

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

AB-9296

File: 40-478972 Reg: 11076098

DONNA SAUNO, dba Rancho Café
12953 San Fernando Road, Sylmar, CA 91342-3655,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

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

ISSUED SEPTEMBER 27, 2013

Donna Sauno, doing business as Rancho Café (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license for having committed violations of Business and Professions Code section 24200.5, subdivision (b); 25657, subdivisions (a) and (b); and section 24200, in conjunction with rule 143.

Appearances on appeal include appellant Donna Sauno, appearing through her counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated July 25, 2012, is set forth in the appendix.

PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on July 15, 2009. Thereafter, on November 28, 2011, the Department instituted a 43-count accusation against appellant charging that she employed and/or permitted persons to engage in drink solicitation activities on five separate dates in January and February 2011.

An administrative hearing was held on April 12, 2012, at which time documentary evidence was received and testimony concerning the violations charged was presented by several Los Angeles police officers. Appellant presented no witnesses.

Following the hearing, the Department issued a decision which sustained 21 of the 43 counts of the accusation,² and ordered appellant's license revoked.

Appellant filed a timely notice of appeal in which she argues that the counts which were sustained were not supported by substantial evidence.

DISCUSSION

The pattern of drink solicitation in this case began at the time of Los Angeles Police Sergeant Liferlando Garcia's first visit to appellant's premises on January 14, 2011, when he was twice solicited for drinks by Patricia Rodriguez (hereafter referred to as "Patricia"). He was charged only \$4 for the Modelo beers, apparently because Patricia was not sure he was not a police officer. The counts of the accusation relating to these two solicitations were not sustained, because of the lack of any evidence of Rodriguez's employment, that appellant or her employees were aware of the solicitations, or that there was any payment or profit-sharing scheme.

These evidentiary deficiencies vanished during Sergeant Garcia's next visit to the

²The charges in counts 3, 5, 7, 9, 11 through 18, 22, 26, 27, 28, 37, 38, 39, and 43 were sustained. The remaining counts of the accusation were dismissed.

premises on January 21, 2011. (Findings of Fact 7 through 12.) Patricia was again present, and again solicited Garcia to purchase a beer for her. Garcia gave \$20 to the bartender, Elena Martinez (hereafter referred to as "Elena") for the beer, and was given \$10 in change. Elena handed \$6 to Patricia, who put it in her purse. Patricia solicited a second beer, Garcia paid with \$10, got no change, and Elena gave Patricia \$6.

A woman named Manuela Herrera Rivera (referred to in the transcript, and here, as "Laura"), joined Garcia and Patricia. Patricia told Garcia he needed to buy beers for Laura and Elena, and one for herself. He agreed to do so, and paid \$30 for the three beers. He was given no change. Elena distributed \$6 each to Patricia and Laura, and kept \$6 for herself.

Appellant's brief, while finding fault with some of the details of Sergeant Garcia's testimony, makes no attempt to dispute his testimony regarding Elena's direct involvement in the solicitation activities and her distribution to Patricia, Laura, and herself of \$6 shares of the money collected from Garcia.

Garcia visited the premises again on January 28, 2011 (Findings of Fact 13 through 19), accompanied this time by Sergeant Louis Cabrera. Patricia was again present, as was Laura. Over the course of the evening, Patricia solicited Garcia for beers six times, and Laura solicited Cabrera for beers five times. Each time, Garcia and Cabrera were charged \$10 for each beer purchased for the two women and Elena. Although the findings do not indicate any distribution by the bartenders of money to Patricia or Laura, it cannot be ignored that Elena was personally involved in the distribution of shares of the solicitation proceeds to Patricia only a week earlier, and her knowledge is imputed to appellant under established legal principles. It is well settled in alcoholic beverage case law that an employee's on-premises knowledge and

misconduct is imputed to the licensee/employer. (See *Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 377 [3 Cal.Rptr.2d 779]; *Kirby v. Alcoholic Bev. Etc. Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291].)

Also on January 28, 2011, a female undercover officer, Maricela Vargas, introduced as a relative of one of the officers, asked Patricia if there was any chance she could be employed as a b-girl. Patricia explained to her that she could start work the following week, and that beers she solicited would cost \$10, of which she could keep \$6.

Sergeants Garcia and Cabrera visited the premises once again on February 4, 2011, this time accompanied by Sergeant Pedro Rodriguez. Patricia was again present, and joined Garcia after a few minutes. Laura was also present, but seated with another patron. Again, the evening was marked by numerous drink solicitations by Patricia and others, including undercover officer Vargas — sometimes as many as five or six solicitations by a single b-girl.

In many respects, this is a typical drink-solicitation case. In other respects, it ranks high in the large number of drinks solicited during the five days of police visits. There is no reason to believe the undercover police were the only patrons being solicited to purchase drinks.

Six of the 16 counts (counts 3, 7, 11, 16, 26, and 37) charging violations of section 24200.5, subdivision (b) were sustained. The statute provides that the Department **shall** revoke a license where there are such violations. Given the number of violations of this section, coupled with the violations found involving other statutes and rules directed at solicitation, there is ample reason to sustain the Department's decision

and order. Revocation is an appropriate penalty.

The evidence is overwhelming that appellant employed or permitted persons to solicit or encourage others to buy drinks under a commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy. Every solicitation involved a \$6 commission, and all of the participants were part of a common plan or conspiracy.³

Appellant's brief is little more than an exercise in fragmentation and misdirection, and fails to persuade us that the licensee is entitled to any relief.

ORDER

The decision of the Department is affirmed.⁴

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

³As the ALJ explained, addressing the penalty issue:

As is typically the case with b-girl activity, The Department pled each solicitation under various code sections. Thus, although roughly half of the counts have been dismissed, a majority of the underlying solicitations have been established. Furthermore, [Elena] Martinez, the bartender, was directly involved in paying commissions for each beer solicited and even kept commissions in connection with beers purchased for her consumption. Accordingly, and in light of the respondent's prior disciplinary history, a severe penalty is warranted. The penalty recommended herein complies with rule 144.

⁴This 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.