

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

AB-9315

File: 40-481922 Reg: 12076457

MARIA ENEDINA SANDOVAL, dba Macumba's
13103 Van Nuys Boulevard, Pacoima, CA 91331,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 5, 2013
Los Angeles, CA

ISSUED SEPTEMBER 27, 2013

Maria Enedina Sandoval, doing business as Macumba's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license, stayed the revocation for a period of three years, and suspended it for 30 days, for having permitted drink solicitation activity in violation of Business and Professions Code sections 24200.5, subdivision (b), and 25657, subdivisions (a) and (b).

Appearances on appeal include appellant Maria Enedina Sandoval, appearing through her counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Sean Klein.

¹The decision of the Department, dated September 28, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on October 15, 2009. On February 8, 2012, the Department instituted a 9-count accusation against appellant charging that on September 9, 2011, appellant permitted drink solicitation activity in the licensed premises in violation of Business and Professions Code sections 24200.5, subdivision (b);² 25657, subdivision (a);³ and 25657 subdivision (b).⁴

At the administrative hearing held on July 24, 2012, documentary evidence was received and testimony concerning the violation charged was presented by the licensee, Maria Sandoval; and by Francisco Lopez, Eric Herrera, and Esmeralda Reynoso, officers with the Los Angeles Police Department (LAPD).

Testimony established that on September 9, 2011, LAPD officers Lopez, Herrera, and Rodriguez entered the licensed premises in an undercover capacity and ordered themselves beers for which they each paid \$5. Subsequently, Officer Lopez was approached by Victoria Duarte, who asked him to buy her a beer. Lopez gave the bartender \$20, the bartender gave him \$10 change, and gave \$6 to Duarte. Lopez testified that this scenario was repeated three additional times with Duarte in the course

²Section 24200.5 provides that "the department shall revoke a license . . . (b) [i]f the licensee has 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 (a), makes it unlawful: "For any person to employ, upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such person a percentage or commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises."

⁴Section 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."

of the evening. (Counts 1 and 2.) Officer Herrera was approached by Patricia Ramos who asked him to buy her a beer for which he was charged \$10. (Counts 3 and 4.) In addition, Lopez was approached by a woman named Pineda to buy her a drink. Lopez was charged \$10, and Pineda received \$6. (Counts 5 and 6.) Lopez was also asked by the bartender to buy her a drink, and when he did he was charged \$10. (Counts 7, 8, and 9.)

Testimony also established that on September 9, 2011, an undercover ABC agent, Esmeralda Reynoso, entered the bar and spoke to the licensee about a "Help Wanted" sign that was posted in the premises. Initially she asked about being hired as a waitress, but ended up discussing a bartending position. During this discussion the licensee mentioned that she allows her bartenders to "fichar," which is slang for soliciting drinks. The licensee also pointed out to Agent Reynoso three different men in the bar she could solicit for drinks.

The ALJ came to the following conclusions:

With respect to counts 1, 2, 3, 4, 5, and 6, there is no evidence that the Respondent or any of her employees heard the solicitations in question. In connection with each solicitation, however, an employee paid a commission directly to the woman who solicited the drink. Such payments clearly indicate that the employees were aware of the solicitations. With respect to counts 7, 8, and 9, on the other hand, the bartender personally solicited the drink in question.

(Conclusions of Law ¶ 7.)

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

Appellant then filed a timely appeal contending the decision is not supported by substantial evidence.

DISCUSSION

Appellant contends the testimony of officers Lopez and Herrera was "sufficiently impeached on the salient facts and did not support a finding of substantial evidence in light of the entire record." (App.Br. at p. 3.) Appellant also maintains the officers' testimony was not credible. (*Ibid.*)

Appellant maintains that the violations charged should not be affirmed because the testimony of Officers Lopez and Herrera was based on notes made by Officer Rodriguez, and not their own notes. (App.Br. at p. 2.) Appellant alleges that Lopez and Herrera failed to recollect the events of September 9, 2011, and that "there were too many conflicts in their testimony, when compared to Rodriguez's statements, to constitute substantial evidence." (*Ibid.*) Officer Rodriguez — the officer who prepared the investigation report — did not testify, only Officers Lopez, Herrera, and Reynoso.

When an appellant contends that a Department decision is not supported by substantial evidence, the Appeals Board's review of the decision is limited to determining, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. (Bus. & Prof. Code § 23084; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113].) 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]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d

181, 185 [67 Cal.Rptr. 734].) "Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456]; *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

Appellant argues that the testimony of Officers Lopez and Herrera does not constitute substantial evidence because, even though they participated in the investigation, the actual report was prepared by another officer. The report in question was not entered into evidence.

Since the officers' testimony, if believed, is evidence of the solicitation activity, the issue is really one of credibility, and the ALJ is the person who makes that determination. (*Lorimore v. State Personnel Bd.* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) In this case, the ALJ clearly chose to accept the testimony of the police officers, and our own review of the record satisfies us that he made the right choice.

Appellant's brief relies on references to details in the hearing transcript to impeach the testimony of the officers. However, little would be served by addressing each and every factual contention made by appellant. The ALJ clearly understood the substance of the testimony and we cannot say that his resolution of the disputed facts was in any way erroneous. Looking at the record as a whole, we find that substantial evidence supports the Department's decision.

ORDER

The decision of the Department is affirmed.⁵

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵This 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.