

ISSUED SEPTEMBER 30, 1998

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

Jose Angel Rosales	)	AB-6950
dba El Seniorial #2)	
5761 Lankershim Boulevard	)	File: 40-103232
North Hollywood, CA 91601-1628,	)	Reg: 96037847
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 8, 1998
	)	Los Angeles, CA
)	

Jose Angel Rosales, doing business as El Seniorial #2 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ issued under Government Code § 11517, subdivision (c), which revoked his license for appellant's employee serving beer to two persons who were obviously intoxicated and allowing a patron to leave the premises with an open container of beer that he had purchased in the premises, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising

¹ The decision of the Department issued under Government Code § 11517, subdivision (c), dated October 1, 1997, and the Proposed Decision of the Administrative Law Judge, dated April 24, 1997, are set forth in the appendix.

from violations of Business and Professions Code §§ 25602, subdivision (a); 23300; and 23355.

Appearances on appeal include appellant Jose Angel Rosales, appearing through his counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on March 9, 1981. Thereafter, the Department instituted an accusation against appellant charging violations as noted above.

An administrative hearing was held on March 17, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Los Angeles police officer Lorenzo Barbosa concerning his observations at the premises on August 8, 1996, and by appellant, who was not present at the time of the incidents, concerning the usual operation of the premises.

Subsequent to the hearing, the Department issued its decision which determined that the allegations of the accusation had been proven.

Appellant thereafter filed a timely notice of appeal. Written notice of the opportunity to file briefs in support of appellant's position was given on April 16, 1998. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient information in that document to aid our 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 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].)

However, since the penalty of revocation is imposed, we have reviewed the record to ascertain whether basic due process requirements were met. Having reviewed the record, we cannot say that due process was denied.

CONCLUSION

The decision of the Department is affirmed.²

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

² This 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, before this final decision becomes effective, may 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.