

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

AB-9458

File: 40-481922 Reg: 14080118

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: March 5, 2015
Los Angeles, CA

ISSUED MARCH 24, 2015

Maria Enedina Sandoval, doing business as Macumba's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license because her agents or employees permitted multiple instances of solicitation activity within the licensed premises, in violation of Business and Professions Code sections 24200.5(b) and 25657, subdivisions (a) and (b), and lewd conduct in violation of rule 143.3, subdivisions (1)(c) and (2).

Appearances include appellant Maria Enedina Sandoval, through her counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, through its counsel, Jennifer M. Casey.

FACTS AND PROCEDURAL HISTORY

¹The decision of the Department, dated July 24, 2014, is set forth in the appendix.

Appellant's on-sale beer license was issued on October 15, 2009. On March 11, 2014, the Department instituted a fifteen-count accusation against appellant. Thirteen of these counts alleged solicitation activity on four separate dates, in violation of Business and Professions Code sections 24200.5, subdivision (b),² and 25657, subdivisions (a) and (b).³ The remaining two counts alleged lewd conduct in violation of rule 143.3, subdivisions (1)(c) and (2).

At the administrative hearing held on May 29, 2014, documentary evidence was received and testimony concerning the violation charged was presented by Officers Jose Monzon, William Coreas, and Jesus Camacho of the Los Angeles Police Department (LAPD), and by Maria Aguilar, a waitress at the licensed premises.

²Section 24200.5, subdivision (b), provides:

Notwithstanding the provisions of Section 24200, the department shall revoke a license upon any of the following grounds:

[¶ . . . ¶]

(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.

³Section 25657, subdivisions (a) and (b), provide that 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 for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.

(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.

Count 1

Testimony established that on October 19, 2012, Officer Monzon entered the licensed premises with his partner, Officer Coreas. They sat down at the bar counter and ordered two Corona beers from the bartender, Beatriz Casillas.⁴ Casillas served them the beers and charged them \$5 each.

The officers noticed a woman who later identified herself as “Irma” sitting near them with a male patron. The male got up and left, at which point the appellant, Maria Sandoval, told Irma that, if the man was finished, she could drink with the officers. Irma got up, approached Officer Coreas, and asked him to “invite her to” (buy her) a drink. Coreas agreed. Irma ordered a bottle of Corona beer. Coreas paid Sandoval with a \$20 bill. Sandoval gave him \$10 in change. The evidence did not establish what happened to the other \$5.

An individual identified as “Iris” approached Officer Coreas and asked him to buy her a beer. He agreed. Irma called Sandoval over and ordered two beers — a Corona for herself and a Bud Light for Iris. Coreas handed \$40 to Irma, who handed \$20 to Sandoval. Irma pocketed the other \$20 outside of Sandoval’s presence. (Count 1.)

Counts 2 through 7

Officer Monzon returned to the licensed premises on December 14, 2012, this time with Officer Camacho. They entered, sat at the bar counter, and ordered two beers — a Corona and a Coors — from Casillas. She served them the beers, and charged them \$5 each.

An individual identified as “Vanessa” came over and asked Officer Monzon if he

⁴According to testimony, Casillas used the alternate names “Mari” and “Betty.”

would buy her a beer. He agreed and handed a \$10 bill to Casillas. Casillas spoke to Sandoval before placing the money in the register. Sandoval brought \$5 in change and gave it to Monzon. She told Vanessa that her beer would cost only \$5. Vanessa ordered a Bud Light, which Casillas served to her. Vanessa told Monzon that she did not receive her tip.

Officer Monzon and Vanessa danced, then returned to the bar counter. Vanessa asked Monzon to buy her another beer. He agreed, and Vanessa ordered a Bud Light. Monzon paid \$5 for Vanessa's beer.

Vanessa commented that she was cold. Officer Monzon commented that it might be because of the way she was dressed. Vanessa stood up and pulled down her pants and underwear, fully exposing her vagina. Casillas looked up at Vanessa and laughed. Vanessa pulled up her pants. (Counts 6 and 7.)

Casillas asked Officer Monzon to buy her a beer. He agreed and gave her \$10. She took the money and obtained a can of beer. She poured the beer into a Styrofoam cup and handed \$5 in change to Monzon. (Count 5.)

Irma, who had been drinking with another patron, approached Officer Monzon and asked him to buy her a beer. He agreed. Irma ordered a beer from Sandoval. Sandoval told her that it would cost \$5. Monzon handed a \$20 bill to Sandoval, who took it to the register and obtained \$15 in change, all of which she handed to Monzon. Sandoval served a can of Bud Light beer to Irma. Irma asked Sandoval for her tip. Sandoval did not respond; she simply walked away. Irma then took \$5 from Monzon's change and placed it in her bra. (Count 3.)

Irma later began interacting with Officer Camacho and asked him to buy her a beer. He agreed. Irma ordered a Bud Light from Casillas; Camacho ordered a Coors

for himself at the same time. Camacho paid by handing a \$20 bill to Casillas. Casillas returned with \$10 in change and the beers. Irma asked Casillas for her tip. Casillas did not respond. Irma told Camacho that he owed her \$5, commenting that she did not understand why Casillas had failed to give her a tip. Irma took \$5 from the change, which was still on the counter.

A waitress, Maria Aguilar,⁵ approached Officer Camacho and asked him to buy her a beer. He agreed. Aguilar ordered a Miller beer from Casillas, who stated that it would cost \$10. Casillas obtained the beer and served it to Aguilar, this time stating that would cost \$5. Aguilar corrected her and stated that the beer would cost \$10. Camacho paid Casillas with a \$10 bill. Casillas obtained \$5 in change and gave it to Aguilar. (Counts 2 and 4.)

Aguilar testified that she was employed at the licensed premises in 2013, but not in 2012. Accordingly, she was not present on December 14, 2012, as the officers testified. She denied using any name other than her own.

Counts 8 and 9

On January 10, 2013, Officer Monzon returned to the licensed premises. He entered by himself and took a seat at the bar counter. He ordered a Corona beer from Casillas, who charged him \$5.

After Officer Monzon had been inside for a while, Casillas approached him and asked if he wanted another beer. He stated that he did not like to drink alone. Casillas stated that he would not have to if he bought her one. He agreed and handed her a \$20 bill. Casillas took the money and obtained \$15 in change. She placed \$5 of the

⁵Aguilar identified herself as "Maritza" when interacting with the officers. We will use her legal name here.

change under the bar counter and gave the other \$10 to Monzon. Casillas obtained a Bud Light for herself, poured it into a Styrofoam cup, and began to consume it.

Casillas subsequently asked Officer Monzon if he wanted another beer. He said that he did, but that it would be his last one. Casillas stated that it would be her last one as well, then asked him to buy her a beer. He agreed and paid with the \$10 bill. Casillas placed the money in the register and obtained \$5 in change, which she placed under the bar counter. Casillas picked up another Bud Light and poured it into the Styrofoam cup. (Counts 8 and 9.)

Counts 10 through 15

On February 1, 2013, Officer Monzon returned to the licensed premises with Officer Coreas. They entered, sat down at the bar counter, and ordered two Corona beers from Casillas. Casillas served the beers to them and charged them \$5 each. Camacho later entered and sat at a table by himself. He ordered a beer from Aguilar, who served it to him. She charged him \$5, which he paid.

Aguilar asked Officer Monzon to buy her a beer. He agreed, and she ordered a Bud Light from Casillas. Aguilar stated that the beer would cost \$10. Monzon handed a \$50 bill to Casillas, who took it to the register and obtained \$45 in change. She handed \$40 of the change to Monzon and \$5 to Aguilar. Aguilar began to consume her beer.

Aguilar later asked Officer Monzon to buy her another beer. He agreed and handed \$20 to Casillas. Casillas took the money to the register and obtained some change. She gave \$10 of the change to Monzon and \$5 to Aguilar. She also served a Bud Light to Aguilar. (Count 10.)

After Officer Monzon and Aguilar danced, she asked him if he would buy her

another beer. Sandoval was four to five feet away at the time. Monzon agreed and handed \$20 to Casillas. Casillas took the money to the register and obtained some change. She handed \$10 of the change to Monzon and the remaining \$5 to Aguilar. Sandoval was in a position to observe this transaction. Casillas served another Bud Light to Aguilar. (Count 15.)

Later, Casillas asked Officer Monzon to buy her a beer. He agreed, and Casillas served herself a Bud Light. She told Monzon that it would cost \$10, which he paid. Casillas put the money in the register and obtained \$5 in change. Casillas placed the \$5 under the counter, poured her beer into a Styrofoam cup, and began to consume it. (Count 12.)

While Officer Monzon was dancing, Officer Coreas was approached by Angela Casillas.⁶ Angela asked Coreas to buy her a beer. He agreed. Angela ordered a Coors Light from Casillas. Coreas paid with a \$20 bill, which Casillas put in the register. Casillas obtained \$15 in change, and gave \$10 of it to Coreas. She gave the remaining \$5 to Angela and served her the beer.

Angela later solicited a second beer from Officer Coreas. He agreed. She called over Casillas and ordered a Coors Light. Coreas paid Casillas with a \$20 bill. Casillas gave \$10 of the change to Coreas. She gave the other \$5 to Angela and served her a beer.

Angela solicited a third beer from Officer Coreas. Coreas agreed, and Angela ordered a beer from Casillas, who served it to her. Coreas paid Casillas with a \$20 bill.

⁶Angela Casillas will be referred to by her first name to avoid any confusion with Beatriz Casillas, appellant's bartender, whom we will continue to identify by her last name.

Casillas gave him \$10 of the change. She gave the remaining \$5 to Angela. During the course of this transaction, Angela pointed out three undercover officers who had entered the licensed premises. She told Coreas he could pretend to be her husband if anyone asked. (Counts 13 and 14.)

During the course of the evening, Aguilar solicited a beer from Officer Camacho. He agreed and handed her a \$10 bill. Aguilar obtained a beer from Sandoval, which she consumed. She did not give any change to Camacho. (Count 11.)

Aguilar admitted that someone sitting at a table offered to buy her a beer on February 1, 2013, but she did not know why. She also admitted that she kept \$5 of the change in connection with this transaction as her tip, even though the patron did not offer it to her. She specifically denied soliciting any beers.

Following the hearing, the Department issued its decision which determined that counts 2, 4, 5, and 8 through 15 had been proven and no defense was established. Counts 1, 3, 6, and 7 were dismissed. The dismissed counts included both charges of lewd conduct under rule 143.3(1)(c) and (2). The sustained counts arise solely from solicitation activity under sections 24200.5(b) and 25657, subdivisions (a) and (b).

The decision imposed a penalty of outright revocation in light of the fact that appellant directly participated in some of the transactions and was aware of others.

Appellant then filed this appeal contending (1) the sustained counts are not supported by substantial evidence, and (2) in the event that this Board dismisses some, but not all, of the charges, then it must remand for reconsideration of the penalty. These issues will be addressed together.

DISCUSSION

Appellant contends that the sustained counts are not supported by substantial

evidence. With respect to counts 2 and 4, appellant argues that Aguilar testified she did not work on the date in question and did not use the name “Maritza”; that testimony was inconsistent regarding where Maritza placed her commissions; and that Officer Camacho had almost no recollection of the date in question and had to refer to a report prepared by Officer Monzon in order to refresh his recollection. With respect to count 5, appellant argues that there is no evidence Mari overheard the solicitation. With respect to counts 8 and 9, appellant contends Monzon was unsure whether Betty had taken a commission, and that findings to that effect rely on inadmissible hearsay evidence. Finally, regarding counts 10 through 15, appellant contends that the \$5 bills paid to Aguilar were tips, since she was a waitress; that Monzon never determined Casillas was paid a commission; and that Aguilar testified she never asked for a beer, only that one was purchased for her on a single occasion.

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 Bev. Control v. Alcoholic Bev. 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 [71 S.Ct. 456]; *Toyota Motor Sales U.S.A., Inc. v. Superior Ct.* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

Moreover, it is the province of the ALJ, as trier of fact, to make determinations as to witness credibility. (*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].)

With regard to counts 2 and 4, the ALJ made the following findings of fact:

14. A waitress, Maria Aguilar,^[fn.] approached Ofcr. Camacho and asked him to buy her a beer. He agreed. Aguilar ordered a Miller beer from Casillas, who stated that it would cost \$10. Casillas obtained the beer and served it to Aguilar, this time stating that it would cost \$5. Aguilar corrected her and stated that the beer cost \$10. Ofcr. Camacho paid Casillas with a \$10 bill. Casillas obtained \$5 in change and gave it to Aguilar.

15. Aguilar testified that she was employed at the Licensed Premises in 2013, but not in 2012. Accordingly, she was not present on December 14, 2012 as the officers testified. She denied using any name other than her own.

(Findings of Fact ¶¶ 14-15.) In a footnote, the ALJ noted that "Aguilar used the name Maritza when interacting with the officers. Her actual name will be used in this decision." (Findings of Fact ¶ 14, fn. 6.)

Based on these findings, the ALJ reached the following conclusions of law:

10. On December 14, 2012, Maria Aguilar (counts 2 and 4), while working as a waitress, solicited beer from Ofcr. Camacho. In connection with this solicitation, she received a \$5 commission. As such, her actions violated sections 24200.5(b) and 25657(b). (Findings of Fact ¶¶ 14-15.) In making this determination, the officers' testimony is given more weight than Aguilar's.

(Conclusions of Law ¶ 10.)

We see no flaw in the findings and conclusions of law surrounding counts 2 and 4. The officers' testimony overwhelmingly supports the conclusion that Aguilar and "Maritza" are the same person. (See RT pp. 59-60 [Ofcr. Monzon testifies Aguilar indentified herself as Maritza]; RT at p. 95 [Monzon states that a waitress named "Alvarez" identified herself as Maritza on Dec. 14, 2012]; RT at p. 122 [Monzon corrects earlier testimony, noting that he meant to "Aguilar," not "Alvarez"]; RT at p. 113 [Monzon identifies Exhibit 5, a photograph of Aguilar, as the waitress known as Maritza]; RT at p. 183 [Ofcr. Camacho points out Maritza as Aguilar, who is seated in the courtroom, and confirms ID with reference to Exhibit 5]; RT at p. 184 [Camacho states Aguilar, also known as Maritza, worked as a waitress on Dec. 14, 2012].) This Board is bound by the credibility findings in the decision below. The ALJ expressly credited the officers' testimony over Aguilar's, and we have no cause to second-guess that determination.

Appellant also insinuates — but does not directly state — that there is a conflict in the testimony regarding where Aguilar placed her commissions. Appellant states, "Camacho testified that Aguilar was wearing an apron when he saw her at the premises, then testified she placed a commission in her front right pants pocket, notwithstanding that on another investigation date it was stated that she placed commissions in her apron pocket." (App.Br. at p. 7.)

Officer Camacho testified that on December 14, 2012, Aguilar put her \$5 commission "in her left pants pocket, the front." (RT at p. 187.) Officer Monzon testified that on February 1, 2012, Aguilar took her \$5 commission "and saved it on [sic] the apron pocket on the front." (RT at p. 45.) The officers describe Aguilar's treatment

of two separate commissions on two separate dates. It is not unreasonable to infer that she placed her commission in different places on different dates, nor is it unreasonable to infer that, on December 14, 2012, she put the money in her pants pocket while simultaneously wearing an apron. There is absolutely no conflict in the testimony.

Finally, appellant objects that Officer "Camacho has almost no recollection of the events of December 14th and frequently referenced the police report for guidance." It is true that Camacho repeatedly referred to the police report to refresh his recollection. Moreover, appellant points out that the police report was prepared by Monzon, not Camacho, and argues, rather cryptically, that "there is an apparent disconnect between what Camacho doesn't recall and what Monzon wrote."

California Evidence Code section 771 is quite liberal in permitting a witness to rely on just about anything — including a police report prepared by another officer — to refresh his memory while on the stand, provided it is produced at the hearing at the request of the adverse party. A witness may rely on "a writing," with no express restrictions on the types of writings or the means used to refresh recollection." (3 Witkin Cal. Evidence § 192, citing Cal. Evid. Code § 771, Legislative Committee com.) At one time, a witness' recollection could *only* be refreshed using writings made by the witness himself or under his direction. (See 3 Witkin, *supra*, at § 192(1).) This is no longer the law. Instead, section 771 "relies on the procedure governing its use to protect against false or manufactured evidence or other abuses." (*Id.* at § 192(2).) Officer Camacho's reliance on Officer Monzon's police report to refresh his recollection of events was perfectly legal — and perhaps unsurprising, given that more than a year had passed since the investigation was completed.

Counts 2 and 4 are supported by substantial evidence, and are therefore

affirmed.

With regard to count 5, appellant objects that there is "no evidence that Mari ever overheard any solicitation, or permitted anyone to solicit or that she paid any commission as evidenced by Monzon's testimony." (App.Br. at p. 7.)

Count 5 alleges that Mari *herself* solicited a beer from Officer Monzon, in violation of section 25657, subdivision (a). Subdivision (a) of that provision makes reference only to the act of solicitation — it does not require payment of a commission.

Undisputed testimony establishes that "Mari" was an alternate name used by appellant's bartender, Beatriz Casillas. (See, e.g., RT at pp. 20-21.) The ALJ made the following findings of fact:

11. Casillas asked Ofcr. Monzon to buy her a beer. He agreed and gave her \$10. She took the money and obtained a can of beer. She poured the beer into a Styrofoam cup and handed \$5 in change to Ofcr. Monzon.

(Finding of Fact ¶ 11.) Based on this, the ALJ reached the following conclusion of law:

11. Also on December 14, 2012, Casillas (count 5), while working as a bartender, solicited a beer from Ofcr. Monzon. She did not retain a commission as part of this transaction. Payment of a commission is only one way this section can be violated, however. It also can be violated if a licensee "employ[s], upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages." Such was the case with Casillas on this date. (Finding of Fact ¶ 11.)

(Conclusions of Law ¶ 11.)

The ALJ correctly stated the law: the payment of a commission is not necessary; a violation may exist where an individual is employed for the purpose of soliciting drinks. The evidence establishes that Casillas, identified as Mari, while working as appellant's employee, solicited an alcoholic beverage from Officer Monzon. It was reasonable for the ALJ to infer — particularly in the absence of evidence to the contrary

— that she was employed to do so. Moreover, we are perplexed by appellant's claim that Mari did not overhear a solicitation. How could she fail to overhear a solicitation she made herself?

Count 5 is supported by substantial evidence, and is therefore affirmed.

With regard to counts 8 and 9, appellant argues that "Monzon testified he was not sure Betty had taken a commission. Without evidence of the payment of a commission Betty's alleged statement that she solicited him is hearsay under Government Code Section, [*sic*] 11513d and not admissible to show anything." (App.Br. at p. 8.)

The undisputed evidence establishes that "Betty" is a second alternate name used by appellant's bartender, Beatriz Casillas. (See, e.g., RT at p. 36.) The ALJ made the following findings of fact:

16. On January 10, 2013, Ofcr. Monzon returned to the Licensed Premises. He entered by himself and took a seat at the bar counter. He ordered a Corona beer from Casillas, who charged him \$5.

17. After he had been inside a while, Casillas approached him and asked if he wanted another beer. He stated that he did not like to drink alone. Casillas stated that he would not have to if he bought her one. He agreed and handed her a \$20 bill. Casillas took the money and obtained \$15 in change. She placed \$5 of the change under the bar counter and gave the other \$10 to Ofcr. Monzon. Casillas obtained a Bud Light for herself, poured it into a Styrofoam cup, and began to consume it.

18. Casillas subsequently asked Ofcr. Monzon if he wanted another beer. He said that he did, but that it would be his last one. Casillas stated that it would be her last one as well, then asked him to buy her a beer. He agreed and paid with the \$10 bill. Casillas placed the money in the register and obtained \$5 in change, which she placed under the bar counter. Casillas picked up another Bud Light and poured it into the Styrofoam cup.

(Findings of Fact ¶¶ 16-18.) Based on these findings, the ALJ reached the following conclusions of law:

12. On January 19, 2013, Casillas, while working as bartender, solicited two beers from Ofcr. Monzon. In connection with each solicitation, she kept a \$5 commission. As such, her actions were in violation of sections 24200.5(b) and 25657(a). (Findings of Fact ¶¶ 16-18.)

(Conclusions of Law ¶ 12.)

It is undisputed that Casillas (identified, at this point, as Betty), after soliciting beers from Officer Monzon, twice retained \$5 and placed it under the bar. We are bound to accept all reasonable inferences that support the Department's findings. The ALJ clearly inferred that each \$5 Casillas retained represented a commission for the solicitation of a drink. This inference was reasonable.

Additionally, admission of Betty's comments was proper. Both the Government Code and the Code of Regulations explicitly permit the use of hearsay in administrative hearings "for the purpose of supplementing or explaining other evidence." (Gov. Code § 11513(d); Cal. Code Regs., tit. 2, § 7429(f)(4).) Here, Casillas' comments to Officer Monzon, stating that he "didn't have to drink alone if [he] bought her a beer" (RT at p. 37) and asking, upon Monzon's last beer, if it was her last as well (RT at p. 39), merely supplement other undisputed evidence of her physical actions, including retrieving a beer, drinking it, and accepting Monzon's payment for it. (See RT at pp. 36-41.) The statements were admissible as administrative hearsay.

Counts 8 and 9 are supported by substantial evidence and are therefore affirmed.

With regard to counts 10 through 15, appellant contends that "[i]t is reasonable to infer that Monzon's two \$5.00 bills handed to Aguilar were tips since she was a waitress at the time." (App.Br. at p. 10.) Appellant again directs this Board to Aguilar's testimony, in which she claimed that she never asked for a beer, only that one was

purchased for her on a single occasion. Moreover, as with counts 8 and 9, appellant argues there is no evidence Casillas was paid a commission on her solicitation.

Notably, while appellant organizes its argument to address counts 10 through 15 as a group, none of its arguments are directed at counts 13 or 14, which alleged Casillas permitted Angela to loiter for the purposes of soliciting under sections 24200.5(b) and 25657(b), respectively. Counts 13 and 14 are therefore affirmed.

With regard to counts 10 through 12 and 15, the ALJ made the following relevant findings of fact:

19. On February 1, 2013, Ofcr. Monzon returned to the Licensed Premises with Ofcr. Coreas. They entered, sat down at the bar counter, and ordered two Corona beers from Casillas. Casillas served the beers to them and charged them \$5 each. Ofcr. Camacho subsequently entered and sat at a table by himself. He ordered a beer from Aguilar, who served it to him. She charged him \$5, which he paid.

20. Aguilar asked Ofcr. Monzon to buy her a beer. He agreed and she ordered a Bud Light from Casillas. Aguilar stated that the beer would cost \$10. Ofcr. Monzon handed a \$50 bill to Casillas, who took it to the register and obtained \$45 in change. She handed \$40 of the change to Ofcr. Monzon and \$5 to Aguilar. Aguilar began to consume her beer.

21. Aguilar subsequently asked Ofcr. Monzon to buy her another beer. He agreed and handed \$20 to Casillas. Casillas took the money to the register and obtained some change. She gave \$10 of the change to Ofcr. Monzon and \$5 to Aguilar. She also served a Bud Light to Aguilar.

22. After Ofcr. Monzon and Aguilar danced, she asked him if he would buy her another beer. The Respondent was four to five feet away at the time. Ofcr. Monzon agreed and handed \$20 to Casillas. Casillas took the money to the register and obtained some change. She handed \$10 of the change to Ofcr. Monzon and the remaining \$5 to Aguilar. The Respondent was in a position to observe this transaction. Casillas served another Bud Light to Aguilar.

23. Later, Casillas asked Ofcr. Monzon to buy her a beer. He agreed and Casillas served herself a Bud Light. She told Ofcr. Monzon that it would cost \$10, which he paid. Casillas put the money in the register and obtained \$5 in change. Casillas placed the \$5 under the counter, poured her beer into a Styrofoam cup, and began to consume it.

[¶ . . . ¶]

27. During the course of the evening, Aguilar solicited a beer from Ofcr. Camacho. He agreed and handed her a \$10 bill. Aguilar obtained a beer from the Respondent, which she consumed. She did not give any change to Camacho.

28. Aguilar admitted that someone sitting at a table offered to buy her a beer on February 1, 2013, but she did not know why. She also admitted she kept \$5 of the change in connection with this transaction as her tip, even though the patron did not offer it to her. She specifically denied soliciting any beers.

(Findings of Fact ¶¶ 19-23, 27-28.) Based on these findings, the ALJ reached the following relevant conclusions of law:

13. On February 1, 2013, Aguilar (counts 10, 11, and 15),^[fn.] a waitress, solicited three beers from Ofcr. Monzon. In connection with each solicitation, she received a \$5 commission directly from Casillas. She also solicited a beer from Ofcr. Camacho, for which she kept a \$5 commission. As such, her actions were in violation of sections 24200.5(b) and 25657(a). (Findings of Fact ¶¶ 19-22 & 27-28.) Once again, the officers' testimony is given more weight than Aguilar's.

14. Also on February 1, 2013, Casillas (count 12), while working as a bartender, solicited a beer from Ofcr. Monzon. In connection with this solicitation, she kept a \$5 commission. As such, her actions were in violation of section 25657(a). (Finding of Fact ¶ 23.)

(Conclusions of Law ¶¶ 13-14.)

With regard to counts 10, 11, and 15, we are bound by the ALJ's credibility findings. The testimony of the officers, which the ALJ gave more weight, indicated that Aguilar solicited multiple drinks. Twice, she was paid a commission by Casillas (count 10), and once, she retained the commission herself (count 11).

Appellant argues, however, that these were not commissions, but rather tips — tips, suspiciously enough, that effectively doubled the price of the beer and were admittedly never offered by the customer himself. The ALJ's inference that these were, in fact, commissions on solicited drinks was entirely reasonable.

With regard to count 15, appellant does not contend that Sandoval did not witness the transaction in question — only that Aguilar never solicited and was never paid a commission. Since the ALJ reached reasonable inferences to the contrary, we can conclude that Sandoval, the licensee, knowingly permitted Aguilar to solicit alcohol in exchange for the payment of a commission, as prohibited by section 24200.5(b).

Counts 10, 11, and 15 are therefore supported by substantial evidence, and are affirmed.

Only count 12 remains. Appellant again argues that when Casillas placed \$5 under the bar, Monzon could not determine that this was a tip. As with counts 8 and 9, the ALJ clearly inferred that the \$5 Casillas retained represented a commission for the solicitation of a drink. This inference was reasonable. Count 12 is also affirmed.

In sum, appellant is merely asking this Board to review the same set of facts and reach a different set of inferences and conclusions. This we cannot do.

Because we affirm all counts sustained in the decision below, we need not consider remand for reconsideration of the penalty imposed.

ORDER

The decision of the Department is affirmed.⁷

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

⁷This 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.

APPEALS BOARD