

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

AB-8583

File: 47-389069 Reg: 05060698

RJ's at RIVERLAKES, LLC, dba RJ's at Riverlakes
9440-C Hageman Road, Bakersfield, CA 93312,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: February 1, 2007
Los Angeles, CA

ISSUED MAY 16, 2007

RJ's at Riverlakes, LLC, doing business as RJ's at Riverlakes (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its bartender, Luis Morales, having served an alcoholic beverage to Matthew Ockenden, an obviously intoxicated patron, a violation of Business and Professions Code section 25602, subdivision (a).

Appearances on appeal include appellant RJ's at Riverlakes, LLC, appearing through its counsel, Richard G. Zimmer and Kristin A. Odom, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated June 8, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on August 30, 2002. Thereafter, the Department instituted an accusation against appellant charging that an employee of appellant sold an alcoholic beverage to an obviously intoxicated patron on June 19, 2005.

An administrative hearing was held on April 4, 2006, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation charged in the accusation had been proved.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that the evidence does not support the findings.

DISCUSSION

Appellant argues that there is not substantial evidence to support the finding that Ockenden was intoxicated or was obviously intoxicated.

The law demands that a licensee use substantial efforts in maintaining a lawfully-conducted business. (*Givens v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529 [1 Cal.Rptr. 446, 450].)

The term "obviously" denotes circumstances "easily discovered, plain, and evident" which place upon the seller of an alcoholic beverage the duty to see what is easily visible under the circumstances. (*People v. Johnson* (1947) 81 Cal.App.2d Supp. 973 [185 P.2d 105].) Such signs of intoxication may include bloodshot or glassy eyes, flushed face, alcoholic breath, loud or boisterous conduct, slurred speech, unsteady walking, or an unkempt appearance. (*Jones v. Toyota Motor Co.* (1988) 198

Cal.App.3d 364, 370 [243 Cal.Rptr. 611].)

Two Department investigators described symptoms of intoxication displayed by Ockenden that were plain and evident. As summarized by the administrative law judge (ALJ), these included extremely loud and boisterous behavior, yelling unintelligibly with slurred speech, standing up and throwing his hands in the air, red face and bloodshot eyes, staggering and bumping into things and people as he walked.

Appellant's argument rests substantially on the testimony of its own witnesses, and does not contend that what the investigators said they saw and heard did not happen. Appellant is asking the Board to interpose its own view of the evidence and its own view with respect to witness credibility, neither of which is permissible. "The function of an appellate Board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court." (*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd./Masani* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor this court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citation.] (*Ibid.*)

Thus, no useful purpose would be served by sifting through the conflicting witness testimony and the competing opinions expressed by the various witnesses as to Ockenden's state of sobriety. The relatively uncontradicted testimony of the

Department investigators concerning the appearance and behavior of Ockenden impresses us as substantial evidence of obvious intoxication as defined by case law. (See *In re William L.G.* (1980) 107 Cal.App.3d 210, 214 [165 Cal.Rptr. 587]; *People v. Murrietta* (1967) 251 Cal.App.2d 1002, 1004 [60 Cal.Rptr 56].) Ockenden's behavior occurred in the plain view of appellant's bartender, and despite this, he was served an alcoholic beverage. In fact, over the two-hour period Ockenden was observed, he consumed five mixed drinks of a drink known in appellant's establishment as a "Jager bomb,"² and was served a grapefruit juice and Southern Comfort drink (an alcoholic beverage) shortly before the investigators intervened.

We see no basis for overturning the decision of the Department.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² A mixture of Jagermeister liqueur and Rockstar, a non-alcoholic energy drink.

³ 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.