

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

AB-9027

File: 21-442500 Reg: 08069874

MOORPARK LIQUOR ENTERPRISES, INC., dba Moorpark Liquor Store
312 West Los Angeles Avenue, Moorpark, CA 93021,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: December 2, 2010
Los Angeles, CA

ISSUED FEBRUARY 9, 2011

Moorpark Liquor Enterprises, Inc., doing business as Moorpark Liquor Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's clerk selling a can of Tilt malt liquor, an alcoholic beverage, to a minor decoy in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Moorpark Liquor Enterprises, Inc., appearing through its owner, Eli Adrabi, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

¹The decision of the Department, dated April 21, 2009, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on October 4, 2006. On October 22, 2008, the Department filed an accusation against appellant charging that, on March 7, 2008, appellant's clerk, Jose Calvario (the clerk), sold an alcoholic beverage to 18-year-old John Koman. Although not noted in the accusation, Koman was working as a minor decoy for the Los Angeles County Sheriff's Department at the time.

At the administrative hearing held on March 12, 2009, documentary evidence was received, and testimony concerning the sale was presented by Koman (the decoy) and by Robert Berger, a Los Angeles County Sheriff's Department deputy. The sale was not disputed, and the parties stipulated that Tilt was an alcoholic beverage.²

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proved, and no defense had been established.

Appellant thereafter filed a timely notice of appeal.

DISCUSSION

Written notice of the opportunity to file briefs in support of appellant's position was given on March 25, 2010. Appellant has not filed a brief. We have reviewed the notice of appeal, and have found it lacks sufficient information for this Board to determine the basis for appellant's appeal.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that the error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d

² The can's label stated that the beverage's alcoholic content was 6.6 percent by volume.

120, 139 [144 Cal.Rptr. 710]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Appellant's owner, Eli Adrabi, appeared before the Appeals Board during the oral argument calendar, and argued that the facts of the matter were different than those found by the administrative law judge (ALJ). It is not the function of this Board, however, to re-try the facts, as the court explained in *Masani*:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. (*CMPB Friends, Inc. v. Alcoholic Bev. Control Appeals Bd.* (2002) 100 Cal.App.4th [1250,]1254 [122 Cal.Rptr.2d 914]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779]; [Bus. & Prof. Code] §§ 23090.2, 23090.3.) We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] 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. (See *Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734] (*Lacabanne*).) 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. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*

(*Masani*) (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

A proceeding before the Appeals Board is an appellate function within which the Board may not accept new evidence or reconsider evidence which the ALJ has concluded is true. With no legal issues being raised, we conclude that the findings are supported by the record, and the decision is supported by those findings.

ORDER

The decision of the Department is affirmed.³

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

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.