

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

AB-7929

File: 47-086542 Reg: 01051068

KATSUMI NAKAWATASE and STEVE K. NAKAWATASE dba Naka Restaurant
11354 Beach Blvd., Stanton, CA 90680
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: December 3, 2002
Los Angeles, CA

ISSUED FEBRUARY 6, 2003

Katsumi Nakawatase and Steve K. Nakawatase, doing business as Naka Restaurant (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their on-sale general eating place license, for permitting women employees and other women to solicit patrons for drinks within the premises, in violation of Business and Professions Code section 24200.5, subdivision (b).

Appearances on appeal include appellants Katsumi Nakawatase and Steve K. Nakawatase, appearing through their counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated December 27, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on June 19, 1980. Thereafter, the Department instituted an accusation against appellants charging that, on October 27, November 7, December 1, December 7, and December 15, 2000, certain named women within the premises, employees and others, were permitted to solicit drinks under a commission, percentage, salary, or other profit-sharing plan or scheme.

An administrative hearing was held on November 14, 2001, at which time documentary evidence was received and testimony concerning the transaction was presented.

Over the period of the five days, numerous solicitations were made to undercover investigators by various women to buy them drinks at inflated prices, some of the proceeds from the solicited drinks' payments, going to the women [RT 15-19, 22, 24-27, 29-31, 34, 36-40, 46-47].

Co-appellant Steve Nakawatase advised the peace officers that he knew payment of commissions for the solicitations was unlawful and was an on-going process for a period of two years. He claimed it was a Spanish custom [Finding X].

Subsequent to the hearing, the Department issued its decision which determined that the violations had occurred as alleged and no defense had been established.

Appellants thereafter filed a timely appeal in which they contend that the penalty is excessive.

DISCUSSION

In addition to claiming the penalty is excessive as the violations were essentially a first time offense, appellants argue that the honesty of co-appellant Steve Nakawatase in admitting the continuous illegal activity, should be another mitigating

factor.

It is the ever present fact that the Department has wide discretion in assessing a penalty.

The fact that this is a first time offense has, at first blush, an appealing basis. The question, however, is whether the revocation order was an abuse of discretion by the Department.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (*Martin v. Alcoholic Beverage Control Appeals Board & Haley* (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (*Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board* (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

The following matters previously before the Appeals Board, while interesting, do not lend much help to appellants: AB-7901, Padilla (2002), a revocation case with a prior same code violation; AB-7662, Bul Ya Song (2001), a revocation case with no priors; AB-7615, Diaz/Ramirez (2001), a revocation case with a prior same code violation; AB-7605, Martinez (2001), a revocation case with a prior same code violation; AB-7556, Club Cha Cha (2001), a conditional revocation with no prior; AB-7535, Sanchez (2001), a revocation case with a prior same code violation; AB-7532, Rosas, (2000), a revocation case with a prior same code violation; and AB7517, Trinh (2001), a revocation case with no prior.

The records of these cases do not show how long before the violations, the

illegal practice had continued. But what is sure, is that priors show to a particular license owner or owners, that the conduct is illegal and they are thereafter charged with that knowledge.

In the present matter, prior knowledge was shown by an admission by co-appellant Steve Nakawatase that the practice of solicitation, known to be illegal, had been on-going for two years.

We cannot find any abuse of discretion by the Department.

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.