

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

ASADA ENTERPRISES, INC.	)	AB-7231
dba Mega)	
3470-1 Wilshire Boulevard	)	File: 47-24571
Los Angeles, CA 90010,	)	Reg: 98042704
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Craig A. Bestwick
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 2, 2000
	)	Los Angeles, CA
)	

Asada Enterprises, Inc., doing business as Mega (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its on-sale general public premises license, but stayed revocation for a two-year probationary period, suspended said license for 20 days and indefinitely thereafter until specified requirements were met and subject to additional conditions, for appellant having sold distilled spirits by the bottle, provided an enclosed room to be used by patrons, and permitted quarterly gross sales of alcoholic beverages to

¹The decision of the Department, dated September 10, 1998, is set forth in the appendix.

exceed quarterly gross sales of food, all in violation of conditions on appellant's license,² and engaged in the sale of alcoholic beverages other than beer while failing to use and keep open the premises in a bona fide manner for the serving of meals to guests, 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 §§23804,³ 23038⁴ and 23396.⁵

² The conditions involved in this appeal provide as follows:

"6. The licensee shall not maintain or construct any type of enclosed room intended for use by patrons or customers for any purpose.

"7. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department upon demand.

"8. Sales of distilled spirits by the bottle are prohibited."

³ Business and Professions Code §23804 provides: "A violation of a condition placed on a license pursuant to this article shall constitute the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and shall be grounds for the revocation or suspension of such license."

⁴ Business and Professions Code §23038 sets forth the general requirements which must be met by the holder of a public eating place license. These general requirements are commonly supplemented, as in this case, by more specific conditions.

⁵ Business and Professions Code §23396 provides, in pertinent part: "No alcoholic beverages, other than beers, may be sold or served in any bona fide public eating place for which an on-sale license has been issued unless the premises comply with the requirements prescribed in Section 23038, 23038.4, or 24045.1."

Appearances on appeal include appellant Asada Enterprises, Inc., appearing through its counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on December 11, 1978. Thereafter, the Department instituted an accusation against appellant charging it with the violation of three conditions on its license, and for its failure to operate a public eating place in a bona fide manner.

An administrative hearing was held on July 1, 1998. At that hearing, Edward Yee testified that, when he and two other Department investigators, Hirata and Tsang, visited the licensed premises, they were greeted by a doorman who advised them that entrance was conditioned upon their acceptance of a \$200 drink minimum, for a bottle of Crown Royal. Accepting the drink minimum, the investigators were escorted to a table where they were greeted by a waiter who asked investigator Hirata if he would like a bottle of Crown Royal and a complimentary food dish. Hirata said he would, and the waiter returned with a bottle of Crown Royal, drinking glasses, and a plate of assorted fruit. The waiter opened the bottle, and left it on the table.

Yee said there appeared to be from 175 to 200 guests, and that the premises was operating as a night club, with dancing and recorded music. Bottles of Crown Royal were on nearly all the tables. Many of the tables also had fruit plates. Yee did not observe any food item other than fruit plates, and did not see

any knives, forks, or napkins.

Yee was charged \$150 for the Crown Royal and \$50 for the fruit plate. After paying, Yee notified the backup team, one of whom was Hilarie Vazquez, a supervising investigator for the Department.

Vazquez testified that she entered the premises approximately an hour or an hour and ten minutes after the first group of investigators, and recovered the bottle of Crown Royal which the investigators had purchased. Vazquez also testified about her discovery of an enclosed room in the rear half of the premises, with approximately 15 people seated on sofas around a large, round cocktail table, and bottles of Crown Royal and fruit plates throughout the room. Vazquez identified the room as the room marked "storage" on the diagram of the premises supplied to the Department when the license issued. (Exhibit 40.)

Vazquez further testified that she was attempting to verify information the Department had received to the effect that the premises was not operating as a type 47 license "which meant it did not have any food available" [RT 31]. Vazquez testified she saw no waiters or waitresses, or any food items other than the fruit plates, and, in her inspection of the kitchen, found the large wall refrigerator being used as dry storage for glasses and trays. The walk-in refrigerator held only alcoholic beverages, and another refrigerator contained frost-burned packages of some kind of fruit. She could find no cups, glasses, cutlery, or menus, nor did she see evidence of other food or cookware, other than a rice cooker which was not being used.

On cross-examination, Vazquez said she had made no effort to determine whether the people in the enclosed room were patrons, employees or part of a private function. A man who, she was told, was an employee, came into the room with her, identified himself as "Black Jack," and wanted to know what was going on. After she explained the purpose of the investigation to him, he assisted her in getting the people to leave the room.

Vazquez acknowledged that there was no requirement that a type 47 license operate as a bona fide eating place at midnight, which was about the time she entered the premises. She also confirmed that the Department policy indicated that type 47 licenses should operate between the hours of 6:00 and 10:00 p.m. for eating meals.

Johnny Tsang, another Department investigator testified about a follow-up investigation of the licensee's books and records, and his preparation of a report based upon that additional investigation. The report (Exhibit 6) contained his statistical analysis of food versus alcohol sales.

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

Appellant filed a timely notice of appeal, reciting the statutory grounds for appeal, but has not filed a brief.

Written notice of the opportunity to file briefs in support of the appellant's position was given on June 16, 1999. 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].)

Our review of the record has convinced us the charges of the accusation were supported by substantial evidence, and no error of any consequence was discovered.

ORDER

The decision of the Department is affirmed.⁶

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁶ 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 final 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.