

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

AB-9472

File: 20-433510; Reg: 13079430

GIL DUYST & SON, INC.,
dba Gil Duyst & Son, Inc.
515 South Lovers Lane, Visalia, CA 93292,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: April 2, 2015
Sacramento, CA

ISSUED APRIL 20, 2015

Gil Duyst & Son, Inc., doing business as Gil Duyst & Son, Inc. (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 25 days because its clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Gil Duyst & Son, Inc., through its vice-president, Kevin Duyst, in propria persona, and the Department of Alcoholic Beverage Control, through its counsel, Dean Lueders.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 25, 2006. On

¹The decision of the Department, dated September 3, 2014, is set forth in the appendix.

October 28, 2013, the Department filed an accusation charging that appellant's clerk, Fernando Rafael Guzman (the clerk), sold an alcoholic beverage to 18-year-old Quinn Connors on September 18, 2013. Although not noted in the accusation, Connors was working at the time as a minor decoy for the Visalia Police Department.

At the administrative hearing held on July 23, 2014, documentary evidence was received, and testimony concerning the sale was presented by Connors (the decoy); by Joe Paddock, a Visalia Police officer; and by Kevin Duyst, vice-president of Gil Duyst & Son, Inc.

Testimony established that on the day of the operation, the decoy entered the licensed premises and selected a three-pack of Bud Light beer. At the sales counter, the clerk asked for identification. The decoy handed him his California driver's license, which had a vertical orientation, showed his correct date of birth — April 14, 1995 — and contained a red stripe indicating "AGE 21 IN 2016." (See Exh. 5.) The clerk swiped the identification through a scanner several times, then said it didn't work. He then completed the sale without asking any age-related questions.

After the hearing, the Department issued its decision which determined that the violation charged had been proven and no defense had been established.

Appellant filed a timely notice of appeal contending: (1) the premises was misidentified as a Chevron gas station, and (2) the ID scanner has always worked, so the decoy must have switched his identification after leaving the store.

Written notice of the opportunity to file briefs in support of appellant's position was given on December 30, 2014. Appellant's opening brief was due January 30, 2015. No brief was filed, and there was no request to extend the time for the filing of briefs or to continue the hearing date of April 2, 2015.

DISCUSSION

Although appellant did not file a brief, it contends in its notice of appeal that (1) the premises was misidentified as a Chevron gas station, and (2) the ID scanner has always worked, so therefore the decoy must have switched his identification after leaving the store.

We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review. We have also reviewed the record in this matter and found it similarly unhelpful to appellant.

Appellant's first contention, regarding the possible misidentification of the premises, was discussed and resolved at the administrative hearing. While the licensed premise was originally mistakenly called a Chevron Gas Station (a past name), as opposed to 76 Conoco Phillips Gas Station (its present name), by the Department's counsel in asking a question of the minor decoy, the address of the premises was correctly stated. When the appellant later mentioned this earlier mistake in the name on the premises, the matter was clarified for all in attendance at the administrative hearing, including appellant. (See RT pp. 31-32.)

The ALJ considered and addressed appellant's second contention in his proposed decision:

Kevin Duyst, vice president of Respondent corporation, testified that the store's scanner has never failed to work. He suggested that therefore, the identification which Connors presented to the clerk was not Connors' California driver license. Mr. Duyst's suggestion is not given any weight, as it is not supported by any evidence.

(Determination of Issues II.)

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, the Appeals Board may deem the general contentions waived or abandoned. Failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal. (*Berger v. Godden* (1985) 163 Cal.App.3d 113, 1117, fn. 2 [210 Cal.Rptr. 109]; *Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710].)

We have carefully reviewed the entire record and find nothing to suggest reversible error. We also find no evidence to support appellant's contentions. Since appellant failed to file a brief, we must rely solely on the objections contained in the notice of appeal. Nothing therein provides a reason to reconsider the penalty imposed, or to disturb the decision below.

ORDER

The decision of the Department is affirmed.²

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

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.