

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

AB-7532a

MARIA E. and VICTOR ROSAS dba The Nugget
15448 Amar Road, La Puente, CA 91744,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 40-304050 Reg: 99046826

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: April 5, 2001
Los Angeles, CA

ISSUED MAY 30, 2001

Maria E. and Victor Rosas, doing business as The Nugget (appellants), appeal from a Decision Following Appeals Board Decision of the Department of Alcoholic Beverage Control¹ which revoked their license (Rosas (Nov. 20, 2000) AB-7532). The Appeals Board decision affirmed the Department's prior decision, which also revoked appellant's license, as to four counts of drink solicitation violations and reversed as to two others.

Appearances on appeal include appellants Maria E. and Victor Rosas, appearing through their counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David Sakamoto.

¹The Decision Following Appeals Board Decision of the Department, dated December 11, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer license was issued on April 28, 1995. Thereafter, the Department instituted a six-count accusation against appellants charging that on April 30, 1999, they permitted various bar-girl (drink solicitation) violations. After a hearing, the Department issued its decision which determined that all six counts of the accusation had been proven.

Appellants appealed that decision to the Appeals Board, contending that the Administrative Law Judge (ALJ) abused his discretion by relying on the testimony of an officer who was admittedly under the influence of alcohol during the investigation, and by denying appellants' motion for continuance. The Appeals Board subsequently issued its decision which determined that the ALJ had not abused his discretion, but finding that two of the counts should be dismissed because there was not substantial evidence to support a finding that the woman soliciting drinks was appellants' employee.

DISCUSSION

The Appeals Board determined that Martinez (the woman soliciting) was not an employee and appellants contend all the counts should have been dismissed, instead of just two, because the ALJ relied exclusively on employment as a basis for sustaining all counts of the Accusation. Appellants argue that the ALJ made no finding that appellants "permitted" Martinez to solicit or paid her a commission, and that such findings are necessary to sustain the four remaining counts. They contend the Appeals Board improperly substituted its own findings for those of the ALJ.

The Department's decision sets out factual findings that detail the events of the violation, finding that appellants' bartender took payment for the beers from the investigators, made change, and, in plain view, handed a \$5 bill to the solicitor for each beer the investigators bought for her. In Finding 15, the decision states:

"It is found that co-respondent Victor Rosas, knew or should have known of the bar girl activity that was taking place at the premises, and not only did not take steps to discourage it, but employed Wendy Martinez for the purpose of promoting such activity at the premises."

Appellants are wrong in asserting that specific findings of permitting and payment of commission are required. A reviewing court, or this Board, is not precluded from examining the record to determine the findings upon which the agency's determination was made. (City of Carmel-by-the Sea v. Board of Supervisors (1977) 71 Cal.App.3d 84, 91 [139 Cal.Rptr. 214].)

Appellants are also wrong when they say that the Department's decision was silent on these issues. The findings clearly show that the bartender knew of and permitted the solicitation. They also show that she paid the solicitor a specific amount for each beer she solicited, establishing that the bartender paid the solicitor a commission. The bartender's actions and knowledge are imputed to the licensees.

In addition, Finding 15 specifically finds that co-appellant Victor Rosas knew or should have known of the solicitation activity and did nothing to stop it. At the time of the violations at issue here, the license was under a stayed revocation from earlier B-girl violations. "Failure to prevent the problem from recurring, once the licensee knows of it, is to 'permit' by a failure to take preventive action." (Laube v. Stroh (1992) 2 Cal.App. 4th 364, 379 [2 Cal.Rptr. 2d 779].)

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
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.