

ISSUED NOVEMBER 12, 1997

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

GURMEET SINGH THIND	)	AB-6778
dba A & G Liquors)	
4900 Madison Avenue, C-2	)	File: 21-255393
Sacramento, CA 95841,	)	Reg: 96037295
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Michael B. Dorais
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	September 3, 1997
	)	Sacramento, CA
)	

Gurmeet Singh Thind, doing business as A & G Liquors (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his on-sale general license suspended for 15 days for his having sold alcoholic beverages (beer and wine) to an 18-year-old minor, 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 include appellant Gurmeet Singh Thind, appearing

¹ The decision of the Department dated November 21, 1996, is set forth in the appendix.

through his counsel, Kulvinder Singh, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Murphy.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general license was issued on December 20, 1990.

Thereafter, on August 29, 1996, the Department instituted an accusation alleging that on July 19, 1996, appellant sold alcoholic beverages (malt liquor and wine) to Joann Porazzo, who at the time of the sale was only 18 years old.

An administrative hearing was held on October 30, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the circumstances of the transaction giving rise to the accusation.

The transaction was witnessed by an investigator for the Department of Alcoholic Beverage Control who was on assignment in the parking lot of the premises. Porazzo had presented false identification to appellant, consisting of a driver's license issued to a person eight years older and six inches taller. Appellant did not testify at the hearing, but argued he had reasonably relied on the driver's license presented to him by Porazzo.

The Administrative Law Judge (ALJ) concluded that, because of the significant differences between Porazzo's apparent age and height and that shown on the driver's license, appellant had failed to establish a defense under Business and Professions Code §25660.

Appellant thereafter filed a timely notice of appeal.

DISCUSSION

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

We have, nonetheless, reviewed the record and see no substance in the appeal. The ALJ, who saw the minor and heard her testify, concluded that Porazzo presented a youthful appearance such that a reasonable person would not only have requested identification, but would have questioned the identification which was produced.

Appellant's counsel argued to this Board that appellant was denied due process because the administrative hearing was conducted while appellant was without counsel. However, the record is clear that appellant was informed in the accusation itself of his right to retain counsel to represent him, and he admitted at the hearing that he had spoken to his attorney about the matter. Consequently, the Administrative Law Judge (ALJ) concluded, as we must, that appellant made a conscious decision to

proceed without counsel.

Counsel also alleges that appellant was misled by the apparent sophistication of the minor, and that she disguised her appearance by wearing shoes that made her appear taller. Neither of these contentions has any merit. The ALJ's finding, pursuant to Business and Professions Code §25660, that a reasonable person would have questioned the false identification presented by the minor, effectively refutes both of these arguments.

For these reasons, we are satisfied appellant was accorded due process at the administrative hearing, and that the evidence was sufficient to support the findings and determinations of the Department.

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.