

ISSUED OCTOBER 31, 2000

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

OPERA NIGHT, INC.	)	AB-7511
dba Louis XIV)	
606 North La Brea Avenue	)	File: 47/58-223041
Los Angeles, CA 90036,	)	Reg: 99046279
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.	)	September 7, 2000
	)	Los Angeles, CA

Opera Night, Inc., doing business as Louis XIV (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for violating a condition on its license, being 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.

Appearances on appeal include appellant Opera Night, Inc., and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

¹The decision of the Department, dated September 23, 1999, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on October 25, 1993. Thereafter, the Department instituted an accusation against appellant charging that, on March 5, 1999, appellant permitted the sale, service and consumption of alcoholic beverages after 12 o'clock midnight, in violation of a condition on its license.

An administrative hearing was held on August 5, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by three Department investigators and appellant's president, Jan Louis Bartole.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as charged in the accusation.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant argues that the condition is ambiguous and, therefore, unenforceable.

DISCUSSION

Appellant contends the condition is ambiguous and subject to several interpretations, making it unenforceable. The condition states: "Sales, service and consumption of alcoholic beverages shall be permitted only between 10:30 a.m. to 12:00 midnight Sunday through Thursday and 10:30 a.m. to 1:00 a.m. Friday and Saturday." The violation occurred at about 12:50 a.m. on March 5, 1999, a Friday morning.

Appellant contends the condition could be interpreted to mean that alcoholic beverages could be served until 1:00 a.m. on a Friday morning, which is what occurred here. Appellant made this argument at the hearing and the ALJ rejected it. (Findings 7 and 8.)

Appellant's counsel withdrew from the appeal in May, and appellant has not filed a brief on its own behalf, although written notice of the opportunity to file briefs in support of the appellant's position was sent to appellant on May 23, 2000. We have reviewed the notice of appeal and have found information in that document insufficient 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 appellant's duty to show this Board that the claimed error existed. Without such assistance by appellant, we 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].)

We have, however, reviewed the record in this appeal, and find nothing there that leads us to doubt the propriety of the Department's decision. The condition at issue, while hardly a model of clarity, can only reasonably be interpreted to mean that the hours for Thursday end at midnight Thursday, the hours for Friday begin at 10:30 a.m. Friday and end at 1:00 a.m. Saturday morning, and the Saturday hours begin at 10:30 a.m. Saturday and end at 1:00 a.m. Sunday morning. There is no other logical way for the closing at midnight on Thursday to be reconciled with the closing designated in the condition as 1:00 a.m. Friday. Appellant's reading of the condition would mean that the premises would open twice on Friday, one opening at 12:01 a.m., with closing 59 minutes later, at 1:00 a.m., and the second opening at 10:30 a.m. The condition does not provide for the premises to open at 12:01 a.m. Friday and to read this into the condition would be absurd.

ORDER

The decision of the Department is affirmed.²

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

²This 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.