

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

AB-7675

IRMA NAVARRETTE and ISIDRO NAVARRETTE dba La Terraza, Inc.
3472 Mission Street, San Francisco, CA 94110,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 47-311001 Reg: 00048203

Administrative Law Judge at the Dept. Hearing: Stewart A. Judson

Appeals Board Hearing: August 3, 2001
San Francisco, CA

ISSUED SEPTEMBER 27, 2001

Irma and Isidro Navarrette, doing business as La Terraza, Inc. (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 20 days for appellants' employee selling an alcoholic beverage to an obviously intoxicated person, 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 §25602, subdivision (a).

Appearances on appeal include appellants Irma and Isidro Navarrette, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

¹The decision of the Department, dated July 20, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general public eating place license was issued on October 20, 1995. Thereafter, the Department instituted an accusation against appellants charging that, on November 20, 1999, appellants' bartender, Margarita Rivera, sold beer to Jorge Martinez, who was then obviously intoxicated.

An administrative hearing was held on June 8, 2000, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been sustained.

Appellants thereafter filed a timely appeal. Written notice of the opportunity to file briefs in support of appellants' position was given on June 13, 2000. No brief has been filed by appellants. We have reviewed the notice of appeal and have found it lacks sufficient information for this Board to review appellant's contentions.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellants. It was the duty of appellants to show the Appeals Board that the claimed error existed. Without such assistance by appellants, 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] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Our review of the record reveals no obvious reason for overturning the decision of the Department. Appellants were represented by counsel at the administrative hearing and presented testimony from the obviously intoxicated patron, Jorge Martinez;

other patrons of the premises present during the events at issue; and the bartender who served Martinez.

The two Department investigators who testified, Justin Gebb and Dean Rewerts, testified that Martinez was unsteady on his feet, having trouble maintaining his balance, his eyes were bloodshot, and he was talking in a loud, boisterous voice, with slurred speech. They also testified that, although the premises was busy at the time, the bartender was in a position to observe Martinez's behavior before serving him a beer. The ALJ, whose responsibility it is to determine the credibility of the witnesses, obviously found the testimony of the investigators more credible than the denials and explanations of appellants' witnesses. This Board is in no position to second guess the ALJ's determination.

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.