

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

FEDERICO and MARIA ISABEL	)	AB-7349
ALVAREZ)	
dba El Casino Club	)	File: 40-324665
4512-14 E. Whittier Blvd.	)	Reg: 98044395
Los Angeles, CA 90022,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	John P. McCarthy
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	February 3, 2000
Respondent.	)	Los Angeles, CA
)	

Federico and Maria Isabel Alvarez, doing business as El Casino Club (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their on-sale beer license for 25 days, with 10 days thereof stayed, the stay conditioned upon a one-year period of discipline-free operation, for having violated conditions on their license, contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §23804.

¹The decision of the Department, dated January 21, 1999, is set forth in the appendix.

Appearances on appeal include appellants Federico and Maria Isabel Alvarez, appearing through their counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer license was issued on February 4, 1997.

Thereafter, the Department instituted an accusation against appellants charging that appellants violated conditions on their license on July 10, 1998, by providing music which was audible beyond the area under the control of the licensees, by allowing the front and rear doors to remain open, and by providing live entertainment, consisting of a disk jockey playing amplified music and patron dancing.²

An administrative hearing was held on December 21, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Department investigator Anthony Pacheco concerning his

² Appellants' license was subject to the following conditions:

"3. The front and rear door(s) shall be kept closed at all times during the operation of the premises except in cases of emergency and to permit deliveries.

4. There shall be no live entertainment, music or dancing permitted on the premises at any time.

5. Music provided shall not be audible beyond the area under control of the licensee."

The record indicates that the accusation was amended to remove the charge relating to live entertainment. The evidence established that the source of the music in question was a juke box.

observations made in the course of a visit to the premises on the night in question.

Subsequent to the hearing, the Department issued its decision which determined that the license conditions had been violated, and issued its order suspending appellants' license.

Appellant has filed a timely notice of appeal. However, the Board has been advised by appellants' counsel that he does not intend to file a brief, and has requested that the matter be submitted on the record.

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 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].)

This is one of two appeals involving these licensees scheduled to be heard at the February 3, 2000, hearing. The other, AB-7288, is an appeal from an order of revocation.

The facts in this case are fairly straightforward. Department investigator Anthony Pacheco testified that, in the course of a visit to the premises, he observed the rear door of the premises open, heard music which was coming from the doorway while he was well beyond the area under the control of the licensees, and upon further inspection found the front door propped open as well. Conditions on appellants' license required the doors to remain shut except for emergencies or to receive deliveries,

neither of which was occurring. Then, upon entering the premises, Pacheco observed patrons dancing, also contrary to a license condition.

Appellants presented no witnesses.

Our review of the record satisfies us that there is substantial evidence to sustain the charge of the accusation, and that there was no procedural error which might have prejudiced appellants.

ORDER

The decision of the Department is affirmed.³

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

³ 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.