ISSUED MARCH 30, 2000

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

FRANCISCO MORENO and RAYMUNDO D. SALDANA dba Play House 1618 South Oxnard Blvd. Oxnard, CA 93030, Appellants/Licensees, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)))))))))))))	AB-7366 File: 40-306636 Reg: 98044389 Administrative Law Judge at the Dept. Hearing: Sonny Lo Date and Place of the Appeals Board Hearing: February 3, 2000 Los Angeles, CA

Francisco Moreno and Raymundo D. Saldana, doing business as Play House (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which suspended appellants' on-sale beer license for 20 days, for permitting the service of an alcoholic beverage to a patron exhibiting obvious signs of intoxication, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and

[1]The decision of the Department, dated February 4, 1999, is set forth in the appendix.

Professions Code §24200, subdivision (a), arising from a violation of Business and Professions Code §25602, subdivision (a).

Appearances on appeal include appellants Francisco Moreno and Raymundo D. Saldana, appearing through their counsel, Fred D. Rogers, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

The Department instituted an accusation against appellants charging service to a person exhibiting obvious signs of intoxication. An administrative hearing was held on December 28, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the issue that the findings and decision are not supported by substantial evidence.

DISCUSSION

Appellants contend that the findings and decision are not supported by substantial evidence, arguing that the signs of intoxication were not such as to support the conclusion as to intoxication, and the waitress did not see whatever signs which were exhibited.

Robert Rodriguez, a Department investigator, testified that he observed a patron who was sitting at a table, slap a female waitress “on the but.” He then

observed the patron sitting in a slumped position, his eyes were red and glassy, and his clothes unkempt [RT 6-8, 21]. The patron went to the bathroom, walking in a swaying manner, with a gait that was unsteady and slow. Upon leaving the bathroom, the patron remained in the opened doorway, and the door closed and hit him. The waitress who later would serve the beverage to the patron, pointed toward the patron due to the door hitting him, and along with another waitress, laughed at the patron. The patron returned to his seat in the same unsteady and slow manner. The patron and others at his table, apparently ordered, and were served beers [RT 9-10, 12-14, 22, 24-26].

The term "obviously" denotes circumstances "easily discovered, plain, and evident" which places upon the seller of an alcoholic beverage the duty to see what is easily visible under the circumstances. (People v. Johnson (1947) 81 Cal.App.2d Supp. 973 [185 P.2d 105].) Such signs of intoxication may include bloodshot or glassy eyes, flushed face, alcoholic breath, loud or boisterous conduct, slurred speech, unsteady walking, or an unkempt appearance. (Jones v. Toyota Motor Co. (1988) 198 Cal.App. 3d 364, 370 [243 Cal.Rptr. 611].)

The law demands that a licensee use substantial efforts in maintaining a lawfully-conducted business. (Givens v. Department of Alcoholic Beverage Control (1959) 176 Cal.App.2d 529 [1 Cal.Rptr. 446, 450].)

The Administrative Law Judge (ALJ) erred when he found "the only evidence that [the patron] was obviously intoxicated prior to being furnished a beer by

[appellants'] waitress was his unsteady walk to and from the restroom." While the conclusion of the ALJ that the patron was obviously intoxicated is correct, his basis was only partially true. It appears he missed a major portion of the testimony by the investigator.

ORDER

The decision of the Department is affirmed.[2]

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[2]This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §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 §23090 et seq.