

ISSUED SEPTEMBER 15, 1997

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

MARIO MILLAN	)	AB-6751
dba El Amigo)	
1308 Merced Avenue	)	File: 40-224585
South El Monte, CA 91733,	)	Reg.: 96035392
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 2, 1997
	)	Los Angeles, CA
_____)	

Mario Millan, doing business as El Amigo (appellant), appeals from a decision¹ of the Department of Alcoholic Beverage Control which ordered his on-sale beer license suspended for 10 days for his having possessed two bottles of distilled spirits on the licensed premises, 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 §25607.

Appearances on appeal include Mario Millan, representing himself, and the

¹ The decision of the Department dated October 31, 1996, is set forth in the appendix.

Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued November 28, 1988. Thereafter, on February 15, 1996, the Department instituted an accusation alleging that on October 27, 1995, appellant unlawfully possessed two bottles of distilled spirits (Canadian Club whiskey and Cuervo tequila) on the licensed premises, and was in possession of a .25 caliber handgun believing it to have been stolen. An administrative hearing was held on August 30, 1996, at which time oral and documentary evidence was introduced concerning the matters charged in the accusation.

Steven Rose, a Department investigator, testified that in the course of an investigation into possible violations at the licensed premises, he found the two bottles of distilled spirits in a portion of the premises used as an office. Appellant admitted possessing the spirits, but testified they were a gift from a friend.

A handgun was also discovered on the premises, and when its serial number was traced, it was discovered that the gun had been stolen several years earlier. However, the Administrative Law Judge (ALJ) accepted appellant's explanation that he had been given the gun several years earlier by a friend and former employee, and dismissed this charge.

The ALJ found that appellant had violated Business and Professions Code

§25607 by possessing the whiskey and the tequila at a time he was not licensed to sell such products, and ordered appellant's license suspended for ten days.

Appellant thereafter filed a timely notice of appeal, stating he was not represented by counsel at the hearing and claiming that his request for a continuance was improperly denied.

Written notice of the opportunity to file briefs in support of the appellant's position was given on March 14, 1997. 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. Game (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

We have reviewed the transcript of the administrative proceeding to determine whether there is any merit to appellant's contention that he was prejudiced by the denial of a continuance. It appears from the transcript [RT 5-6] that appellant did not request the continuance until the date of the hearing, stating as his reason for needing the continuance that the attorney he attempted to retain a

week earlier was unable to be present on the date set for the hearing.

The grant or denial of a continuance is normally a matter of discretion. In this case, appellant knew when the hearing was to take place more than a month before the actual date, but did not attempt to engage an attorney until only one week prior to the hearing date. The ALJ, noting that appellant had filed a notice of defense on July 8, 1996, and that a notice of hearing had been sent to him on July 30, 1996, stated that appellant had been given sufficient time to retain an attorney. The ALJ stated that if the Department was seeking revocation, he might react differently, but upon being assured the Department was not, he denied the request. Under such circumstances, the ALJ was well within his discretion in denying the continuance.

In addition to demonstrating that a request for a continuance was timely, a party appealing the denial of such a request must demonstrate that he or she was prejudiced by the denial. Appellant has not pointed to any particular aspect of the proceeding that he contends would have been different if he had been represented by counsel. As it is, he successfully persuaded the ALJ that when he was given the stolen weapon, he had no reason to believe it to be stolen property. While the ALJ found his possession of the distilled spirits to violate the statute, we find it difficult to see how the presence of an attorney would have changed the outcome. The liquor was on the licensed premises, it was properly seized, appellant lacked the necessary license, and he admitted it was his. That it was a gift was irrelevant.

The penalty, a ten-day suspension, is the standard Department penalty for such an offense.

CONCLUSION

The decision of the Department is affirmed.²

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

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 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.