

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

OSCAR F. CASILLAS and	)	AB-6556
PAULA C. CASILLAS)	
dba 6711 Club	)	File: 42-250097
6711 North Figueroa Street	)	Reg: 95032014
Los Angeles, CA 90042)	
Licensees/Appellants,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Frank Britt
)	
THE DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	April 3, 1996
	)	Los Angeles, CA

Oscar F. Casillas and Paula C. Casillas, doing business as the 6711 Club (appellants), appealed from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellants' on-sale beer and wine license for 20 days for selling and furnishing an alcoholic beverage to an obviously-intoxicated person, in violation of Business and Professions Code §25602(a).

Appearances on appeal included appellants Oscar F. Casillas and Paula C. Casillas, appearing through their counsel, Hector Orozco; and the Department of

¹The decision of the department dated August 10, 1995 is set forth in the appendix.

Alcoholic Beverage Control, through its counsel, David Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on November 2, 1990. Thereafter, the department instituted an accusation against the license on January 23, 1995.

An administrative hearing was held on July 11, 1995, at which time oral and documentary evidence was received. Although appellants were notified of the date, time, and place of the administrative hearing, they made no appearance at the hearing, nor were they represented by counsel. The matter proceeded as a default pursuant to §11520 of the Government Code.

At that hearing, it was determined that appellants sold and furnished beer, an alcoholic beverage, to an obviously-intoxicated person.

Subsequent to the hearing, the department issued its decision, which suspended appellants' on-sale beer and wine license for 20 days. Thereafter, appellants filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of appellants' position was given on October 19, 1995. No brief has been filed by appellants. The department has not filed a brief in this instant appeal. We have reviewed the notice of appeal and have found insufficient assistance in that document to aid in review.

The appeals board is not required to make an independent search of the record for error not pointed out by appellants. It was the duty of appellants to show the appeals board that the claimed error existed. Without such assistance by the appellants, the appeals board may deem the general contentions waived or abandoned.

See Horowitz v. Noble (1978) 79 Cal.App.3d 120, 129 144 Cal.Rptr. 710; and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531, 26 Cal.Rptr. 880, 881.

At the oral argument hearing before the appeals board, appellants' counsel appeared and argued that while appellants did not submit a brief, appellants contended that the penalty was excessive.

The court in Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 39, 152 Cal.Rptr. 285, considering penalty, stated:

"Under the relevant constitutional and statutory provisions, the Department is expressly empowered to either suspend or revoke an issued license...; the propriety of the penalty to be imposed rests solely within the discretion of the Department whose determination may not be disturbed in the absence of a showing of palpable abuse...." (Citations omitted.)

In the absence of an abuse of the department's discretion, the appeals board will not disturb the department's penalty orders. See Martin v. Alcoholic Beverage Control Appeals Board/Haley (1959) 52 Cal.2d 287, 341 P.2d 296. However, where an appellant raises the issue of an excessive penalty, the appeals board is obligated to examine the issue. See Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785, 97 Cal.Rptr. 183.

Reasonable minds may differ as to whether or not the penalty is "too harsh." Such dilemma can only be left to the department's discretion. The department had the following factors to consider: (1) a 20-day suspension in 1991 for allowing an employee to solicit the purchase of alcoholic beverages, a violation of Business and Professions Code §25657(b) and rule 143; and (2) a 20-day suspension in 1992 for

allowing a minor to remain on the premises without lawful business, and possessing distilled spirits on the premises without the proper license.

The department's Instructions, Interpretations, and Procedures manual, at page L 228 shows the usual penalty for furnishing an alcoholic beverage to an obviously intoxicated person to be a 20-day suspension. Considering the prior disciplinary history of appellants, the penalty appears a reasonable exercise of the department's constitutionally-mandated discretion. The department having exercised its discretion reasonably, the appeals board will not disturb the penalty.

CONCLUSION

The decision of the department is affirmed.²

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

²This 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.