

ISSUED JANUARY 27, 1997

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

JTC LAGUNA RESORTS	)	AB-6539
dba Boom Boom Room	)	
1401 South Coast Highway	)	File: 47-272104
Laguna Beach, CA 92651,	)	Reg: 94031464
Licensee/Appellant,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John A. Willd
DEPARTMENT OF ALCOHOLIC	)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	October 2, 1996
	)	Los Angeles, CA
_____	)	

JTC Laguna Resorts, doing business as Boom Boom Room (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended appellant's on-sale general public eating place license for five days and indefinitely thereafter, for failing to operate regularly and in a bona fide manner for the serving of meals to guests, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation Business and Professions Code §23038.

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<sup>1</sup>The decision of the Department dated May 25, 1995, is set forth in the appendix.

Appearances on appeal include appellant JTC Laguna Resorts, appearing through its counsel, Ralph B. Saltsman; and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

#### FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on December 29, 1992. Thereafter, the Department instituted an accusation against appellant on January 3, 1995. Appellant requested an administrative hearing.

The hearing was held on April 20, 1995, at which time oral and documentary evidence was received. At that hearing, it was determined that appellant was not in compliance with Business and Professions Code §23038, in that it was not serving meals to guests in a bona fide manner for compensation.

Subsequent to the hearing, the Department issued its decision, which was adverse to appellant. Appellant filed a timely notice of appeal.

Appellant has not filed a brief. At the hearing, appellant's counsel challenged that part of the order which provided that appellant's license was to be suspended indefinitely, following the initial five-day suspension, until appellant was again in compliance with the requirements of §23038. Appellant's counsel expressed concern that the Department could, without notice or hearing, retain the license without a prompt inspection to determine compliance, thus effectively extending the suspension.

Counsel for the Department represented to the Board that appellant now claims to be in compliance with §23038, and that Department investigators have reported apparent compliance.

We think that a formal request by appellant to the Department to conduct an investigation to determine whether appellant has taken the necessary steps to cure the deficiencies which resulted in the Accusation will furnish appellant the comfort it seeks. From past experience, we have no reason to believe that the Department will not act with dispatch in response to such a request.

Appellant has raised no other issues, and it is not the Board's obligation to search the record for error not pointed out by appellant.<sup>2</sup> It is the duty of appellant to show the Appeals Board that error occurred.

#### CONCLUSION

The decision of the Department is affirmed.<sup>3</sup>

RAY T. BLAIR, JR., CHAIRMAN  
JOHN B. TSU, MEMBER  
BEN DAVIDIAN, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup> Appellant's arguments to the Administrative Law Judge were essentially that its business of food service had been severely curtailed by the 1994 fires and floods in the area. The decision appears proper in that it forces appellant not to delay in setting up procedures for the serving of food, and prohibits any delay in the pursuit of conformity.

<sup>3</sup> This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.