

ISSUED NOVEMBER 25, 1996

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

| | | |
|-----------------------------|---|----------------------------|
| JOSE R. TAPIA |) | AB-6625 |
| dba El Nuevo Guadalajara |) | |
| 121 North Sacramento Street |) | File: 41-52139 |
| Lodi, CA 95240, |) | Reg: 95032516 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Department Hearing: |
| |) | Ronald M. Gruen |
| DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | Date and Place of the |
| Respondent. |) | Appeals Board Hearing: |
| |) | September 4, 1996 |
| |) | San Francisco, CA |
| |) | |

Jose R. Tapia, doing business as El Nuevo Guadalajara (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which unconditionally revoked appellant's on-sale beer and wine eating place license for appellant's having kept, suffered, used, or permitted to be kept or used, in conjunction with the licensed premises, a disorderly house or a place in which people abided or to which people resorted to the disturbance of the neighborhood and for purposes which were then and are now injurious to the public welfare, morals, health, convenience, and safety, being

¹The decision of the Department dated December 14, 1995, is set forth in the appendix.

contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and arising from violations of Business and Professions Code §§24200, subdivisions (a) and (b), and 25601.

Appearances on appeal include appellant Jose R. Tapia; and the Department of Alcoholic Beverage Control, appearing through its counsel, John R. Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on January 2, 1987. Thereafter, the Department instituted an accusation against appellant on May 2, 1995, alleging various violations.

An administrative hearing was held on September 11, 12, and 13, 1995, and November 13 and 14, 1995, at which time oral and documentary evidence was received. At that hearing, testimony was presented that appellant, through his agents or employees, allowed the premises to be used as a disorderly house, and created a law enforcement problem for the Lodi Police Department.

Subsequent to the hearing, the Department issued its decision which unconditionally revoked appellant's license, finding that from March 15, 1992, through July 3, 1994, 25 incidents occurred within the premises which were injurious to the public welfare and morals of the community, which included 16 incidents of public intoxication, one discharge of a firearm, two homicides by stabbing, one battery on the person of another, one stabbing, and two instances each of possession and being under the influence of a controlled substance. The findings also stated that, in addition to the above, there were 173 police calls to the premises from the period of March 3, 1992, through November 12, 1994, which included calls concerning fights, disturbing the

peace, and public drunkenness. Appellant filed a timely notice of appeal.

Written notice of the opportunity to file briefs in support of the appellant's position was given on March 29, 1996, to appellant's counsel. Thereafter, on April 25, 1996, the schedule for the filing of appellant's brief was reset. On June 7, 1996, the schedule to file briefs was again reset. On July 3, 1996, appellant's counsel withdrew from representation. With no brief filed, a telephone call was placed to appellant's residence and a message left for appellant to call the Appeals Board. No return call has been received. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].) We so hold.

CONCLUSION

The decision of the Department is affirmed.²

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER

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.

ISSUED NOVEMBER 25, 1996

AB-6625

BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD