

ISSUED APRIL 14, 1999

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

CHRIS GONZALES	)	AB-7104
dba Hills Curve	)	
1466 Riverside Road	)	File: 40-293589
Watsonville, California 95076,	)	Reg: 97041306
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Arnold Greenberg
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 4, 1999
	)	Sacramento, CA
	)	

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Chris Gonzales, doing business as Hills Curve (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which revoked his on-sale beer license for numerous incidents related to the solicitation of drinks, all found to be 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 §§24200.5 and 25657, subdivisions (a) and (b), and Rule 143.

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<sup>1</sup>The decision of the Department, dated April 16, 1998, is set forth in the appendix.

Appearances on appeal include appellant Chris Gonzales and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

#### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on March 22, 1994.<sup>2</sup> Thereafter, the Department instituted an accusation against appellant charging, in 23 counts, various incidents involving the solicitation of drinks. An administrative hearing was held on February 25, 1998, at which time oral and documentary evidence was received regarding the alleged incidents. The Department presented the testimony of three of its investigators who, in an undercover capacity, had visited the premises on three occasions in April 1997, and had at those times either been solicited for drinks by females identified as employees of the premises, or observed instances of solicitation by those females. The Department also presented various documents, photographs and payroll records in support of the charges. Appellant testified on his own behalf, and essentially denied any knowledge of the occurrences, or of having employed any of the females involved, stating that he had delegated the management and operation of the bar to his manager, Rigoberto Abarca.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established, and ordered appellant's license revoked.

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<sup>2</sup> Respondent and his wife were licensees of the premises between 1990 and 1994.

Appellant thereafter filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of the appellant's position was given on October 20, 1998. No brief has been filed by appellant. 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].)

However, in view of the fact that appellant's license was ordered revoked, we have reviewed the record to satisfy ourselves that such a drastic sanction was appropriate.

In his notice of appeal, appellant asserted his belief that the Department abused its authority by proceeding with the hearing despite its knowledge that he did not have legal counsel present. Next, he blamed his problems on the fact he was going through a personal crisis and encountering professional problems beyond his control. Finally, he questioned the severity of the penalty, stating that he had fired his manager upon learning of the citations which had been issued. He did not question the validity of the findings and determinations to the effect that the premises, and or its manager, had employed numerous females engaged in a commission or profit-sharing scheme involving the solicitation of alcoholic and non-alcoholic drinks.

The testimony of the Department's witnesses, although in part based upon hearsay, is clearly sufficient to support the findings and determinations. Their testimony, derived from three different undercover visits to the premises, demonstrated that there were as many as eight females employed by the premises as bartenders or waitresses, who, in addition to their regular duties, solicited the purchase of drinks, either alcoholic or non-alcoholic, and shared in the proceeds from those transactions.

The unlawful conduct included several violations of Business and Professions Code §24200.5, which mandates revocation in such circumstances. Therefore, appellant's suggestion that the penalty is excessive is unpersuasive.

Although appellant has suggested that he was prejudiced by the absence of legal counsel at the hearing, the record establishes that he was informed at the time the accusation was filed of his right to counsel. The record also indicates that appellant's decision not to be represented by counsel was based upon financial considerations. That he elected to represent himself is no basis for any relief.

Finally, the fact that, as appellant contends, the profit-sharing scheme was implemented by appellant's manager, and that appellant himself had no knowledge of the scheme, is no defense. The law is clear that an employer is responsible for the acts of his employees. This rule, referred to as the law of respondeat superior, is especially applicable here, where appellant, according to his own testimony, elected to be an absentee owner.

ORDER

The decision of the Department is affirmed.<sup>3</sup>

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

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<sup>3</sup> 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 order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.