself. He asked her to dance, and she agreed. When they finished dancing, he walked her back to her table. She asked him to sit with her. He replied that he was sitting at the bar counter. The two of them walked over to the bar counter and sat down.

Once seated, Suzy asked Officer Monzon to buy her a beer. He agreed. Suzy ordered a Bud Light beer from Alvarado, who was five feet away and looking at them. Alvarado served the beer to Suzy. Monzon paid Alvarado with a \$20 bill. Alvarado obtained \$15 in change. She handed \$5 to Suzy and \$10 to Monzon. Suzy pocketed the money and began to consume her beer.

When she finished her first beer, Suzy asked Officer Monzon to buy her another.

He agreed, and Suzy ordered a Bud Light from Alvarado. Alvarado served the beer to Suzy. Monzon paid with a \$20 bill. Alvarado took the money to the register and obtained some change. She handed \$5 of the change to Suzy and the remaining \$10 to Monzon.

Periodically, Suzy left the premises. Each time she returned and sat with Officer Monzon.

Suzy asked Officer Monzon to buy her a third beer. He agreed. Once again, Alvarado took the order and served a beer to Suzy. Monzon paid Alvarado with a \$10 bill. Alvarado attempted to hand the money to Suzy. As she did so, she asked for \$5 back. Suzy replied that her money was in the car. Alvarado then took the \$10 to the register and obtained \$5 in change. She handed the \$5 to Suzy.

Suzy and Officer Monzon returned to the dance floor. While they danced, Monzon became aware that some of the people inside the licensed premises believed that Sergeant Garcia and the three female officers were police.

Suzy and Officer Monzon returned to the bar counter. Suzy asked him to buy her another beer. He agreed, and Alvarado served Suzy another beer. Monzon placed two \$5 bills on the counter. Suzy picked up one and kept it. Alvarado picked up the other and took it to the register. The officers then left the licensed premises.

Appellant's witnesses provided different versions of these events.

After the hearing, the Department issued its decision that counts 1 through 4, 8 through 14, 17 through 19, and 21 through 22 had been proven and no defense was established. Counts 5 through 7, 15 through 16, 20, and 23 were dismissed. The ALJ specifically rejected the self-serving testimony of appellant's employees where it conflicted with the credible testimony of the LAPD officers. Because these violations

took place during the period of stayed revocation arising from the 2010 disciplinary action, appellant's license was revoked.

Appellant filed a timely appeal raising the following issues: (1) counts 2, 3, 10, and 18 are not supported by substantial evidence that appellant employed its bartenders for the purpose of soliciting alcoholic beverages, nor did the Department make findings to that effect, and (2) counts 14 and 22 are not supported by substantial evidence that appellant knowingly permitted either Suzy or Gutierrez to loiter for the purpose of solicitation, nor did the Department make findings to that effect.²

DISCUSSION

I

Appellant contends that counts 2, 3, 10, and 18 are not supported by substantial evidence, and that the Department failed to make the necessary findings to sustain these counts. Specifically, appellant argues that there is no evidence that it employed its staff for the purpose of soliciting alcoholic beverages or that it knowingly permitted them to do so — only that it lawfully employed them to tend bar or wait tables.

This Board is bound by the factual findings in the Department's decision as long as they are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor this court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for

²Appellant does not challenge the solicitation violations sustained in counts 1, 9, 12, 13, 17, or 21, all of which were brought under section 24200.5(b). Appellant also does not challenge the condition violations underlying counts 4, 8, 11, and 19.

consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

This Board, however, reviews questions of law *de novo*. (See *Pueblos Del Rio South v. City of San Diego* (1989) 209 Cal.App.3d 893, 899 [257 Cal.Rptr. 578].)

The imputation of an employee's acts is a issue of law, not fact. Under settled law, the acts and knowledge of premises staff are imputed to employer. (See, e.g., *Yu v. Alcoholic Bev. Control Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 377 [3 Cal.Rptr.2d 779]; *Kirby v. Alcoholic Bev. Control Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291]; *Wright v. Munro* (1956) 144 Cal.App.2d 843 [301 P.2d 997].) "The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and *as a matter of general law* the knowledge and acts of the employee or agent are imputable to the licensee." (*Wright, supra*, 181 Cal.App.2d at p. 164, emphasis added.)

Strong policy supports imputing constructive knowledge of an employee's conduct to the licensee as a matter of law — particularly where, as here, the conduct directly involves the sale of alcohol. The constructive knowledge rule for liquor licensees arose to prevent them from simply staying away from the licensed premises in order to avoid responsibility for the unlawful acts occurring within. (See *Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144 [196 P.2d 657].) To permit ignorance as a defense would simply encourage licensees to absent themselves from the premises, to exploit lesser employees as shields against liability, and to sidestep

discipline even in the face of recurring violations.

Business and Professions Code section 25657 provides, in relevant part:

It is unlawful:

(a) For any person to employ, upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such person a percentage or commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.

(b) In any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting.

Counts 2 and 3 allege violations of subdivisions (a) and (b), respectively, by bartender Alvarado on October 19, 2012. Count 10 alleges another violation of subdivision (b) by Alvarado on November 30, 2012, and count 18 alleges a violation of subdivision (b) by bartender Perez on December 13, 2012.

The ALJ made the following findings of fact regarding the events surrounding counts 2 and 3:

5. On October 19, 2012, Ofcr. Jose Monzon and Ofcr. Coreas entered the Licensed Premises. They went to the bar counter and ordered two bottles of Corona beer from Luz Alvarado, one of the bartenders. Alvarado served the beers to them and charged them a total of \$10.

6. Ofcr. Coreas ordered a second beer. Alvarado served it to him and charged him \$5. Alvarado asked Ofcr. Monzon if he wanted another beer. He stated that he did not like to drink alone. Alvarado then asked him to buy her a beer. He agreed and asked her what kind of beer she liked. She stated that she liked Bud Light. Ofcr. Monzon ordered a beer for himself and handed \$20 to Alvarado. Alvarado took the money to the register and obtained \$10 in change. She placed \$5 of the change in her own pocket and gave the other \$5 to Ofcr. Monzon. She obtained two beers, serving one to Ofcr. Monzon and keeping the second for herself.

(Findings of Fact ¶¶ 5-6.) Based on these facts, he reached the following conclusions

of law:

8. On October 19, 2012, Luz Alvarado (counts 1, 2, 3, and 4) solicited a beer from Ofcr. Jose Monzon while she was working as a bartender. She kept a \$5 commission in connection with this solicitation.

(Conclusions of Law ¶ 8.)

Regarding count 10, the ALJ made the following findings of fact:

9. Ofcr. Monzon returned to the Licensed Premises on November 20, 2012, accompanied by Sgt. Liferlando Garcia. Sgt. Garcia entered first. Ofcr. Monzon followed and went to the bar counter, where he ordered a shot of tequila from Alvarado. Alvarado served him the shot and charged him \$7. He then sat down at a table.

10. Ofcr. Monzon subsequently went back to the bar counter and ordered another shot of tequila from Alvarado. Alvarado served it to him. He paid with a \$20 bill and obtained some change.

11. Alvarado stated that she wanted a shot as well. Ofcr. Monzon agreed and ordered a beer. Alvarado obtained a shot of tequila (which was half the size of the earlier shots) and the beer. She served the beer to Ofcr. Monzon and consumed the shot of tequila. Ofcr. Monzon paid with a \$20 bill. Alvarado placed the money in the register and handed the remaining \$5 to Ofcr. Monzon, indicating that the total cost of Alvarado's shot of tequila was \$10 (i.e., \$4 in the register and a \$6 commission). The officers subsequently exited.

(Findings of Fact ¶¶ 9-11.) Based on these facts, he reached the following conclusions

of law:

10. On November 30, 2012, Alvarado (counts 9, 10, and 11) solicited a shot of tequila from Ofcr. Monzon while she was working as a bartender. She kept a \$6 commission in connection with this solicitation.

(Conclusions of Law ¶ 10.)

Regarding count 18, the ALJ made the following factual findings:

17. Ofcr. Monzon and Sgt. Garcia returned to the Licensed Premises on December 13, 2012. Sgt. Garcia entered first and Ofcr. Monzon followed. Ofcr. Monzon went to the bar counter and ordered a Corona beer from Perez, who served it to him. He paid with a \$20 bill and received \$15 in change.

18. Ofcr. Monzon asked Perez why she was not drinking since he had seen her drink on other occasions. She stated that she had not been invited to a drink and asked him to buy her one. He agreed and she obtained a Corona beer. Ofcr. Monzon handed a \$20 bill to Perez, which she took to the register. She handed the remaining \$10 to Ofcr. Monzon. The officers subsequently exited the Licensed Premises.

19. Later, Perez asked Ofcr. Monzon to buy her another beer. He agreed and handed \$10 to Perez. Perez took the money to the register and obtained \$5 in change, all of which she placed on a pile next to the register. She also obtained a beer for herself.

(Findings of Fact ¶¶ 17-19.) Based on these facts, the ALJ reached the following conclusions of law:

12. On December 13, 2012, Ofcr. Monzon asked Victoria Perez (counts 17, 18, and 19) why she was not drinking. She replied that she had not been invited to, then asked him to buy her a beer.^[fn] He agreed and purchased a beer for her, which she accepted and consumed. She subsequently solicited a second beer. Both times, she kept a \$5 commission.

(Conclusion of Law ¶ 12.)

Notably, appellant does not challenge the validity of these factual findings, but instead claims they lack a significant element of proof:

There is absolutely *no* evidence, and thus not substantial evidence, to support a finding that Ms. Alvarado and/or Ms. Perez was employed, or knowingly permitted, to loiter in the premises for the purpose of soliciting alcoholic beverages. Rather, as discussed, it has only been established that Ms. Alvarado and/or Ms. Perez were employed for the lawful purpose of serving as bartenders and/or waitresses.

(App.Br. at p. 15.)

Appellant argues that the ALJ did not and could not make a factual finding that either Alvarado or Perez were employed to solicit alcoholic beverages. They do not challenge the finding, however, that the women charged an inflated price for solicited drinks and then paid themselves a commission.

Appellant refers this Board to *Garcia v. Munro* (1958) 161 Cal.App.2d 425, which

it claims "stands for the proposition that the [D]epartment must present evidence that the alleged [soliciting individual]'s *purpose* was to loiter to solicit drinks for commission." (App.Br. at p. 14.) According to appellant, if an individual is hired as a bartender and continues her bartending duties even while soliciting alcoholic beverages, the licensee cannot be disciplined.

Appellant overlooks a significant observation in *Garcia*:

Here, [the soliciting individual] was employed as a bartender or waitress and performed the duties of that position. Certainly evidence that she talked with patrons, spent some time with them and solicited some patrons to buy her drinks does not support a finding that she was employed to "loiter" on the premises. *If there was evidence that the licensees paid her a commission for drinks solicited, that might be some indication that she was employed "to loiter" to solicit drinks.*

(*Garcia, supra*, 161 Cal.App.2d at p. 429, emphasis added.) Appellants do not dispute the payment of commissions. (See Findings of Fact ¶¶ 8, 10, 12.) The payment of a commission is, under *Garcia*, sufficient to support an inference that both women were employed for the purpose of soliciting drinks.

Moreover, the actions of Alvarado and Perez while tending bar are imputed to the licensee as a matter of law. Thus, the findings that Alvarado and Perez solicited drinks, charged an inflated price, and paid themselves a commission are sufficient, because appellant had constructive knowledge of its employees' conduct. Put another way: where, as here, the evidence and undisputed findings show a bartender charged an inflated price for a solicited drink and then paid herself a commission from the proceeds, that is factually sufficient to establish that the appellant employed the bartender for the purposes of solicitation. No additional factual finding is necessary.

II

With regard to counts 14 and 22, appellant argues that there is no evidence it knowingly permitted either Gutierrez or Suzy to loiter for the purpose of soliciting drinks, or that it was even aware of their presence at the premises. Additionally, appellant claims that there is no evidence the women were loitering for the purpose of soliciting drinks. Appellant contends that the evidence shows little more than that the women were present at the premises.

As discussed, the acts and knowledge of premises staff are imputed to employer. (See Part I, *supra*.)

Section 25657, subdivision (b), prohibits "loitering in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting." In *Pacheco* (2014) AB-9371, we articulated an appropriate definition of "loitering" for the purposes of this section. The word means:

""[T]o linger idly by the way, to idle,' 'to loaf' or to 'idle.'" (*Wright v. Munro* (1956) 144 Cal.App.2d 843, 847 [301 P.2d 997], citing *Phillips v. Municipal Court* (1938) 24 Cal.App.2d 453, 455 [75 P.2d 548].) Another helpful definition, drawn from the Penal Code, "connotes lingering in the designated places for the purpose of committing a crime as opportunity may be discovered." (*In re Cregler*, 56 Cal.2d 308, 312 [14 Cal.Rptr. 289].) Under this definition, "lingering idly by" would not constitute loitering provided the lingerer was merely waiting for a legal purpose. (See *ibid.*)

(*Id.* at p. 10.)

Count 14 and count 22 both allege violations of section 25657, subdivision (b). Count 14 alleges that appellant employed or knowingly permitted Arcelia Gutierrez to loiter for the purpose of soliciting drinks. Count 22 makes the same allegation, this time involving the woman known as Suzy.

In the decision below, the ALJ made the following findings of fact regarding count 14:

13. Sgt. Garcia consumed a portion of his beer. When he set the beer down, Arcelia [Gutierrez], who was sitting next to him, asked if he needed another beer. He said that he did. She stated that she needed one too. They ordered two beers from Alvarado, who obtained a Modelo for Arcelia and a Tecate for Sgt. Garcia. Sgt. Garcia paid with a \$50 bill. Alvarado took the money to the register and obtained two \$20 bills as change. She handed one of the twenties to Sgt. Garcia and the other one to Arcelia. As she did so, she stated Arcelia had to give him the rest of his change because she was out of small bills. Arcelia indicated that she needed her purse and asked Alvarado to get it for her. Alvarado grabbed a purse from a location behind the bar counter and handed it to Arcelia. Arcelia took \$15 out of her purse and handed it to Garcia. As she did so, she explained that her beer cost \$10.

14. Arcelia finished her first beer and stated that she needed another one. Sgt. Garcia agreed and stated that he needed another one as well. They placed their order with Alvarado, who served a Bud Light to Arcelia and a Tecate to Sgt. Garcia. Sgt. Garcia paid with a \$20 bill. Alvarado took the money and returned with \$10 in change. She gave \$5 to Arcelia and the other \$5 to Sgt. Garcia.

15. Arcelia solicited a third beer from Sgt. Garcia. He agreed and paid using a \$20 bill. Alvarado obtained some change from the register, \$5 of which she gave to Arcelia.

16. Arcelia solicited a fourth beer from Sgt. Garcia. He agreed and she ordered a beer from Perez, who served it to her. Sgt. Garcia paid with a \$10 bill. Perez obtained \$5 in change which she gave to Arcelia.

(Findings of Fact ¶¶ 13-16.) Based on these findings, the ALJ reached the following conclusions of law:

11. On December 7, 2012, Arcelia (counts 12, 13,^[fn] and 14) solicited four beers from Sgt. Liferlando Garcia. In connection with each of these solicitations, the bartenders paid her a \$5 commission, indicating that they were aware of the solicitations.

(Conclusions of Law ¶ 11.)

With regard to count 22, the ALJ made the following findings of fact:

20. On January 19, 2013, Ofcr. Monzon and Ofcr. Coreas once again

entered the Licensed Premises. Later, Sgt. Garcia separately entered the Licensed Premises. Finally, three female officers also entered the Licensed Premises. Ofcr. Monzon and Ofcr. Coreas sat down at the bar counter and ordered two Corona beers, each of which cost \$5.

21. Ofcr. Monzon noticed a woman, Suzy, who was sitting by herself. He asked her to dance and she agreed. When they finished dancing, he walked her back to her table. She asked him to sit with her [sic]. He replied that he was sitting at the bar counter. The two of them walked over to the bar counter and sat down.

22. Once seated, Suzy asked him to buy her a beer. He agreed. Suzy ordered a Bud Light beer from Alvarado, who was five feet away and looking at them. Alvarado served the beer to Suzy. Ofcr. Monzon paid Alvarado with a \$20 bill. Alvarado obtained \$15 in change, \$5 of which she handed to Suzy and \$10 of which she handed to Ofcr. Monzon. Suzy pocketed the money and began to consume her beer.

23. When she finished her first beer, Suzy asked Ofcr. Monzon to buy her another. He agreed and Suzy ordered a Bud Light from Alvarado. Alvarado served the beer to Suzy and Ofcr. Monzon paid with a \$20 bill. Alvarado took the money to the register and obtained some change. She handed \$5 of the change to Suzy and the remaining \$10 to Ofcr. Monzon.

24. Periodically, Suzy exited the Licensed Premises. Each time she returned and sat with Ofcr. Monzon.

25. Suzy asked Ofcr. Monzon to buy her a third beer. He agreed. Once again, the order was placed with Alvarado, who served a beer to Suzy. Ofcr. Monzon paid Alvarado with a \$10 bill. Alvarado attempted to hand the money to Suzy. As she did so, she asked for \$5 back. Suzy stated that her money was in the car. Accordingly, Alvarado took the \$10 to the register and obtained \$5 in change. She handed the \$5 to Suzy.

26. Ofcr. Monzon and Suzy returned to the dance floor. While they danced, Ofcr. Monzon became aware that some of the people inside the Licensed Premises believed that Sgt. Garcia and the three female police officers were police officers.

27. Ofcr. Monzon and Suzy returned to the bar counter. Suzy asked him to buy her another beer. He agreed and Alvarado served a beer to her. Ofcr. Monzon placed two \$5 on the bar counter. Suzy picked up one and kept it; Alvarado picked up the other and took it to the register. The officers subsequently exited the Licensed Premises.

(Findings of Fact ¶¶ 20-27.) Based on these findings, the ALJ reached the following

conclusions of law:

17. On January 19, 2013, Suzy (counts 20 and 23) solicited a series of drinks from Ofcr. Monzon. Alvarado was the bartender involved in each of these solicitations There was no evidence that Suzy was employed at the Licensed Premises.

(Conclusions of Law ¶ 17.)

The findings surrounding count 14 are fully supported by the testimony of Sergeant Garcia. (See RT, vol. I, at pp. 135-140.) Similarly, the findings surrounding count 22 are supported by the testimony of Officer Monzon. (See RT, vol. I, at pp. 28-47.) While appellant's witnesses did offer contrary testimony (see generally RT, vol. II), the ALJ specifically rejected this testimony as self-serving and not credible.

(Conclusions of Law ¶ 18.) The evidence is therefore sufficient to support the findings.

Moreover, the findings are sufficient to support both counts. First, the factual findings support an inference that the women were loitering for the purpose of soliciting, and the bartenders knew of their purpose. With regard to count 14, Gutierrez lingered near Sergeant Garcia for the duration of the night, and appears to have done nothing but interact with him and solicit successive drinks. With regard to count 22, Suzy lingered near Officer Monzon throughout the night, and continued to solicit drinks from him. It is true she also danced with him; dancing, however, is comparable to the conversation that often accompanies a solicitation transaction, and does not itself negate the inference that Suzy was loitering for the purpose of soliciting drinks. It is also true that Suzy periodically left the premises. If anything, however, the fact that she departed only to return and solicit more drinks supports the inference that she was loitering for the purpose of solicitation. In both cases, the bartenders paid the women a commission, proving they were aware of the solicitations taking place.

Second, the actions of appellant's bartenders are imputed to appellant itself as a matter of law; no separate factual finding is necessary. While appellant insists the Department must produce evidence that appellant itself witnessed the solicitations firsthand, we are at a loss to comprehend how The Landing Strip, an incorporated business entity, could independently exist as a percipient witness. Moreover, even appellant's employees seem oblivious to the identity of the The Landing Strip's owner. (See, e.g., RT, vol. II, at pp. 26, 60.) As noted in Part I, appellant cannot avoid imputation of its employees' acts simply by making itself scarce.

The evidence is sufficient to support the findings, and the findings are sufficient to support discipline against appellant's license as a matter of law. We see no cause to disturb the decision below.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
FRED HIESTAND, 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.