

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

AB-7642

OSCAR F. CASILLAS and PAULA C. CASILLAS
dba 6711 Club
6711 North Figueroa Street, Los Angeles, CA 90042,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 42-250097 Reg: 00048321

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

Appeals Board Hearing: May 3, 2001
Los Angeles, CA

ISSUED JUNE 21, 2001

Oscar F. Casillas and Paula C. Casillas, doing business as 6711 Club (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 20 days for their employee, Virginia Salinas Camarillo ("Camarillo"), in violation of Business and Professions Code §25602, subdivision (a), having sold and/or furnished an alcoholic beverage (beer) to Federico Suarez ("Suarez"), who at the time of such sale and/or furnishing was an obviously intoxicated person.

Appearances on appeal include appellants Oscar F. Casillas and Paula C. Casillas, appearing through their counsel, J. Patrick Maginnis, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated May 18, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine public premises license was issued on November 2, 1990. An accusation charging a violation of Business and Professions Code §25602, subdivision (a), was filed February 17, 2000, and an administrative hearing was held on April 13, 2000. A decision of the Department sustaining the charge of the accusation was filed May 18, 2000, and this timely appeal followed.

Appellants, through their counsel, contend that there is no substantial evidence to support the decision.

DISCUSSION

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without

jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.² It is not the function of the Appeals Board to try the case anew.

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

We have carefully reviewed the record evidence, and are satisfied that the proposed decision of the Administrative Law Judge fairly and accurately summarizes the evidence of record and reaches a result entirely consonant with settled law. The attacks, express and implicit, in appellants' brief on the competence and integrity of the ALJ are totally unwarranted.

² California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Appellants do not deny that Camarillo sold or furnished the beer to Suarez, or that Suarez was obviously intoxicated.³ Instead, they argue that, without documentary proof of employment, such as an employment contract or a W-2 form, there is no evidence to support the finding that Camarillo was an employee. Although they deny that appellant Oscar Casillas admitted to Los Angeles police officer Steven Ruiz that Camarillo was an employee, and had been an employee for five years, the ALJ chose to believe the testimony of the officer instead of Oscar Casillas's denial that he had made such an admission.

Civil Code §2298 states: "An agency is either actual or ostensible." Civil Code §2300 defines "ostensible agency" as: "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (See also 2 Summary of California Law, Witkin, pages 52-53 for a full discussion of ostensible agency).

The doctrine of ostensible agency has frequently been applied to sustain a finding that a person who acted in the capacity of a waitress by taking drink orders, serving drinks, clearing tables, or performing the acts ordinarily performed by an employee working in that capacity, may be deemed an agent for the purpose of

³ Appellants assert there was no evidence that Camarillo cleared tables or took orders from patrons. Appellants are mistaken. Los Angeles police officer Enrique Conrado testified that he observed Camarillo clearing tables, taking orders, delivering beer to patrons, collecting money, and turning it over to the bartender. That appellants' witnesses may have disputed this testimony in the course of their own testimony does not cause it to vanish as evidence. As we have noted, it is the ALJ's responsibility to resolve the conflicts in the evidence, and this he did. It is not this Board's prerogative simply to disregard his assessment of the facts, so long as his findings are supported by substantial evidence, as they are here.

imputing liability under the Alcoholic Beverage Control Act. The testimony of the police officers, if believed, is sufficient to support a determination that Camarillo was an ostensible agent whose conduct is imputable to appellants.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
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.