

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

AB-7655

JUAN MANUEL Mercado and MARIA DE JESUS Mercado dba Mazatlan Bar
3800 Hammel Street, Los Angeles, CA 90063,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 61-351199 Reg: 00048209

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

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

ISSUED JUNE 21, 2001

Juan Manuel Mercado and Maria De Jesus Mercado, doing business as Mazatlan Bar (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license, stayed the order of revocation, conditioned upon a two-year period of discipline-free operation, and imposed a 45- day suspension for having violated a condition on their license which prohibited live entertainment and dancing, 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 appellants Juan Manuel Mercado and Maria De Jesus Mercado, appearing through their counsel, Edward A. Esqueda, and the

¹The decision of the Department, dated June 8, 2000, is set forth in the appendix.

Department of Alcoholic Beverage Control, appearing through its counsel, Michele Wong.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer public premises license was issued on July 13, 1999. On February 4, 2000, the Department instituted an accusation against appellants charging that, on December 9, 1999, appellants permitted a mariachi band to play for patrons in return for gratuities, in violation of a condition on their license which prohibited live entertainment and dancing.

An administrative hearing was held on April 18, 2000. At that hearing, Department investigator Juan Torres testified that he and two other investigators visited the premises on December 9, 1999, and while there observed the mariachi band while it performed for a period of 30 to 35 minutes.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and entered the order from which this timely appeal has been taken.

Appellants contend that the decision of the Department is not supported by substantial evidence.

DISCUSSION

Appellants make the same argument in this appeal as they do in the companion appeal (AB-7643) - that the Department's decision is not supported by substantial evidence. Appellants once again ignore the findings of the Administrative Law Judge (ALJ) and assume instead that their version of the facts is controlling, despite the fact that the ALJ chose to believe the testimony of

investigators Pacheco and Torres.

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].)

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) It is obvious that the ALJ chose not to accept appellants' description of the incident. It is not the Board's function to substitute its judgment of credibility for that of the ALJ.

Appellants' contention that there was no evidence of any contractual arrangement between them and the mariachi band misses the mark. The band was

allowed to play for an extended period of time without any attempt by appellants' bartender to cause their removal. Her inaction was the equivalent of granting them permission to entertain, contrary to the license condition.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² 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.