

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

AB-7660

DONNA MROTEK, Protestant

v.

EFREN H. BERNAL, GERARDO RODRIQUEZ, and JOSE S. ZERMENO
dba Su Casa Fresh Mexican Grill
1417 San Andres Street, Santa Barbara, CA 93101,
Respondents/Applicants

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 41-354400 Reg: 00048394

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

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

ISSUED JUNE 21, 2001

Donna Mrotek (appellant/protestant) appeals from the decision of the Department of Alcoholic Beverage Control¹ which denied her protest against the application of Efren H. Bernal, Gerardo Rodriguez, and Jose S. Zermeno, doing business as Su Casa Fresh Mexican Grill (respondents/applicants), for an on-sale beer and wine public eating place license.

Appearances on appeal include appellant/protestant Donna Mrotek, appearing through lay advocate Jerry Morales; respondents/applicants Efren H. Bernal, Gerardo Rodriguez, and Jose S. Zermeno; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

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

FACTS AND PROCEDURAL HISTORY

Applicants applied for an on-sale beer and wine public eating place license and Donna Mrotek filed a protest against issuance of the license. An administrative hearing was held on April 21, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the basis of the protest, the operation of the proposed premises, and the Department's investigation of the application.

Subsequent to the hearing, the Department issued its decision which determined that the protestant had not established grounds for denial of the issuance of the conditional license.

Protestant thereafter filed a timely appeal in which she enumerated safety, environmental, and moral issues as reasons that the license should not be issued.

DISCUSSION

Written notice of the opportunity to file briefs in support of protestant's position was given on January 25, 2001. No brief has been filed by protestant. We have reviewed the notice of appeal and have found the listing of issues in that document, without argument or discussion, insufficient for our review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by protestant. It was protestant's duty to show the Appeals Board that the claimed error existed. Without such assistance by protestant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; Sutter v. Game! (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Protestant appears to be reiterating the issues she raised at the administrative hearing. These issues were discussed at some length in the Department's decision and were found there either to be not established or not grounds for denying issuance of the license.

The ALJ found that the imposition of conditions on the license as shown in Appendix A to the Department decision, with the addition of two more conditions agreed to by the applicants at the hearing, would ensure that the operation of the proposed premises would not be disruptive to the neighborhood or to protestant's child care facility located next to the proposed premises.

Our review of the record shows that the ALJ carefully examined all the issues raised by protestant, and we believe that his conclusion in favor of issuing the license with conditions is not unreasonable or contrary to the weight of the evidence.

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.