

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

JESUS RENTERIA PEREZ	)	AB-7402
dba La Ronda)	
10215 South Atlantic Boulevard	)	File: 42-269945
South Gate, CA 90280,	)	Reg: 98044974
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	May 4, 2000
	)	Los Angeles, CA

Jesus Renteria Perez, doing business as La Ronda (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his on-sale beer and wine public premises license, but stayed revocation conditioned upon a three-year period of discipline-free operation and an actual suspension of 60 days, for, through an employee, having possessed a controlled substance for sale, and having employed a minor in a portion of the premises designed and used for the

¹ The decision of the Department, dated April 29, 1999, is set forth in the appendix.

sale and service of alcoholic beverages, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Health and Safety Code §11351, and Business and Professions Code §§23402 and 25663, subdivision (a).

Appearances on appeal include appellant Jesus Renteria Perez, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on April 10, 1992. On November 2, 1998, the Department instituted an accusation against appellant which contained two counts charging appellant with purchasing beer from sellers lacking the proper wholesale license, three counts alleging that minors were permitted to enter and remain in the premises without lawful business, and one count charging that a minor was employed in the portion of the premises primarily designed and used for the sale of alcoholic beverages.

An amended accusation was filed which added two counts, one charging that appellant, through an employee, possessed a controlled substance (cocaine) for sale, and the other charging that appellant, through an employee, possessed a controlled substance (methamphetamine).²

² The amended accusation renumbered the counts. The counts involving controlled substances became counts 1 and 2; the unlawful purchases became counts 3 and 4; the counts charging the presence of minors in the premises

An administrative hearing was held on February 1, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Jose Luis Castro, Jose Humberto Castro, and Hugo Martinez, the minors charged with being in or employed in the premises; by Kenneth Sprowls and Darren Arakawa, two of the police officers who took part in the raid on appellant's premises which led to the charges of the accusation; by Michael Vanesia, a narcotics expert employed in the Los Angeles County Sheriff's crime laboratory; and by Hillary Vasquez, a Department investigator. Appellant presented no witnesses.

Subsequent to the hearing, the Department issued its decision which found that counts 1 (cocaine possession) and 8 (employment of a minor) were established by the evidence, and counts 3 and 4 established by virtue of a stipulation. Counts 2, 5, 6, and 7 were dismissed. Suspensions, to run concurrently, were imposed on each of the four counts, and the stayed revocation was ordered with respect to count 1.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contests the decision only as to count 1, contending that there was no substantial evidence that the illegal act of the employee in possessing cocaine was related to the sale of alcohol. Appellant also challenges the penalty to the extent based upon

became counts 5, 6, and 7; and the charge of employment of a minor in the portion of the premises where alcohol is sold and served became count 8.

the violation involving the cocaine.

DISCUSSION

Appellant contends that, under the rule established in Santa Ana Food Market, Inc. v. Alcoholic Beverage Control Appeals Board (1999) 76 Cal.App.4th 570 [90 Cal.Rptr.2d 523]³, it was improper to impute to her employer the crime committed by the waitress by possessing cocaine for sale.

The evidence shows that the cocaine was discovered in the purse of a waitress after a bindle of cocaine fell from the purse while she was searching for her identification. A further search uncovered an additional seven bindles, in total an amount giving rise to a presumption it was held for sale.

There was no evidence of any transaction having taken place on the premises, nor any negotiation for a sale. Nor was there any evidence introduced showing knowledge on the part of the licensee or any other employee that the waitress was in possession of cocaine.

The Department argues that there need be only a minimal nexus between the illegal act and the sale of alcohol.

While we do not agree with the Department that the nexus need only be "minimal," we think that, in this case, there was a nexus sufficient to impute the illegal conduct of the employee to appellant.

³ The California Supreme Court, on March 29, 2000, denied a request for the depublishation of the reported decision.

The employee, a waitress, kept the purse which contained the cocaine behind the bar. The quantity discovered indicated she possessed it for sale. Her employment duties required that she circulate among the patrons of the premises, affording her ample opportunity to solicit buyers.

The decision in Santa Ana Food Market, supra, does not lend itself to the broad application appellant asks of it. This is apparent not only from the court's heavy emphasis on the steps taken by the market to prevent the illegal trade in food stamps, but also from the court's own warning against attributing too much to its decision:

"By concluding the ABC's action in this case was an abuse of discretion, we do not intend to change the basic rules for suspension of licenses or unduly restrict the ABC from exercising its discretion. But where, as here, a licensee's employee commits a single criminal act unrelated to the sale of alcohol, the licensee has taken strong steps to prevent and deter such crime and is unaware of it before the fact, suspension of the license simply has no rational effect on public welfare and morals."

(Santa Ana Food Market, supra, 76 Cal.App.3d at 576.)

In contrast, there is no evidence in the record of any steps taken by appellant or its managers to warn employees against the use, possession, or sale of controlled substances on the licensed premises. Appellant presented no witnesses at the hearing.

Further, there is a definite risk to the public welfare and morals if sellers of illegal narcotics use their place of employment as a place to store narcotics in saleable quantities while they are on duty.

Finally, although the penalty may appear harsh, we cannot say that it

exceeds the broad discretion accorded the Department in arriving at a penalty it deems appropriate for the protection of the public welfare and morals.

ORDER

The decision of the Department is affirmed.⁴

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

⁴ 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.