

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

AB-9111

File: 40-434773 Reg: 09072072

DORA'S PLACE, INC., dba Dora's Place
8220 Sunland Boulevard, Sun Valley, California 91352,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: June 2, 2011
Los Angeles, CA

ISSUED JULY 19, 2011

Dora's Place, Inc., doing business as Dora's Place (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license, but stayed the revocation on the condition that appellant complete 36 months of discipline-free operation, and which suspended its license for 30 days, for permitting drink solicitation activities and permitting improper entertainer conduct in the licensed premises, violations of Business and Professions Code sections 24200.5, subdivision (b); 25657, subdivision (a); 25657, subdivision (b); and Department rules 143, 143.2 and 143.3 (4 Cal. Code Regs. §§ 143, 143.2 & 143.3).

¹The decision of the Department, dated April 21, 2010, is set forth in the appendix.

Appearances on appeal include appellant Dora's Place, Inc., appearing through its counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on January 23, 2006. On January 21, 2010, the Department filed a 45-count First Amended Accusation against appellant, charging it with permitting drink solicitation on the licensed premises on February 27, 2009; March 20, 2009; and April 4, 2009; and permitting improper entertainer conduct on March 5, 2009.

At the administrative hearing held on February 10 and 16, 2010, documentary evidence was received and testimony concerning the violations charged was presented by three Los Angeles Police Department vice division officers: Louis Cabrera, Richard Dave Krynsky and Li Fernando Garcia. Testimony was also received from employees of the licensed premises: Ofelia Macias (waitress), Fidelia Ramirez (bartender), Miriam "Angelica" Blanco (manager), and Jonathan Maruany (security guard), as well as the licensee and sole shareholder, Marciano Sanchez.

Testimony established that on three separate occasions, undercover vice officers observed drink solicitation in the licensed premises, wherein women in the bar received kickbacks for inducing the officers to buy them drinks, and on a fourth occasion observed dancers who removed their bikini tops and engaged in unlawful touching of their breasts, as well as performing topless while not on a stage 18 inches above the immediate floor level and removed at least six feet from the nearest patron, as required by rules 143.2 and 143.3.

Subsequent to the hearing, the Department issued its decision which dismissed

all but counts 9, 12, 14 and 17 (improper entertainer conduct) and counts 19, 21, 22, 30, 33, 38, and 41 (drink solicitation) and determined that these remaining counts were proven.

Appellant filed a timely appeal raising the following issues: (1) The penalty imposed was an abuse of discretion, and (2) the findings regarding drink solicitation are not supported by the evidence.

DISCUSSION

I

Appellant contends that the Department abused its discretion in imposing a 30-day suspension for violations of rules 143.2 and 143.3: permitting improper entertainer conduct (i.e. permitting dancers whose breasts and/or buttocks were exposed to view to perform while not on a stage 18 inches above the immediate floor level and removed at least six feet from the nearest patron, and permitting unlawful touching and caressing of the breasts) (counts 9, 12, 14 and 17).

The Appeals Board may examine the issue of excessive penalty if it is raised by an appellant (*Joseph's of California. v. Alcoholic Beverage Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183]), but will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Beverage Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].)

" 'Abuse of discretion' in the legal sense is defined as discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered [Citations]." (*Brown v. Gordon* (1966) 240 Cal.App.2d 659, 666-667 [49 Cal.Rptr. 901].)

Appellant maintains that since the administrative law judge (ALJ) said in the

Penalty section of the Proposed Decision at page 8: "[t]he dancer violations are not particularly egregious and warrant the minimum penalty" that a lesser penalty than the 30-day suspension should be imposed. Appellant conveniently ignores, however, the full extent of the ALJ's penalty discussion, which involves much more than just the improper entertainer conduct (*ibid.*):

The Department requested that Respondent's license be revoked, with the revocation stayed for three years on the condition that the license be suspended for 45 days. In support of this recommendation, the Department noted that the Respondent had suffered previous discipline for the same type of violations. The Department's recommendation did not differentiate between the solicitation violations and the dancer violations other than to suggest that any suspensions run concurrently. The Respondent argued that the accusation should be dismissed with respect to the solicitation violations and, if any penalty were imposed for the dancer violations, it should not exceed 15 days.

All three priors are too remote to constitute aggravation, particularly since the two most recent violations were for unrelated offenses. Section 24200.5(b),² however, mandates that any penalty for violating its provisions include some form of revocation, while the penalty for violating section 25657(b)³ ranges from a 30-day suspension to revocation. The dancer violations are not particularly egregious and warrant the minimum penalty. The penalty recommended herein complies with rule 144.

As the ALJ's discussion makes clear, the 30-day suspension was not based entirely on the improper entertainer conduct, but rather primarily on the charges relating to drink solicitation. In addition, the penalties imposed are to run concurrently, so even if the dancer violations were somehow mitigated, the end result would still be a 30-day

²The specific language used in section 24200.5, subdivision (b) is: "employed or permitted any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy."

³Section 25657, subdivision (b), makes it unlawful to "knowingly permit anyone to loiter in . . . said premises for the purpose of . . . soliciting any patron or customer . . . to purchase any alcoholic beverages for the one . . . soliciting."

suspension based upon the drink solicitation violations.

Appellant's disagreement with the penalty imposed does not mean the Department abused its discretion. The penalty comports with standard penalties in the Department's Penalty Guidelines pursuant to rule 144. (Cal. Code Regs., tit. 4, § 144.) Appellants have not shown that the Department abused its discretion in imposing the standard penalty.

II

Appellant contends that the findings regarding drink solicitation are not supported by the evidence.

When findings are attacked as being unsupported by the evidence, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the findings. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department. (See 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 245, pp. 4236-4238.)

(*Kirby v. Alcoholic Beverage Control Appeals Board* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815].)

In making this determination, the Board may not exercise its independent judgment on the effect or weight of the evidence, but must resolve any evidentiary conflicts in favor of the Department's decision and accept all reasonable inferences that support the Department's findings. (*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Masani)* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826]; *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 51 [248 Cal.Rptr. 271]; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261

Cal.App.2d 181, 185 [67 Cal.Rptr. 734]; *Gore v. Harris* (1964) 29 Cal.App.2d 821, 826-827 [40 Cal.Rptr. 666].)

The ALJ made numerous findings of fact in his Proposed Decision regarding the drink solicitation activity observed by the undercover vice officers. Each time an officer purchased a beer for himself the charge was \$5, but each time a beer was purchased for one of the women who had asked the officers to buy her a drink the charge was \$10, with \$5 going to the house and the other \$5 going to the woman receiving the drink.

A reasonable person would accept the evidence presented, as summarized in the findings of fact, as substantial evidence for the conclusion that appellant permitted drink solicitation activity in the licensed premises. We disagree with appellant that insufficient evidence exists to support the ALJ's findings.

ORDER

The decision of the Department is affirmed.⁴

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This 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.