

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

AB-9020

File: 47-416483 Reg: 08069601

MOPAN INVESTMENTS, INC., dba Ten Restaurant Paninni Tentation
4647 MacArthur Blvd., Newport Beach, CA 92660,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: May 6, 2010
Los Angeles, CA

ISSUED JULY 16, 2010

Mopan Investments, Inc., doing business as Ten Restaurant Paninni Tentation (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license, subject to a three-year probationary period and a 25-day suspension, for violation of Health and Safety Code Sections 11379, subdivision (a) and 11360, subdivision (a).

Appearances on appeal include appellant Mopan Investments, Inc., appearing through its representative, Toufie Sarwai, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated February 19, 2009, is set forth in the appendix.

PROCEDURAL HISTORY

Appellant's on-sale general public eating license was issued on December 31, 2004. On September 11, 2008, the Department filed an accusation against appellant charging that appellant's employees sold controlled substances and narcotics to an undercover investigator on three separate occasions.

At the administrative hearing held on January 28, 2009, documentary evidence was received and testimony concerning the violations charged was presented.

Subsequent to the hearing, the Department issued its decision which determined that appellant's license should be revoked, but stayed revocation subject to the conditions that the license be suspended for 25 days, and that no cause for disciplinary action occur within the three-year probationary period.

Appellant filed a timely appeal, and written notice of the opportunity to file briefs in support of appellant's position was given on February 7, 2010. However no brief was filed by appellant prior to the Appeals Board hearing.

DISCUSSION

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that some error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Appellant presented oral argument in support of the proposition that a 25-day suspension would represent a severe economic hardship, such that they might not be able to remain in business. However, beyond a request for leniency, or a

postponement of the period of suspension, no legal basis for a reduction in penalty was put forth.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (*Martin v. Alcoholic Beverage Control Appeals Board & Haley* (1959) 52 Cal.2d 287 [341 P2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board may examine that issue. (*Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board* (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

Case law says that if reasonable minds might differ as to the propriety of the penalty imposed, that fact serves to fortify the conclusion that the Department acted within the area of its discretion. (*Harris v. Alcoholic Beverage Control Appeals Board* (1965) 62 Cal.2d 589 [43 Cal.Rptr. 633,636].) We believe the penalty is not excessive.

ORDER

The decision of the Department is affirmed.²

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

²This 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.