

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

AB-8748

File: 47-330438 Reg: 07064940

VIRGINIA REHLING and ALAN REHLING, Appellants/Protestants

v.

QUATTRO FORTUNE INC., dba Ca Dario Ristorante
37 East Victoria Street, Santa Barbara, CA 93101,
Respondent/Applicant

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: August 7, 2008
Los Angeles, CA

ISSUED: NOVEMBER 17, 2008

Virginia Rehling and Alan Rehling (appellants/protestants) appeal from a decision of the Department of Alcoholic Beverage Control¹ which granted the application of Quattro Fortune Inc., doing business as Ca Dario Ristorante (respondent/applicant), for an on-sale general public eating place license.

Appearances on appeal include appellants/protestants Virginia Rehling and Alan Rehling, appearing through their counsel, John D. O'Connor; respondent/applicant Quattro Fortune Inc., appearing through its counsel, Michael S. Fauver; and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated August 22, 2007, is set forth in the appendix.

PROCEDURAL HISTORY

In August 2006, Quattro Fortune Inc., dba Ca Dario Ristorante (applicant), petitioned for issuance of an on-sale general public eating place license. Applicant, holder of an on-sale beer and wine public eating place license, operates a high-end Italian restaurant housed in a free standing building on Victoria Street in Santa Barbara, California. Protests were filed by appellants Virginia Rehling and Alan Rehling, whose residence is located approximately 15 feet from the premises, and an administrative hearing was held on June 27, 2007. At that hearing, oral and documentary evidence was presented concerning the application and the protests.

Subsequent to the hearing, the Department issued its decision and allowed the license to issue, subject to the applicant's acceptance of conditions contained in its petition for conditional license dated August 18, 2006, as modified in Determination of Issues No. 3. The Department determined that its Rule 61.4 (4 Cal. Code Regs., §61.4) was not a bar to issuance of the license.

Appellants thereafter filed an appeal, asserting as grounds for the appeal those set forth in Business and Professions Code section 23084.

DISCUSSION

This matter was originally to be heard by the Appeals Board on June 5, 2008. Appellants had been advised by letter dated March 17, 2008, April 3, 2008, that their brief was to be filed on or before April 11, 2008. Appellants were further advised by letter dated April 11, 2008, that the hearing had been rescheduled to August 7, 2008, and that their brief was to be filed on or before May 12, 2008. Appellants have not filed a brief.

We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review. 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 to 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].)

Nonetheless, we have reviewed the transcript of the administrative hearing and the proposed decision and are unaware of any reason why the decision of the Department should not be affirmed. We agree with the administrative law judge that the conditions contained in applicant's petition for conditional license, as modified, will provide appellants enhanced protection against late night noise generated by the operation of the restaurant, noise to which they would otherwise remain subject without the benefit of the noise-abatement conditions, were the license not to issue. Late night noise was the principal concern of appellants.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER

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.

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.

ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD