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

AB-9371
File: 42-315267 Reg: 13078103

MARIA TERESA PACHECO and ROBERT PACHECO
dba Coral Reef
909 West Anaheim Street, Wilmington, CA 90744,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 1, 2014
Los Angeles, CA

ISSUED JUNE 13, 2014

Maria Teresa Pacheco and Robert Pacheco, doing business as Coral Reef (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which revoked their license for violations of Business and Professions Code sections 24200.5, 25657(a) and (b), 25602(a), and California Code of Regulations, title 4, section 143.2, paragraph (2).

Appearances on appeal include appellants Maria Teresa Pacheco and Robert Pacheco, appearing through their counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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[1]The decision of the Department, dated September 6, 2013, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine public premises license was issued on January 17, 1996. On March 6, 2013, the Department instituted a 24-count accusation against appellants. Twenty-two of these counts alleged that, on three separate dates, appellants employed or permitted individuals to engage in drink solicitation activity within the premises, in violation of sections 24200.5, subdivision (b),[2] and 25657, subdivisions (a) and (b).[3] One of the remaining counts alleged that on the second of these three dates, appellants permitted a patron to engage in lewd conduct in violation

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[2]Counts 3, 5, 7, 9, 11, 14, 16, 18, and 22 alleged violations of section 24200.5, subdivision (b). That section states, in relevant part:

> Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:
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> ¶ . . . ¶
>
> (b) If 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.

[3]Counts 1, 2, 13, and 21 alleged violations of section 25657, subdivision (a). Counts 4, 6, 8, 10, 12, 15, 17, 19, and 23 alleged violations of subdivision (b). Section 25657 states:

> It is unlawful:
>
> (a) 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 on such premises.
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> (b) In any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting.

of rule 143.2, paragraph (2).[4] The final count alleged that on a fourth and final date, appellants' employee served alcohol to an obviously intoxicated patron in violation of section 25602, subdivision (a).[5]

At the administrative hearing held on August 6, 2013, documentary evidence was received and testimony concerning the violation charged was presented by Sergeant Lifernando Garcia and Officer Francisco Lopez of the Los Angeles Police Department (LAPD). Appellants presented no witnesses.

Testimony established that on three separate dates between January 20, 2012 and February 17, the LAPD officers observed multiple instances of solicitation activity as well as a single instance of lewd conduct at the licensed premises. Additionally, on a fourth date, March 9, 2012, the officers observed appellants' bartender serve an

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[4]Count 20 alleged a violation of rule 143.2, paragraph (2). That rule states, in relevant part:

> The following acts or conduct on licensed premises are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted:
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> (1) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
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> (2) To employ or use the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph (1) above.

[5]Count 24 alleged a violation of section 25602, subdivision (a). That section states, in relevant part:

> (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

alcoholic beverage to an obviously intoxicated person.

The events underlying counts 1 through 12 took place on January 20, 2012. On that evening, Sergeant Garcia and Officer Lopez entered the licensed premises and proceeded to the bar, where they ordered a Modelo Especial and a Victoria from a female bartender named "Sonia," later identified as Antonia Diaz Garcia. Sonia served the officers and charged them $7 for each beer. A second bartender, later identified as Flor De Maria Aguilar-Arevalo, approached the officers. Flor told them that the other women in the bar believed they were police officers. Flor told Lopez that she didn't care if they were police, and asked him to buy her a beer. Lopez agreed and handed a $20 bill to Flor. Flor, who was now on the customer side of the bar, ordered a Bud Light from Sonia and handed her the $20 bill. Sonia served Flor the beer, gave Lopez $10 in change, and handed $7 to Flor. Flor took the $7 and placed it in her bra, then consumed her beer. (Counts 1 through 4.)

A short while later Flor called two other women over to where Garcia and Lopez sat. They were identified only as "Alicia" and "Rosa." Alicia asked Lopez to buy her a beer. Rosa asked Garcia to buy her a beer. Both officers agreed. Alicia and Rosa ordered beers from Sonia. Lopez paid $20 to Flor, who was behind the bar. Flor gave the $20 bill to Sonia. Sonia served Alicia and Rosa each a Bud Light beer, and gave each of them $7. Alicia placed the money in her bra. Rosa placed the money in her pants pocket. Both consumed their beers. (Counts 5 through 12.)

Flor, Alicia, and Rosa each solicited an additional three drinks in substantially the same manner.

The events underlying counts 13 through 20 took place on February 9, 2012. On that date, Sergeant Garcia and Officer Lopez returned to the licensed premises and

ordered a Modelo and a Victoria from Flor. Flor served them the beers and charged them $7 each. Flor told the officers that one of the women had told her that Lopez and Garcia were police.

Rosa then approached the officers and asked Lopez to buy her a beer. Lopez agreed. Rosa ordered a Bud Light beer from Flor. Lopez gave Rosa a $20 bill. Flor served Rosa her beer. Rosa then handed the $20 bill to Flor. Flor gave $10 to Lopez and handed $7 to Rosa. Rosa placed the $7 in her pocket and consumed her beer. (Counts 13 through 15.)

Alicia and a woman identified as "Gabriela" then approached the officers. Gabriela asked Garcia to buy her a beer. Garcia agreed. Gabriela ordered a Victoria beer from Flor. Flor served the beer. Garcia gave Flor a $20 bill. Flor then gave $10 in change to Garcia and handed $7 to Gabriela. Gabriela placed the $7 in her bra and consumed her beer. (Counts 18 and 19.)

Rosa then asked Lopez to buy Alicia a beer. Alicia said "Yes, what about me" or words to that effect. Lopez agreed. Alicia ordered a Bud Light beer from Flor. Flor served Alicia the beer and Lopez paid Flor with a $10 bill that he had on the bar in front of him. Flor handed $7 to Alicia. Alicia placed the $7 in her bra and consumed her beer. (Counts 16 and 17.)

Flor then told the officers that if they were going to buy beers for the girls, then she was going to place the girls' money on the bar in front of the girl, rather than handing it to them directly.

Rosa again asked Lopez to buy her a beer. Lopez agreed. Rosa ordered a Bud Light beer from Flor. Flor served Rosa the beer and collected $20 from Lopez. Flor returned with change, placed $10 on the bar in front of Lopez, and placecd $7 on the

bar in front of Rosa. Rosa picked up the $7 and put it in her pocket, within Flor's view. Rosa then consumed her beer.

Gabriela solicited Sergeant Garcia for an additional two beers in substantially the same fashion as above.

On three separate occasions that evening, Gabriela pulled down the top of her dress, exposing her bare breasts within view of everyone in the premises. On two other occasions, she lifted her dress up to the waist. She was not wearing undergarments, and exposed her genitalia, buttocks, and anus within view of everyone in the premises. Flor observed these incidents, but made no effort to stop Gabriela from exposing herself. Flor told Officer Lopez that Gabriela was crazy. (Count 20.)

The events underlying counts 21 through 23 took place on February 17, 2012. On that date, Sergeant Garcia returned to the premises with Officer Ruiz, also of the LAPD. The officers took seats at the bar and ordered beers from Flor. A short while later Alicia and Gabriela approached the officers. Gabriela asked Garcia to buy her a beer. Flor was on the other side of the bar and in a position to overhear the solicitation. Garcia agreed. Gabriela ordered a Victoria beer from Flor, and Flor served it to her. Garcia paid Flor with a $10 bill. Flor placed $7 on the bar in front of Gabriela. Gabriela took the money and placed it in her bra. Garcia asked if that was his change. Gabriela said "No, it's mine." Flor was present and in a position to hear this exchange. Gabriela then consumed her beer. (Counts 21 through 23.)

Gabriela told Garcia that Flor did not want to give change directly to Gabriela because Flor thought Garcia was a "narc," or police officer. That is why Flor placed the $7 on the bar, rather than handing it directly to Gabriela.

Gabriela solicited two additional beers from Garcia, under substantially the same

circumstances.

The events underlying count 24 took place on March 9, 2012. On that date, Sergeant Garcia and Officers Lopez and Ruiz returned to the licensed premises and took seats at the bar. They ordered beers from Sonia, and were served. Officer Lopez noticed a male patron at the bar, later identified as Armando Madrigal-Carillo, whose speech was very loud and slurred. Armando was drinking a Modelo Especial beer. A short while later Armando ordered another Modelo beer, and Sonia served it to him.

Sonia left the bar to serve customers seated at tables. Armando followed Sonia and grabbed her arm. Sonia pushed Armando off. Armando lost his balance, stumbled, and almost fell to the floor. Armando returned to the bar. Lopez noted that Armando was unsteady on his feet, and that his eyes were droopy. Sonia was in a position where she either observed or should have observed this behavior.

After Sonia returned to the bar, Lopez told her that Armando looked drunk. Sonia agreed, and told Officer Lopez that "he won't leave me alone." Lopez noted that Armando had bloodshot eyes and a strong odor of alcohol emanating from his person, and that his speech was slurred and very loud.

After watching Armando for about 45 minutes, Lopez formed the opinion that Armando was obviously intoxicated and should not be served any more alcohol. Sonia did see, or ought to have seen, the same symptoms Lopez observed.

Armando ordered another Modelo beer. Sonia served it to him. Armando consumed it. (Count 24.)

Subsequent to the hearing, the Department issued its decision which sustained all 24 counts and imposed a penalty of revocation. The ALJ noted the egregiousness of the violations and the apparent lack of control over the premises, and reached the

conclusion that the premises were operated in a manner contrary to the public welfare and morals, and that a stayed revocation with suspension would be insufficient to deter the illegal activity. Accordingly, appellants' license was revoked.

Appellants have filed an appeal making the following contentions: (1) the evidence does not support the Department's decision with regard to section 25657(b), because there is no evidence the women were allowed to "loiter"; (2) the evidence does not support the Department's decision with regard to many of the counts falling under 24200.5(b) because testimony established only so-called "string solicitations"; (3) revocation is an excessive penalty for the violations of rule 143.2(a) and section 25602(a).

DISCUSSION

I

Appellants contend that the evidence does not support the counts brought under section 25657, subdivision (b), because there is no evidence that the women were allowed to "loiter" on the premises.

When an appellant asserts 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 Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826]; *Lacabanne Props., Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734].)

"'Substantial evidence' is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (*San Diego Unified School Dist. v. Comm. on Prof. Competence* (2013) 214 Cal.App.4th 1120, 1142 [154 Cal.Rptr.3d 751], citing *Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307 [141 Cal.Rptr. 354].) "It is sufficient if any reasonable trier of fact could have considered it reasonable, credible, and of solid value." (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52 [76 Cal.Rptr.2d 356].)

Appellants argue that the Department fails to articulate the "loitering" element for any of the counts brought under section 25657(b). (App.Br. at pp. 4-5.) Appellants contend that "[n]one of the witnesses who testified at the administrative hearing mentioned that any female loitered within the meaning" of the statute. (*Ibid.*) Moreover, appellants claim, Officer Lopez testified that his report did not state that the soliciting individuals were observed before they approached him, and that the Department therefore cannot show that they were "loitering."

Appellants contend that in order to loiter, an individual "must wander about, stand idly by, spend time idly, loaf or walk about aimlessly without purpose." For support, appellants direct this Board to *Garcia v. Munro*, 161 Cal.App.2d 425, 429 [326 P.2d 894].

A violation of section 25657(b), however, does not consist simply of "loitering,"

but of loitering "in or about said premises *for the purpose of* begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting." (Emphasis added.) Because the statute uses the language "loitering *for the purpose of*," it is impossible for us to accept a definition of loitering that requires conduct entirely devoid of purpose.

A better definition is "'to linger idly by the way, to idle,' 'to loaf' or to 'idle.'" (*Wright v. Munro* (1956) 144 Cal.App.2d 843, 847 [301 P.2d 997], citing *Phillips v. Municipal Court* (1938) 24 Cal.App.2d 453, 455 [75 P.2d 548].) Another helpful definition, drawn from the Penal Code, "connotes lingering in the designated places for the purpose of committing a crime as opportunity may be discovered." (*In re Cregler*, 56 Cal.2d 308, 312 [14 Cal.Rptr. 289].) Under this definition, "lingering idly by" would not constitute loitering provided the lingerer was merely waiting for legal purpose. (See *ibid.*)

In each of the counts alleging a violation of section 25657(b), the evidence is sufficient to support the conclusion that the women were loitering for the purpose of soliciting, and that the bartenders knew of their purpose. With regard to count 4, Flor was not actively tending bar, but rather was lingering on the customer side for the sole purpose of soliciting a drink from Officer Lopez. (See Findings of Fact ¶ 4.) With regard to counts 6, 8, 10, and 12, it is uncontradicted that Flor told the officers the women in the bar did not want to talk to them because they were afraid they were the police. (*Ibid.*) This supports the inference that the women were lingering on the premises for purpose of soliciting drinks, and that the bartenders permitted them to do so. Similar uncontroverted testimony supports counts 15, 17, and 19. In particular, Flor reiterated that the girls believed the officers to be police, and noted midway through the

evening that she would place the girls' money on the counter rather than handing it to them directly. Both these show that she was fully aware the women were lingering in the officers' presence for the purpose of soliciting drinks, and permitted them to do so. (See Findings of Fact ¶¶ 8, 11.) Finally, testimony supporting count 23 indicates that Gabriela and Flor had an understanding regarding the placement of money on the counter, which supports the inference that Gabriela was present in the premises for the purpose of soliciting drinks. (Findings of Fact ¶ 15.)

Moreover, in each of these cases, the women lingered near the officers throughout the evening and continued to solicit drinks, suggesting they had no other purpose for remaining on the premises. (See Findings of Fact ¶¶ 6, 13, 17.)

Appellants also argue that the Department must establish what, precisely, the women were doing before the officers arrived. Appellants ostensibly rely on *Garcia v. Munro* for authority, but offer no direct citation to any such language, and we find none. Moreover, it would be difficult, if not impossible, to prove what the women were doing before the officers arrived. (See *Portallanza* (2012) AB-9203.) The uncontroverted testimony, however, does support the ALJ's conclusion that while the officers were present at the premises, the women in question were permitted to loiter for the purpose of soliciting drinks from the officers.

Appellants made no attempt to counter the Department's prima facie case that the women were loitering in the premises for the purpose of soliciting alcoholic beverages. Indeed, appellants presented no evidence whatsoever. The Department therefore established its case under section 25657, subdivision (b), and this Board has no grounds to reverse.

II

Appellants contend that the counts brought under section 24200.5, subdivision (b), were not established with specificity. Instead, appellants claim, the Department relied on evidence of so-called "string solicitations" — that is, the mere allegation that an individual solicited a series of drinks in the same manner as the first.

As above, this Board's review is limited to determining whether substantial evidence exists to reasonably support the findings of fact, and whether the decision is supported by those findings.

Appellants point this Board to a decision of the Department, pending before this Board, in which the ALJ allegedly dismissed a number of counts that were described with insufficient detail. (App.Br. at p. 8, citing *Acosta* (September 6, 2013) File No. 48-425738.) We have reviewed the Department's decision in *Acosta* and find no indication that any counts were dismissed because they were described with insufficient detail.[6] Most counts in that case were in fact upheld on the strength of a single, well-described solicitation, with the comment that subsequent solicitations were not described in sufficient detail to support a finding. (See *Acosta*, *supra*, at p. 8.)

In at least one instance in the *Acosta* decision, however, the ALJ noted that, where there was detailed testimony of a single solicitation, summarized testimony of subsequent solicitations "provided additional context and demonstrated that all three solicitations were part and parcel of an ongoing scheme." (*Id.* at p. 7.)

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[6]In *Acosta*, one count was dismissed because it was not established that the drink was beer; two counts were dismissed because the woman in question did not solicit the drink herself; and two additional counts were dismissed because there was no evidence the employee overheard or was otherwise aware of the solicitation. (*Id.* at pp. 8-9.) The ALJ noted that a further eleven counts were dismissed at the Department's request, but beyond that, no explanation was given. (*Id.* at p. 9.)

This Board is in no way bound by the Department's decision in an unrelated case. The general treatment, however, is correct: a summary description of a solicitation is insufficient, by itself, to sustain a count. However, where evidence of a single solicitation clearly establishes a count, subsequent "string solicitations," though summary in description, can serve to establish a pattern of conduct — for instance, that an individual is loitering solely for the purpose of repeatedly soliciting drinks.

Each of the counts brought in this case under section 24200.5(b) is supported by at least one well-described, undisputed solicitation incident. (Findings of Fact ¶¶ 4-5, 8-12, 15-16.) None are supported solely by summary testimony, though summary testimony is often cited, briefly, at the end of each set of findings. (See Findings of Fact ¶¶ 6, 13, 17.)

If this Board were, in fact, faced with a count supported solely by "string solicitation" testimony, we might find that the evidence is insufficient. However, the case before us presents no such circumstance, and we see no grounds to reverse the decision below.

III

Appellants contend that the penalty of outright revocation is excessive for the violations of rule 143.2(2)[7] and section 25602(a). Appellants direct this Board to the penalty guidelines contained in rule 144, which suggest a 30-day suspension for a

[7]Appellants point out that the allegations underlying count 20 are a closer fit for rule 143.3 than rule 143.2(2). Rule 143.3 states "No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus." This rule does seem a better fit for the facts. Appellants, however, merely mention this in passing and challenge only the penalty imposed, not the decision to impose disciplinary action under rule 143.2(2). Accordingly, we will not consider the issue here.

single violation of rule 143.2 and a 15-day suspension for a single violation of section 25602(a).[8] Appellants argue that the ALJ ought to have listed separate penalties for each offense in order to prevent confusion.

The Appeals Board may examine the issue of excessive penalty if it is raised by an appellant. (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183].) However, the Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion the Department acted within the area of its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Rule 144 provides guidelines for penalty selection. It is important to note, however, that the guidelines are merely that — guidelines — and are not binding requirements. The rule affords considerable discretion to the Department:

> These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

The rule then provides a non-exhaustive list of potential aggravating factors — among them a "[c]ontinuing course or pattern of conduct."

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[8]Appellants have two prior disciplinary actions for violations of section 25602. However, because these violations date back to 1997 and 2000, they were not considered by the ALJ and will not be considered here.

For purposes of this case, however, the most illuminating portion of rule 144 lies at the beginning: "The California Constitution authorizes the Department, in its discretion to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals."

Appellants are correct that the penalty of outright revocation is greater than the penalties suggested for isolated violations of either rule 143.2(2) or section 25602(a). However, it is clear from the decision that the ALJ was not imposing a revocation for a single violation of 25602, or for a single violation of rule 143.2(2), or even for the multiple instances of solicitation discussed above. He explains that it is the sum of these violations — and the inevitable inferences that arise — that call for outright revocation:

> Individually, these items may or may not justify revocation of the license. However, when they are all combined it is obvious that the licensees are not taking anything seriously when it comes to running this business. The Department has a duty to insure that licensees do not run their business contrary to public welfare and morals. When a licensee operates contrary to public welfare and morals then the Department must act. Based upon all of this information it does not appear that a stayed revocation along with a suspension will prevent the licensees from permitting the illegal activity to continue.
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> The licensees have operated their business contrary to public welfare and morals. The Department must not let it continue. There is no evidence that would cause anyone to believe that the illegal activity will stop if they are allowed to continue to operate.

(Penalty Considerations at p. 9.)

In their closing brief, appellants alternatively attack the notion of a comprehensive penalty, arguing that it is designed to punish appellants rather than promote corrective measures, that the Department "almost uniformly" imposes a stayed

revocation for a first solicitation violation, and that it was "obvious" the ALJ considered the existence of a separate, non-final solicitation accusation against appellants when crafting the penalty.

These arguments were not presented in appellants' opening brief. However, even if we give appellants the benefit of the doubt and assume these arguments were made wholly in response to issues raised in the Department's reply brief, we still find that they hold no merit. The ALJ was not *required* to offer appellants the chance at a stayed revocation. Moreover, the sheer audacity of the violations tends to indicate that a suspended revocation would do little good — within seven weeks, appellants' employees openly and egregiously violated four alcoholic beverage statutes and a Department rule, *even when appellants' bartender suspected the officers were police*. The evidence shows that appellants' employees have little to no regard for the law. There is nothing in the decision to indicate the ALJ considered any outside accusation pending against appellants, nor was it necessary to do so in order to conclude that the premises pose an undeniable risk to the health and welfare of this state's citizens — the facts of this case alone were sufficient. Outright revocation is both appropriate and authorized by the California constitution.

ORDER

The decision of the Department is affirmed.[9]

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

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[9]This 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.