

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

| | | |
|-----------------------------|---|--------------------------|
| GURMEET SINGH THIND |) | AB-6598 |
| dba Victory Liquor |) | |
| 1067 C Street |) | File: 21-292497 |
| Galt, CA 95632, |) | Reg: 94031510 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | Keith A. Levy |
| THE DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | Date and Place of the |
| Respondent. |) | Appeals Board Hearing: |
| |) | June 5, 1996 |
| |) | Sacramento, CA |
| |) | |

Gurmeet Singh Thind, doing business as Victory Liquor (appellant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 25 days, with 10 days stayed for a probationary period of one year, for appellant's clerk having sold an alcoholic beverage to a person under the age of 21, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, Article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal included appellant Gurmeet Singh Thind, and the

¹The decision of the department dated October 19, 1995, is set forth in the Appendix.

Department of Alcoholic Beverage Control, through its counsel, Robert Murphy.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on January 19, 1994.

Thereafter, the department instituted an accusation against appellant on December 5, 1994.

An administrative hearing was held on September 18, 1995, at which time oral and documentary evidence was received. At that hearing, it was established that appellant's employee sold alcoholic beverages to a person who was then 17 years old, without asking for identification, in violation of Business and Professions Code §25658, subdivision (a). It was also established that appellant had previously entered into a stipulated decision that on May 15, 1992, he had sold an alcoholic beverage to a minor and that he had paid \$540 in an Offer in Compromise.

Subsequent to the hearing, the department issued its decision suspending appellant's license for 25 days, with 10 days of the suspension stayed on condition that appellant not commit any further violations in the next year. Appellant thereafter filed a timely notice of appeal.

In the present matter, written notice of the opportunity to file briefs in support of the appellant's position was given on February 2, 1996. No brief has been filed by appellant. We have reviewed the notice of appeal and have found nothing in that document that would aid this board's review.

DISCUSSION

The appeals board is not required to make an independent search of the record for error not pointed out by the appellant. It was the duty of the 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. (See 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].)

At the oral hearing before this board, the appellant, with the help of an interpreter, argued that his employee had not sold an alcoholic beverage to a minor and raised issues about the sale possibly being a “set up” in retaliation for actions appellant had taken with regard to the license application of another. These issues appear to have been raised at the administrative hearing and rejected by the administrative law judge as not established.

The scope of the appeals board's review is limited by the California Constitution, by statute, and by case law. In reviewing the department's decision, the appeals board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the department are supported by substantial evidence in light of the whole record, and whether the department's decision is supported by the findings. The appeals board is also authorized to determine whether the department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded

relevant evidence at the evidentiary hearing.²

In this appeal, we have reviewed the findings the of the department and find them supported by substantial evidence. There is no evidence that was improperly excluded at the administrative hearing, nor has the appellant presented new evidence that was not reasonably available at the time of the hearing. Under the circumstances, we must sustain the determination of the department.

CONCLUSION

The decision of the department is affirmed.³

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²The California Constitution, Article XX, Section 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

³This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.