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

DONNA B. and HECTOR VILLALOBOS	)	AB-6685
dba Club Tropicana)	
68 West Market Street	)	File: 48-265820
Salinas, CA 93901,	)	Reg: 95032643
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	March 5, 1997
	)	San Francisco, CA
)	

Donna B. And Hector Villalobos (appellants), doing business as Club Tropicana, appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked appellants' on-sale general license, but stayed the revocation and suspended the license for 180 days to allow appellants to transfer the license to a person acceptable to the Department, for co-appellant Hector Villalobos having pleaded guilty to a felony charge of subscribing to a false tax return, being contrary to the universal and generic public welfare and morals provisions of the California

¹The decision of the Department dated June 6, 1996, is set forth in the appendix.

Constitution, article XX, §22, arising from a violation of Business and Professions Code §24200, subdivision (d).

Appearances on appeal include appellants Hector and Donna Villalobos; and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general public premises license was issued on November 22, 1991. Thereafter, the Department instituted an accusation on August 27, 1995, alleging that Hector Villalobos had pleaded guilty to a charge of filing a false income tax return, a felony and a crime involving moral turpitude. Appellants requested a hearing.

An administrative hearing was held on April 25, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the nature of the plea bargain entered into by co-appellant Hector Villalobos. Subsequent to the hearing, the Department issued its decision which determined that subscription to a false tax return was a crime involving moral turpitude and, therefore, Hector Villalobos had pleaded guilty to a crime involving moral turpitude. The Department ordered that the license be revoked, with appellants allowed 180 days to transfer the license to a person acceptable to the Department, the license being suspended during that 180-day period. Appellants thereafter filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of appellants' position was given on November 1, 1996. No brief was filed by appellants. 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 appellants. It was the duty of appellants to show to the Appeals Board that the claimed error existed. Without such assistance by appellants, 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].)

Although appellants did not file a brief, they did appear at the hearing before this board. Appellant Hector Villalobos (hereinafter "appellant") argued that moral turpitude requires an intent to defraud for personal gain, and he received no personal gain from his failure to report certain income. He argued that the income he omitted was offset by deductions and credits that he was entitled to but had not taken. He contends that there was no tax liability connected with his guilty plea because of the offsetting deductions.

The record on appeal does not support appellant's contentions. Appellant was indicted by a Grand Jury in 1993. He was charged with six counts: three counts of tax evasion and three counts of subscribing to a false tax return. The tax evasion counts stated his unpaid tax liability for the three years involved as almost

\$127,000, resulting from unreported income of approximately \$427,000. In 1994, appellant entered into a plea agreement with the United States Attorney, pleading guilty to Count 5 of the indictment which stated that he had signed and filed a joint United States individual tax return for calendar year 1987, under penalty of perjury, "which return he did not believe to be true and correct as to every material matter because he stated in that return . . . that their joint taxable income for said calendar year was zero, whereas he then knew and believed that their joint taxable income for the calendar year 1987 was \$181,515.96." The plea agreement stated that appellant did "not agree to nor admit the income and tax-loss figures alleged in the Indictment." Appellant served nine months in a community correction center and paid a \$10,000 fine.

Appellant has produced no evidence to refute this record. He has produced no documentary evidence to show that he had no fraudulent intent and that he received no personal gain. No evidence was presented to show that, indeed, he had deductions or credits to offset the income that was unreported. He did not produce tax returns or declarations or testimony by his tax preparers to substantiate his contentions. There is nothing in the record to establish his true tax liability.

Appellant presented considerable documentation of his good character and his civic involvement. But he also has a record of a conviction of a felony involving moral turpitude. Without substantiation to support his contentions, we cannot say that the Department abused its discretion in this case.

CONCLUSION

The decision of the Department is affirmed.²

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

DISSENT

I respectfully dissent. Revocation is a harsh penalty for this violation. Even though the revocation is stayed for 180 days to allow appellant to find a buyer for the license, with the license suspended for that 180 days, it will be very difficult for appellant to find a buyer. I believe that this penalty is excessive. I would affirm the Department's determination, but remand the matter to the Department for reconsideration of the penalty.

JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.