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

AB-9488
File: 47-329792 Reg: 14079899

JOANNE JANICE FRANKLIN,
dba Ketch Joanne Restaurant & Harbor Bar
17 Johnson Pier, Pillar Point Harbor
Princeton-by-the-Sea, California 94018,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Nicholas R. Loehr

Appeals Board Hearing: July 9, 2015
San Francisco, CA

ISSUED JULY 31, 2015

Appearances by counsel:

Rebecca Stamey-White of Hinman & Carmichael for appellant Joanne Janice Franklin, dba Ketch Joanne Restaurant & Harbor Bar.

Dean Lueders for respondent Department of Alcoholic Beverage Control.

Opinion:

This appeal is from a decision of the Department of Alcoholic Beverage Control[1] which suspended appellant's license for 5 days for exceeding license privileges, a violation of Business and Professions Code sections 23300 and 23355.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general bona fide public eating place license was issued on

[1]The decision of the Department, dated December 4, 2014, is set forth in the appendix.

April 11, 1997. Appellant's license was previously disciplined once, for a sale-to-minor violation, in a decision issued in December of 2010.

On February 3, 2014 the Department instituted a three-count accusation against appellant. Count 1 alleged that the appellant, through her employee, exceeded her license privileges by permitting a patron to leave the premises with an open container of alcohol. Counts 2 and 3 each alleged that one of two bartenders served an alcoholic beverage to an obviously intoxicated person.

At the administrative hearing held on May 14, 2014, documentary evidence was received and testimony concerning the violations charged was presented by Agent Richard G. Doermann of the Department of Alcoholic Beverage Control; by Joshua Taylor, the patron in question in all three counts of the accusation; by Amber Brisebois, a friend of Taylor's, and Marissa Jankowski, an acquaintance of Taylor's, both of whom were present at the licensed premises on the night in question; by Alexandra Deeter and Jacqueline Huerta-Martinez, appellant's bartenders; by Karen Nelson, appellant's server; by Salvador Villanueva, appellant's host; by Heidi Franklin, appellant's family member and general manager; and by Albert Dunne, appellant's manager.

Testimony established that on January 3, 2014, Department Agents Doermann and Stockbridge visited the licensed premises in response to complaints of disorderly house conduct. They arrived at approximately 9:30 p.m. The licensed premises consisted of a bar area and a restaurant. Doermann and Stockbridge took seats in a booth located in the back corner of the bar area. Two bartenders were working at the time: Jacqueline Huerta-Martinez and Alexandra Deeter.

Agent Doermann observed Joshua Taylor in the bar area intermittently for approximately one and a half to two hours. During this time, Huerta-Martinez served

Taylor a "screwdriver," which consists of vodka mixed with orange juice.

Agent Doermann saw Taylor exit the premises with the screwdriver and go outside to a back patio. The rear exit door was located by the back of the bar, near a brick fireplace wall. The bar area was in very close proximity to the exit. Doermann did not see the bartenders viewing Taylor's exit to the outside patio.

The premises has a sign posted by the rear exit door saying "No Alcohol Outside - Thank You Harbor Bar." The sign was posted on January 3, 2014, the night in question. Later, appellant placed another sign outside on the patio bench that says "No alcohol outside Thank You." The outside patio is not licensed for the sale, service, or consumption of alcoholic beverages.

Doermann followed Taylor outside and saw him sitting alone on a small bench. He saw Taylor consuming his drink. Taylor was sitting quietly and he exhibited no loud or boisterous behavior. There were no other patrons or any employees outside. Taylor remained outside for approximately 10 to 15 minutes, then returned inside the licensed premises.

After the hearing, the Department issued its decision which determined that count 1 was proven and no defense was established. Counts 2 and 3 were dismissed and are not at issue in this appeal.

Appellant filed a timely appeal contending that the findings of fact underlying the conclusion that Taylor took an alcoholic beverage outside the licensed premises are not supported by substantial evidence because the ALJ failed to acknowledge testimony contradicting Agent Doermann's version of the events.

DISCUSSION

Appellant contends that the findings of fact contained in the Department decision are not supported by substantial evidence because they rely solely on the version of events offered by Agent Doermann, and do not "consider the entirety of the testimony presented." (App.Br. at p. 13.) In particular, appellant argues that Agent Doermann's testimony was vague and inconsistent; that the ALJ found Taylor's testimony sufficiently credible to dismiss counts 2 and 3, but not credible with regard to count 1; that the ALJ's finding that Taylor was not credible is flawed because Taylor never admitted that cocaine impairs his judgment; and finally, that the ALJ fails to consider or even acknowledge the testimony of a number of witnesses indicating that Taylor never took his drink outside.

Business and Professions Code section 23300 provides: "No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division." Similarly, section 23355 provides: "Except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the license provided for in Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued."

It is undisputed that the patio area of the premises is not licensed for the sale or consumption of alcoholic beverages. The issue on appeal is therefore one of pure fact: was there substantial evidence to support the conclusion that Joshua Taylor brought his drink onto the unlicensed patio on the night in question?

When findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernard* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].) Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of Cal.* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

> We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] 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. [Citation.] 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 Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (*Masani*) (2004) 119 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

It is the province of the ALJ, as the 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].) The Appeals Board will not interfere with those determinations in the absence of a clear showing of abuse of discretion.

Regarding count 1, the ALJ did indeed decline to credit Taylor's testimony:

> 6. Joshua Taylor testified that he went outside to the patio, but he left his drink on the bar. Taylor claims he went outside to smoke a cigarette and hang out with friends. Taylor's testimony on this point is not credible. He testified that he consumed approximately 15 screwdrivers during the course of the day. In addition, Taylor imbibed cocaine, which he admitted

> impairs his judgment. Taylor's impairment makes his testimony untrustworthy concerning this issue.

(Findings of Fact ¶ 6.)

Appellant insists that Taylor never admitted that cocaine impairs his judgment. (App.Br. at p. 12.) There are two significant problems with this assertion. First, it is facially inaccurate. On cross-examination, the following exchange took place:

> [MR. LUEDERS:] Q. Did you ingest any other substance *that would impair you* that day?
>
> [MR. TAYLOR:] A. Yes.
>
> Q. And what was that substance?
>
> A. Cocaine.

(RT at p. 134, emphasis added.) Counsel for the Department specifically asked Taylor if he had ingested substances that would impair him, and Taylor responded that he had used cocaine. The inevitable inference is that cocaine is a substance that impairs Taylor, though it obvious that the quantity of cocaine ingested and the time or times at which it was ingested during the day (questioned never asked of the witness) are pertinent to the degree, if any, of impairment.

Appellant argues in addition that despite Taylor's consumption of both alcohol and cocaine, the ALJ was not free to discredit Taylor's testimony:

> [T]hat Taylor stated he consumed fifteen screwdrivers, the strength of which are unknown, without consideration of the effect of a nap, food intake, Taylor's tolerance, health, youth and relative ability to appear not obviously intoxicated to the two bartenders who served him, does not make his testimony about the evening uncredible without a factual showing or testimony that he was incapacitated.

(App.Br. at p. 12.) Maybe yes and maybe no, but more likely yes. Taylor admitted that, during the course of the day in question, he had consumed not only *fifteen* alcoholic

beverages, but also cocaine (though again we do not when during the day or how much) — an ingestion supporting an inference of intoxication, for most mere mortals who admit doing so. Taylor's own testimony was, therefore, sufficient to support a finding of likely intoxication that casts suspicion on his recollection of the salient events. Taylor did not need to be visibly "incapacitated," as appellant suggests, for his judgment and perception to be rendered unreliable. (See *id.*)

Moreover, there is no conflict in the ALJ's assessment of Taylor's credibility. Appellant insists that the ALJ relied on Taylor's testimony in dismissing counts 2 and 3, both of which alleged that appellant's bartenders sold alcohol to Taylor despite obvious intoxication. Appellant writes, "The ALJ accepted much of [Taylor's] testimony to support the findings that he was not obviously intoxicated, and yet, on the count related to him bringing a drink outside, dismissed his testimony as uncredible due to his consumption habits that day." (App.Br. at p. 2.)

A review of that portion of the decision, however, reveals that the ALJ never once relied on Taylor's own testimony in determining that Taylor was not obviously intoxicated:

> Even though Agent Doermann focused more intensely on the unidentified patron described above, his attention was also drawn to Joshua Taylor. Doermann testified he believed Taylor was intoxicated when he (Taylor) first entered the Harbor Bar. The factors that Agent Doermann relies upon to form this opinion included the following; Taylor had a blank stare, his movements were slow and deliberate, he was quiet, his hair was disheveled, and his coat "appeared to be draped over him instead of being worn properly." Taylor also was careful getting onto his barstool and he slouched. The court notes there is no evidence Taylor wobbled on his barstool, had any difficulty sitting or staying on the stool, and he never slid or fell off the barstool. As he continued to observe Taylor, Agent Doermann believes Taylor was "muttering". (State's Exhibit 2)
>
> Agent Doermann testified that Joshua Taylor also had a flushed face and glassy, watery eyes. However, this information does not appear in

Doermann's report that was prepared shortly after the incident. Therefore, it is given little weight in assessing the factors Agent Doermann relied upon to form his opinion. (*Id.*)

Agent Doermann saw Taylor moving around amongst the group he came in with. Doermann observed Taylor drink from 3 separate bottles of beer, but he did not observe Taylor actually finish any of the bottles. Indeed, there is no evidence Taylor actually ordered any of the beer, and the evidence indicates he may have only been taking sips from friend's [*sic*] bottles on the bar. There is no conclusive evidence concerning the amount of beer Taylor consumed during the time Doermann was watching him. Agent Doermann also saw Taylor consume 2 shots of Fireball during this time. The aforementioned unidentified male in the group seems to have purchased the shots. Taylor denies drinking any Fireball shots. *Agent Doermann's testimony is more credible than Taylor's account because of Taylor's indulgence in cocaine and alcohol on this day*.

As Joshua Taylor was moving around within the bar, Agent Doermann saw him bump into another patron or patrons. Agent Doermann also testified that Taylor "almost" bumped a patron into the wood stove. However, the patron never fell against the stove or touched it. The Court notes the very cramped space in and around the bar and wood burning fireplace where Taylor's group was located. (Exhibit A 1-6) It is certainly conceivable that patrons might bump into one another, intoxicated or not, and jostle them in this small area. The evidence does not support a conclusion that Taylor was so intoxicated that his balance and coordination were severely impaired. The evidence more strongly suggests Taylor was bumping into patrons in a fairly small bar area because of congestion and inattentiveness.

Taylor was not sober during his time in the Harbor Bar, but he was not exhibiting some of the classic signs of overt intoxication that a reasonable person, including a bartender, might observe; loud, obnoxious behavior, lack of coordination (falling, weaving, and inability to handle money), combativeness, bloodshot eyes, strong odor of alcohol on his breath, or slurred speech.

Agent Doermann testified that while Taylor was sitting at the bar there was nothing to obstruct either bartender's view of him. However, since Taylor was moving around inside the bar, and traversing between the bar and restaurant, he would not have been in the bartender's [*sic*] field of vision the entire time.

Agent Doermann testified that he waited until Taylor had consumed the 2 Fireball shots and "3 beers" before making his final determination that Taylor was "obviously intoxicated." In part, Doermann wanted the bartenders to be able to observe the signs of "obvious intoxication that he

> thought established this conclusion. Significantly, Agent Doermann testified that the only additional sign of obvious intoxication that Taylor manifested following his initial entry into the bar was that he was "muttering" to himself. However, Doermann never saw or heard Taylor muttering to the bartenders.
>
> When Taylor re-entered the bar after going outside to the unlicensed area with his Screwdriver, Agent Doermann observed him go to the bar. The bartender, Alexandra Deeter, waited on him. Doermann saw Taylor ordering a drink, but he could not hear Taylor speaking.
>
> Agent Doermann believes Taylor had difficulty getting his credit card out of his wallet and exhibited impaired fine motor movements. Nevertheless, Taylor produced his credit card to Deeter without dropping, fumbling, or otherwise bungling its presentation.

(Findings of Fact ¶¶ 8-12, emphasis added.) Additionally, the ALJ considered testimony from Alexandra Deeter and Villanueva that Taylor is a regular (Findings of Fact ¶ 13); that Deeter has, in the past, refused to serve Taylor due to obvious intoxication (Findings of Fact ¶ 14); and that while Taylor was not sober, he did not, on this occasion, show obvious signs of intoxication (Findings of Fact ¶¶ 14, 15). The ALJ's dismissal of counts 2 and 3 was not, as appellant suggests, predicated on Taylor's own testimony; it was based on the observations of Agent Doermann — which, in the opinion of the ALJ, failed to establish obvious intoxication — and on the direct observations of Deeter and Villanueva.

It is true that the ALJ recites a small portion of Taylor's testimony relevant to counts 2 and 3, including that Taylor "does not think he spilled" a shot of Jaegermeister he purchased for Villanueva, and that he "does not think he had any difficulty getting his credit card out of his wallet." This testimony is uncertain, however, and more importantly, merely duplicative of the testimony already offered by Agent Doermann, Deeter, and Villanueva. The ALJ did not rely on these brief and dubious snippets in reaching his decision to dismiss counts 2 and 3, nor did he give credit to Taylor's

testimony, either explicitly or implicitly. In fact, he went so far as to repeat his conclusion that Taylor's testimony was *not* credible due to Taylor's consumption of alcohol and cocaine. (Findings of Fact ¶ 9, echoing assessment made in Findings of Fact ¶ 6.)

Appellant also takes issue with the ALJ's failure to acknowledge the testimony of other witnesses, including appellant's server, Karen Nelson, and its bartenders, Jacqueline Huerta-Martinez and Alexandra Deeter. Appellant contends that these witnesses corroborated Taylor's testimony that he did not bring his drink outside to the unlicensed patio.

Appellant first points to the testimony of bartender Huerta-Martinez. Huerta-Martinez testified that Taylor ordered a screwdriver from her, and that she served it to him. (RT, Vol. II, at pp. 62-63.) She also testified that she saw him drink some Jaegermeister (RT, Vol. II, at p. 85), though she appears to contradict herself on this point (RT, Vol. II, at p. 82, 84). It is true that Huerta-Martinez testified on direct examination that she did not see Taylor leave the premises with an alcoholic beverage:

> [MS. STAMEY-WHITE:] Q. Did you see Mr. Taylor leave the premises with a drink that night?
>
> [MS. HUERTA-MARTINEZ:] A. No.
>
> Q. How can you be sure?
>
> A. Well, Josh [Taylor] — Josh has been there plenty of times before and knows how to read. So he's read the signs. He knows all too well that there are no drinks allowed outside the premises, whether it's out front or out back.

(RT, Vol. II, at p. 66.) Huerta-Martinez's certainty that Taylor never left the premises with an alcoholic beverage was not based on actual observation, but on her own assumptions about Taylor's knowledge, abilities, and willingness to comply. Such

speculative testimony does little to bolster appellant's case, and was properly ignored.

Huerta-Martinez also testified on cross-examination that she saw Taylor and his group of friends leave the bar:

> [MR. LUEDERS:] Q. Did you ever see that group that [Taylor] was with leave the bar?
>
> [MS. HUERTA-MARTINEZ:] A. Yeah, they did on occasion. They usually smoke. So they went on a cigarette break once or twice.
>
> Q. Are you certain they went on a cigarette break once or twice?
>
> A. I can't be certain but it — usually maybe once.
>
> Q. Okay. And how long were they gone when they were on their cigarette break?
>
> A. No more than 15 minutes.

(RT, Vol. II, at p. 86.) Huerta-Martinez's admittedly uncertain testimony tells us only that the group, as a whole, left the premises to smoke "usually maybe once," for about fifteen minutes. It does not tell us whether Taylor, as an individual, actually departed the bar or instead lingered on the patio, and it certainly does not tell us whether, on this particular occasion, Taylor was carrying an alcoholic beverage when he went left the premises. Again, Huerta-Martinez's testimony is unhelpful and was properly omitted.

Lastly, appellant treats Huerta-Martinez's "usually maybe once" smoking break as concrete fact and argues "Taylor only ordered the screwdriver after he returned from a smoking break, so he could not have taken it outside the bar." (App.Br. at p. 8.) Huerta-Martinez did testify that Taylor ordered the screwdriver after reentering the premises:

> [MS. STAMEY-WHITE:] Q. At that point when he ordered the drink from you, were you able to observe his appearance before serving him the drink?

> [MS. HUERTA-MARTINEZ:] A. Yes. He came in from the back entrance. He had been gone for a little bit. So — which I'm considering is probably his smoke break. He came in. He sat down at the end of the bar, and I asked him, "What's up?"
>
> He's like, "Nothing. Can I get a drink?"
>
> "Of course. What do you want?"
>
> "A screwdriver." I gave him a screwdriver.

(RT, Vol. II, at pp. 62-63.) She also testified on examination by the court that Taylor left his drink on the bar and remained in the premises until his arrest:

> [THE COURT:] Q. After he sat down and ordered a drink, you served it to him, approximately how long was it after he took that first sip that you saw him be arrested or taken out?
>
> [MS. HUERTA-MARTINEZ:] A. It was probably 20 minutes, 20 to 30 minutes.
>
> Q. What was he doing during those 20 or 30 minutes?
>
> A. At this point he had left the drink that I served him, the screwdriver, in front of the seat where I served it to him. And he walked over to right in front of bar 3 where the gentlemen had been sitting, and he was standing there with his friends.
>
> Q. He left his drink up on the bar?
>
> A. Yes.

(RT, Vol. II, p. 81.) Appellant offers Huerta-Martinez's testimony in order to corroborate Taylor's claim — rejected by the ALJ — that he left his screwdriver on the bar. Taylor, however, also testified that *he went outside* and left his drink in the bar. (RT, Vol. I, p. 126.) Huerta-Martinez's testimony directly contradicts Taylor's on the salient question of whether Taylor went outside to the patio after ordering his screwdriver. If Huerta-Martinez's testimony buttresses Taylor's on one point, it undermines it on another. Her testimony can hardly be said to corroborate Taylor's version of events, is therefore unhelpful to appellant's case, and was properly omitted from consideration.

Second, appellant directs this Board to the testimony of bartender Alexandra

Deeter. Deeter testified on cross-examination that she did not see Taylor consume any alcohol on the night in question, but that he did purchase two drinks for others. (RT, Vol. II, at p. 113.) The relevant question for purposes of count 1, however, is not whether Taylor *consumed* an alcoholic beverage,[2] but whether he carried an alcoholic beverage outside the licensed premises and onto the unlicensed patio. Deeter, in fact, testified that Taylor and his friends *did* leave the bar:

> [MR. LUEDERS:] Q. Did you ever see [Taylor] leave the location that you identified on the photograph?
>
> [MS. DEETER] A. Yes.
>
> Q. Where did he go?
>
> A. He left the bar.
>
> Q. How do you know he left the bar?
>
> A. Because I did not see him in the bar.
>
> Q. And so that's the only reason why you believe he left the bar is because you didn't see him inside?
>
> A. Well, him and his friends, yeah, I saw them leave. They weren't in the bar anymore, and then they came back about a half hour, hour later.

(RT, Vol. II, at p. 117.) Deeter's testimony is entirely unhelpful. It is not clear whether she *actually* saw Taylor and his friends leave the premises, or merely inferred that they had left based on their apparent absence. If she did see them leave, she does not say whether they actually departed the premises or merely went outside to the patio. Most significantly, Deeter does not tell us whether Taylor was carrying an alcoholic beverage at the time. In sum, Deeter's testimony is utterly unhelpful, and the ALJ was justified in

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[2]It is worth noting, however, that based on his own testimony, Huerta-Martinez's, and Agent Doermann's, Taylor did consume some portion of the screwdriver.

omitting it.

Third, appellant objects to the ALJ's failure to consider or reach a credibility finding on the testimony of Karen Nelson, the server who waited on Agents Doermann and Stockbridge. According to appellant, Nelson testified that "she did not observe the agents get up from their table while they were at the Harbor Bar, and never saw them go outside." (App.Br. at p. 9.) On cross-examination, however, appellant admitted she could not be sure that the agents never left the booth:

> [MR. LUEDERS:] Q. Did you constantly watch those two individuals?
>
> [MS. NELSON:] A. Yeah, it's my job as a server to check on them.
>
> Q. Well, I mean 100 percent of the time did you watch everything they did?
>
> A. Not 100 percent of the time. That would be impossible.
>
> Q. 25 percent of the time?
>
> A. I'd say more than that.
>
> Q. 30?
>
> A. I mean, every time I walk into the bar, you glance over in that area because it's a back corner table. So it's in the station for us to pick up our alcohol right there. So they're just off to the left of me. So not only did I check on them a lot but I also — each time you go into the bar, you check to look over there.
>
> Q. Well, the reason I'm asking is because you testified that you never saw those gentlemen stand up. So I wanted to know if you were watching them all the time they were there and could state that they never stood up guaranteed 100 percent between the hours of 9:00 to 11:00.
>
> A. I can't guaranty [*sic*] they never stood up.

(RT at pp. 149-150.) To paraphrase, Nelson was not certain. In light of her responses on cross-examination, Nelson's testimony does not tell us that Agent Doermann *never* went to the patio; it tells us only that he didn't go outside during the moments Nelson

happened to be looking toward the booth. There was no cause for the ALJ to consider Nelson's testimony on this point, or make a credibility ruling on it.

In sum, the testimony offered by Huerta-Martinez, Deeter, and Nelson does nothing to corroborate Taylor's testimony, and in some cases directly contradicts it. We see no reason why the ALJ should be required to map an entire labyrinth of vague, inconsistent, and speculative testimony, particularly where that testimony tends, as here, to contradict — rather than corroborate — appellant's primary witness.

Despite gaps in her own witness' testimony, appellant argues that Agent Doermann's testimony was inconsistent and should have been rejected. Appellant points to two segments of Doermann's testimony. First, after appellant's counsel elicited the booth's physical characteristics and its location in the restaurant, the following exchange took place:

> [MS. STAMEY-WHITE:] Q. Agent Doermann, were you seated in the booth the entire time that you were at [the licensed premises]?
>
> [Agent Doermann:] A. I was seated in the booth the entire time, yes, ma'am.
>
> Q. In that same booth?
>
> A. In that same booth, yes, ma'am. At various locations in that booth, but, yes, in that booth.

(RT, Vol. I, at p. 41.) Appellant argues that Agent Doermann later contradicted himself by claiming he went outside to observe Taylor:

> [MS. STAMEY-WHITE:] Q. So before when you said you didn't ever leave the booth, you did leave the booth at least once.
>
> [AGENT DOERMANN:] A. Well, yeah, to follow him out.
>
> Q. To go outside?
>
> A. Yes, ma'am.

(RT, Vol. I, at p. 91-92.) Based on these two portions of the record, appellant would have this Board conclude that "Doermann was inconsistent about the conduct of his investigation. He testified that he did not leave his bar booth while he was at the Ketch Joanne, and later that he actually did leave to go outside to observe Taylor." (App.Br. at p. 11.)

Appellant mischaracterizes the testimony. Agent Doermann did not testify that he *never left the booth*; he testified that he was "seated in the booth the entire time." (RT, Vol. I, at p. 41.) The difference is subtle: being *seated in the booth* the entire time may simply imply that he was not seated elsewhere — he never moved to a table, for example, or to a barstool. *Never leaving the booth*, on the other hand, leaves less to interpretation: it implies that he remained steadfastly within the booth's confines. The latter phrasing was offered only by appellant's counsel, not by Agent Doermann himself. (See RT, Vol. I, at pp. 91-91.)

In any event, it is the province of the ALJ to reach inferences and resolve conflicts in the evidence. The ALJ found that Agent Doermann did leave the booth to follow Taylor outside. We have no grounds to question his interpretation of Doermann's testimony.

Appellant also contends that Doermann's choice of the back bar booth would have limited his visibility and hampered his investigation. Doermann did testify that he needed to adjust his position in the booth to view the bar area:

> [MS. STAMEY-WHITE:] Q. What other positions were you in?
>
> [AGENT DOERMANN:] A. When I was making the observation of Joshua, then I would have been sitting on the edge of that portion because I needed to have a clear view of him in order to make the observations."

(RT, Vol. 1, p. 42.) Marissa Jankowski, an acquaintance of Taylor's, testified that the Doermann's booth has a "skewed view" of the bar area. (RT, Vol. 2, at p. 42.) Huerta-Martinez suggested that from Doermann's booth, it would be "kind of hard . . . to get a good view of what's going on on the bar." (RT, Vol. 2, at p. 59.) At no point does any witness or other evidence establish that it was *impossible* to view the bar. Appellant's conclusion that the agents' choice of booth "hampered the investigation" (App.Br. at p. 11) is unsupported.

Finally, appellant objects to the ALJ's conclusion that "There is no evidence the licensee has any protocols to monitor and detect" patrons bringing alcoholic beverages onto the unlicensed patio. Appellant argues that she does take preventative measures:

> Huerta[-Martinez] testified that the bar has policies and signage in place to prevent patrons from exiting the bar with open containers, that she did not permit Taylor to take a drink outside . . . . Nelson testified that she was part of the security team to enforce the bar's policies against drinking off the premises.

(App.Br. at p. 13.) In fact, while Nelson *started* working at the licensed premises as "bar security," on the date in question, she was working as a food server. (RT, Vol. II, at p. 133.) It is unclear whether her duties as a food server included monitoring patrons exiting to the patio. If so, it is unclear how Nelson could have fulfilled those duties while also waiting on restaurant patrons. Moreover, as discussed above, Huerta-Martinez merely assumed that Taylor had read the signs regarding alcohol on the patio and was willing to comply. (RT, Vol. II, at p. 66.) Mere signage, combined with implicit trust in well-known patrons, does *not* constitute a formal protocol and is, as evidenced by this case, insufficient to prevent violations. The ALJ's conclusion on this point was fully supported by the evidence.

At oral argument, counsel for appellant described the evidence as "murky."

Indeed, the record contains a tremendous quantity of testimony from appellants' witnesses — much of it irrelevant or contradictory, and very little of it enlightening for an ALJ tasked with evaluating whether the violation in count 1 actually took place. The testimony from Agent Doermann, however, is clear, and establishes a strong prima facie case that appellant has failed to disprove. We find no error in the ALJ's decision to credit Doermann's testimony, nor do we find error in the omission of extraneous, obfuscatory testimony.

ORDER

The decision of the Department is affirmed.[3]

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

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[3]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.