

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

FRANCISCO RAMOS and REFUGIO E.	)	AB-6865
RAMOS)	
dba Mi Tenampa	)	File: 42-280089
9765 Laurel Canyon Boulevard	)	Reg: 96037970
Pacoima, California 91331-4108,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Ronald M. Gruen
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	January 7, 1998
	)	Los Angeles, CA
)	

Francisco Ramos and Refugio E. Ramos, doing business as Mi Tenampa (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which ordered their on-sale beer and wine public premises license revoked, with revocation stayed for a probationary period of three years, and a 45-day suspension, for their having employed Jose Rojas on the premises for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, and permitting Maria Lopez and Marisol Salgado to loiter in the licensed premises for the

¹The decision of the Department, dated April 10, 1997, is set forth in the appendix.

purpose of soliciting customers to purchase alcoholic beverages for them, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §25657, subdivision (a), and Penal Code §303a.

Appearances on appeal include appellant Francisco Ramos and Refugio E. Ramos, appearing through their counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine public premises license was issued on February 4, 1993. Thereafter, the Department instituted an accusation against appellant charging that appellants employed Jose Rojas on the premises for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, and permitting Maria Lopez and Marisol Salgado to loiter in the licensed premises for the purpose of soliciting customers to purchase alcoholic beverages for them.

An administrative hearing was held on February 11, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the observations by Los Angeles police officer Alejandro Martinez of activities which transpired in Mi Tenampa involving appellants' bartender, Jose Rojas, and two female patrons, Maria Lopez and Marisol Salgado.

Subsequent to the hearing, the Department issued its decision which sustained the charges of the accusation, concluding that Rojas, Lopez, and Salgado were participants in an organized scheme involving the use of bar girls to solicit

drinks at prices which were substantially higher than prices charged to ordinary patrons.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants contend that decision and its findings are not supported by substantial evidence.

DISCUSSION

Appellants contend that the findings by the Administrative Law Judge were not supported by substantial evidence in light of the record as a whole.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].) Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of

the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Appellants contend that there is no evidence to prove that Rojas had any connection with either Lopez or Salgado; that there is no evidence either Lopez or Salgado was loitering within the meaning of Penal Code §303a; and that there is no evidence to show any purposeful conduct on the part of Lopez and Salgado to loiter or solicit drinks.

It is apparent from a review of the record that the Administrative Law Judge (ALJ) chose to believe the testimony of officer Martinez, and to accord little weight to the testimony of the witnesses presented by appellants, who denied the existence of any scheme involving solicitation of drinks. As the Department reminds us in its brief, the determination of the credibility of witnesses is for the trier of fact, who is in a position to see and hear the witness as he or she testifies, and assess the various criteria that are relevant to the process of determining the truthfulness of the witness's testimony, or the lack thereof.

Appellants attempt to explain away what occurred, by isolating each element

of the transaction and attempting to provide an innocent explanation for it. Officer Martinez's testimony, however, and the exhibits introduced by the Department, when viewed as a whole, clearly establish the scheme found by the ALJ. These elements include the presence of the women in the bar when the officers arrived (Lopez had been there a half hour, and had not had anything to drink); the immediate approach by Lopez; her solicitation of a drink from Martinez practically as an integral part of her introductory remarks; the record maintained by the bartender, even though, according to the testimony of Jose Rojas, it was his practice to make such notations only when a customer had not immediately paid for beers which had been purchased; the tabs accumulated by Salgado as the purchases continued; the premium price for the beers the women requested; and the fact that Salgado's given name was on the sheet containing the bartender's notations.

Appellants' brief contains an extended discussion of what supposedly constitutes loitering within the meaning of Penal Code §303a. They argue that mere loitering for the sake of loitering with no specific intent to commit a crime is not loitering within the meaning of §303a. Here, however, it is not unreasonable to infer Lopez's intent from her conduct, which was to approach a male customer almost immediately upon his entrance into a bar, where she had been for a half hour previously without drinking, and ask him to buy her a beer. To suggest that this is not the precise conduct at which the statute was aimed is to ignore reality.

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

²This 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.