

ISSUED JANUARY 13, 1998

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

LEONIDA BAZOTIS and YSABEL LLERENA	)	AB-6831
dba Santorini Greek Restaurant)	
2529 Pacific Coast Highway	)	File: 41-292753
Torrance, California 90505,	)	Reg: 96037134
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	November 5, 1997
	)	Los Angeles, CA
)	

Leonida Bazotis and Ysabel Llerena, doing business as Santorini Greek Restaurant (appellants), appeal¹ from a decision of the Department of Alcoholic Beverage Control² which ordered the on-sale general public eating place license in their names revoked because they were not the true owners thereof, being contrary to the universal and

¹ Although the caption denotes two appellants, Leonida Barzotis is a nominal party to the appeal only because his name appears on the license. The appeal is being pursued only by Ysabel Llerena, who contends she purchased Mr. Barzotis's interest in the restaurant and would be the sole licensee but for the Department's failure and refusal to acknowledge the change in ownership.

² The decision of the Department dated April 3, 1997, is set forth in the appendix.

generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§23300 and 23355.

Appearances on appeal include appellants Leonida Barzotis³ and Ysabel Llerena, appearing through their counsel, Martin H. Rub; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine eating place license was issued on April 11, 1994. Thereafter, the Department instituted an accusation alleging that appellants were not the true owners of the licensed business, but instead Thomas Collias was the owner or part owner thereof.

An administrative hearing was held on February 19, 1997, at which time oral and documentary evidence was received regarding the involvement of Collias in the operation of the restaurant and appellant Llerena's claim that she was the sole owner of the restaurant and, but for the Department's inaction, would be the only licensee.

Subsequent to the hearing, the Department issued its decision which determined that Collias was the hidden owner of the restaurant and the source of its funding, and that Barzotis and Llerena were held out as the licensees because Collias himself would have been unable to obtain a license. Appellant thereafter filed a timely notice of appeal.

³ See footnote 1, supra.

Written notice of the opportunity to file briefs in support of appellants' position was given on August 6, 1997. Although it was due on September 22, 1997, no brief was filed by appellants.⁴ 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].)

Nonetheless, we have reviewed the record and are satisfied the decision of the Department is correct and should be affirmed.

The evidence in support of the Department's case, simply stated, is that Collias, who had supplied all of the startup money (\$25,000), intended to operate the restaurant in partnership with Barzotis, but when he learned he could not obtain a license to sell alcoholic beverages because of legal problems in Canada, took steps to conceal the fact that he held an ownership interest by substituting Llerena, with whom he had a personal relationship [II RT 59]. Thereafter, he was present at the restaurant

⁴ The Appeals Board has been orally advised by Martin Rub, the attorney who filed the notice of appeal on behalf of appellant Llerena, that he no longer represents her. No formal withdrawal of counsel has been filed.

on a regular basis [II RT 53]; handled the restaurant's business affairs with its landlord [Exhibit 12]; dealt with the Board of Equalization and with vendors and suppliers, writing and signing checks to them on the restaurant's checking account [Exhibits 21, 22, 28]; acknowledged the receipt of merchandise and supplies by signing invoices accompanying or following shipments to the restaurant [Exhibits 8, 30]; handled correspondence with the accountant for the restaurant in connection with tax and payroll matters [Exhibit 4]; and made purchases on the credit card issued jointly in his name and the name of the restaurant [Exhibit 13]; all constituting conduct consistent with control and ownership of the business.

Collias was one of the original applicants for the license which is at the focal point of this dispute. (See Exhibit 5.) That application, dated August 24, 1992, was withdrawn on October 30, 1992. The notice of withdrawal (Exhibit 6) refers to a "legal problem in Canada" as the reason. The "legal problem" appears to be the existence of an arrest warrant issued by the Canadian government. Although Collias acknowledged the existence of an outstanding arrest warrant in Canada [II RT 24], the Department's offer into evidence of a copy of the arrest warrant and related documents (Exhibit 31) was rejected for lack of authentication [II RT 86].

After Collias withdrew his application, Barzotis and Llerena applied for the license, and it was issued in their names on April 11, 1994. A letter to Llerena (Exhibit 36) dated one day later, on the letterhead of an attorney, refers to the preparation of

documents for the transfer of Barzotis's interest in the restaurant to Llerena. A promissory note dated April 20, 1994, purports to describe the arrangements pursuant to which Llerena will pay Barzotis for his interest in the restaurant. Barzotis allegedly sold his interest to Llerena, making her the sole owner.

Collias and appellant Llerena, both of whom testified, claimed that the occasions on which Collias signed documents relating to the restaurant were when he was simply assisting while she was away from the business or preoccupied with other matters. Llerena claimed that she paid Barzotis for his ownership interest [II RT 67], and denied that Collias was an owner. Both claimed that Collias's name was left on utility accounts to relieve Llerena from having to make large cash deposits as a condition of obtaining utilities services [II RT 18, 76].

There is little question that, except with respect to his dealings with the Department, Collias held himself out as, and acted in the role of, owner of the restaurant. The Administrative Law Judge (ALJ) was justified in believing the scenario that the Department's exhibits depicted, and in rejecting the testimony of Collias and Llerena that she was the only owner and that Collias had no interest other than that of helping out from time to time. The documentary exhibits, viewed as a whole, strongly support the inference that Collias, and not Llerena, owned the business.

The ALJ's rejection of Llerena's claim that Collias never had a hidden ownership interest, and of Collias' denial of such an interest, is essentially a determination their

testimony was not credible.

CONCLUSION

The decision of the Department is affirmed.⁵

BEN DAVIDIAN, CHAIRMAN
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD⁶

⁵This final order 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 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.

⁶ Ray T. Blair, Jr., Member, did not participate in the oral argument or decision in this matter.