

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

AB-7868

File: 42-345547 Reg: 00050148

MARIA TERESA OLIVERA PEREZ dba Half Crown
1238 East Edinger Avenue, Santa Ana, CA 92707,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 9, 2002
Los Angeles, CA

ISSUED JULY 26, 2002

Maria Teresa Olivera Perez, doing business as Half Crown (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license for having permitted employees and patrons to possess, and possess for sale, a controlled substance, i.e., cocaine, on the licensed premises, and because she was not the true owner of the business, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§24200, subdivisions (a) and (b), in conjunction with Health & Safety Code §§11350 and 11351, and Business and Professions Code §§23300 and 23355.

Appearances on appeal include appellant Maria Teresa Olivera Perez, representing herself, and the Department of Alcoholic Beverage Control, appearing

¹The decision of the Department, dated July 19, 2001, is set forth in the appendix.

through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on August 17, 1998. Thereafter, the Department instituted an accusation against appellant charging, in five counts, that an employee possessed cocaine for sale in the premises (counts 1 and 3); that an employee permitted a patron to possess cocaine for sale in the premises (counts 2 and 4); and that she was not the true owner of the business, in violation of various sections of the Business and Professions and Health and Safety Codes.

An administrative hearing was held on June 12, 2001, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Santa Ana police officers Juan Hernandez, Art Carranza, and Edward Hernandez, and Department investigator Richard Ryan in support of the charges of the accusation, and William Pierce, Jesus Medina, and Rumalda Ortiz on behalf of appellant, who also testified. Subsequent to the hearing, the Department issued its decision which determined that the charges in all of the counts of the accusation had been established, and which ordered the license revoked.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant raises the following issues: (1) there was no finding that employee Moreno (the subject of count 1) possessed drugs; the evidence was only circumstantial; (2) Villegas (the patron who was the subject of count 2) was behind the bar only to help move an inoperative freezer; (3) appellant had no reason to suspect that Dominguez (the subject of count 3) possessed drugs; and (4) the evidence does not support the finding of false ownership.

DISCUSSION

A brief summary of the evidence relating to the cocaine possession charges will facilitate our examination of the issues raised by appellant, all of which appear to be questioning the sufficiency of the evidence.

Officer Juan Hernandez was one of several officers executing a search warrant on August 18, 2000. He testified that he arrested Maria Dominguez after finding two bindles of cocaine in her purse. The purse was behind the bar when Dominguez retrieved it for the officer. Dominguez told Hernandez she was a waitress. Perez testified that Dominguez was an employee. Dominguez said she obtained the cocaine from a patron who sells cocaine inside the bar.

Officer Carranza was also part of the search warrant team. He testified that he found a Marlboro box containing several bindles of what he recognized as cocaine while conducting a consensual search of Raul Ruiz, a bar patron. The box was in Ruiz's shirt pocket, closed and not visible. Ruiz was identified by Dominguez as the person who supplied her the cocaine. Carranza said he found 23 bindles in the box. In his opinion, the cocaine was packaged for sale. Ruiz told Carranza he had sold a couple of bindles to a person at the bar, and sold only to people he knew at that location. Ruiz was arrested.

Officer Edward Hernandez conducted a bar check of the premises on July 20, 2000. He testified that, as he entered the bar, he observed Omar Villegas looking at him from behind the bar counter, and then throwing a black object into a trash can. At about the same time he observed Rosenda Morena behind the bar, removing white objects from her waistband and throwing them on the floor. Hernandez retrieved the black object from the trash and picked up the white objects from the floor. The black

object was found to be approximately 44 grams of cocaine, wrapped in black plastic. The white objects were five bindles of a powdery substance, approximately nine and one-half grams, which presumptively tested for cocaine. Hernandez arrested both Villegas and Moreno. Villegas denied throwing the cocaine in the trash. Moreno indicated to Hernandez that she worked in the bar, but Villegas did not.

Investigator Ryan testified that he accompanied the police officers who were executing the search warrant on August 18, 2000, to assist in their investigation and to investigate a complaint of false ownership. He conducted a records search and discovered telephone, gas, and electric utility bills showing, in his opinion, who actually owned the premises. The bills were in the name of Rumalda Ortiz. He discussed the bills with appellant, who was present. She told him, through an interpreter, that the bills were in Ortiz's name because she, Perez, did not speak English.

I

Appellant contends that there was no finding that Moreno possessed drugs; the evidence was circumstantial. We interpret this as a challenge to the sufficiency of the evidence, since there clearly was a finding (Finding of Fact II) that Moreno possessed cocaine for purposes of sale.

"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].)

When 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].)

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 testimony of Officer Edward Hernandez that he saw Moreno removing from her clothing and throwing on the floor what turned out to be five bindles of cocaine is clearly sufficient to support a finding that she possessed cocaine. Since Moreno did not testify, Hernandez's testimony was unrefuted. Coupled with the controlled substance report (Exhibit 2) and the stipulation from appellant's counsel establishing that the white powder was, in fact cocaine, the officer's testimony was substantial evidence sufficient to support the finding.

II

Villegas was behind the bar and in possession of cocaine. Both Perez and Ortiz testified they were unaware anyone possessed or sold drugs in the bar.

Appellant's brief asserts that Villegas was behind the bar for the purpose of moving an inoperative freezer-refrigerator. Villegas did not testify, and our search of the record finds nothing to support the brief's assertion. Jesus Medina, who essentially characterized himself as appellant's uncompensated manager and trouble shooter, and who supposedly knew what Villegas was doing behind the bar, testified, but said nothing about Villegas. There was no evidence Villegas was an employee, nor was there any evidence to explain why he was behind the bar. The explanation tendered to the Appeals Board for his presence behind the bar is without record support.

The Administrative Law Judge (ALJ) found it not established that appellant had

personal knowledge of the events on either July 20 or August 18. However, the fact that two employees, on separate dates, possessed cocaine, together with evidence that one of those employees purchased cocaine from a patron, demonstrates an atmosphere of narcotic trafficking in the bar that is ultimately appellant's responsibility. One of the employees admitted she purchased drugs from a patron while on the premises. That patron was arrested with a substantial quantity of cocaine in his possession. Another person was in possession of a substantial quantity of cocaine while in an area of the premises generally restricted to employees. Appellant's disclaimer of knowledge, in the face of widespread narcotics activity, is hardly persuasive. Even if true, appellant is still responsible. A licensee is vicariously responsible for the unlawful on-premises acts of his or her employees. Such vicarious responsibility is well settled by case law. (Morell v. Department of Alcoholic Beverage Control (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405, 411]; Harris v. Alcoholic Beverage Control Appeals Board (1962) 197 Cal.App.2d 172 [17 Cal.Rptr. 315, 320]; and Mack v. Department of Alcoholic Beverage Control (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633].)

III

Appellant claims she had no knowledge Dominguez possessed cocaine. However, as stated above, a licensee is vicariously responsible for the unlawful on-premises acts of her employees. That she lacked personal knowledge is irrelevant. (See cases cited, supra.)

IV

The ALJ found inescapable the conclusion that appellant was not the true owner. There is substantial evidence to support that conclusion.

Exhibit 6 is a sworn statement signed by Ortiz following questioning by investigator Ryan, in which she admitted being a 50-percent owner, sharing equally in the profits and losses. In the statement, Ortiz states that she did not disclose her ownership interest to the “ABC” because of a B-girl problem she had with a bar she had owned in 1988. The ALJ found not credible her explanation that she did not know what she was signing, and that the investigator had put words in her mouth.

Appellant, contending that she is the sole owner of the premises, explains that Ortiz’s name is on the utility bills simply because Ortiz speaks English and she does not. Appellant claims to have purchased the premises with \$35,000 borrowed from Ortiz in an undocumented loan, but since fully repaid.

The ALJ, as the trier of fact, chose to rely on the admissions by Ortiz, written and oral, of an ownership interest, and to reject her attempt to disavow it. We cannot fault him for doing so. Viewed in the aggregate, Ortiz’s admission of an ownership interest, her name on the utility accounts, and her receipt of a “salary” equal to that received by Perez for what in her case amounted to part-time hours while Perez worked a full 40 hours a week or more, all support the ownership finding.

ORDER

The decision of the Department is affirmed.²

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.

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

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.