

ISSUED AUGUST 26, 1997

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

DELORES M. & VIDAL W. SOTO	)	AB-6693
dba Buffalo Bills)	
3350 Sandy Way	)	File: 47-305122
South Lake Tahoe, CA 96150,	)	Reg: 96035349
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Michael B. Dorais
THE DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	June 4, 1997
	)	Sacramento, CA
)	

Delores M. and Vidal W. Soto, doing business as Buffalo Bills (appellants) appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their on-sale general public eating place license for 10 days and, thereafter, indefinitely until the premises are in compliance with Business and Professions Code §23038, or until appellants exchange their license for an on-sale general public premises license, for appellants failing to operate as a bona fide eating place as required by their license, being contrary to the universal and generic

¹The decision of the Department, dated June 27, 1996, is set forth in the appendix.

public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§23038 and 23396.

Appearances on appeal include appellants, appearing through their counsel, Henry G. Murdock, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on March 17, 1995. Thereafter, the Department instituted an accusation against appellants alleging that during December 1995, appellants failed to operate the premises as a bona fide public eating place as required by their license, in that no food was served or available during that time.

An administrative hearing was held on May 22, 1996, at which time oral and documentary evidence was received. Testimony was presented concerning the sublease of the restaurant operation and modification of the kitchen. Mr. Soto stipulated to the facts as stated in the accusation, but testified that he believed he had complied with Department requirements during the kitchen modifications.

Subsequent to the hearing, the Department issued its decision which determined that appellants had operated in violation of their license while the kitchen was closed and no food was being served, and that the Department had not authorized, directly or through estoppel, the sale of alcoholic beverages (other than beer) during the time that food was not being served. Appellants thereafter filed a timely notice of appeal.

In their appeal, appellants raise the following issues: (1) The decision is not supported by the findings; (2) the findings are not supported by substantial evidence in light of the whole record; and (3) appellants, at the time of the hearing, were without counsel and were at a great disadvantage. No brief has been filed in support of appellants' contentions.

DISCUSSION

Appellants raise several issues in their notice of appeal, but have filed no brief explaining their contentions.

Written notice of the opportunity to file briefs in support of the appellants' position was given on December 23, 1996, and an extension of time to file appellants' brief was granted on January 28, 1997. No brief has been filed by appellants. 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 appellants. It was the duty of appellants to show to the Appeals Board that the claimed error existed. Without such assistance by appellants, 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].)

Appellants admit that the kitchen was closed and that no food was served from July through December 1995, but basically plead ignorance of wrongdoing as

an excuse. Mr. Soto, in his several discussions with Department employees, never stated specifically that the kitchen was closed and the people he talked to didn't ask him. Mr. Soto apparently took that as at least tacit approval of his continuing to operate without serving food until the kitchen was reopened.

In the notice of appeal, appellants' counsel states, as one of the issues: "Appellant was at the time of the hearing without legal counsel and was at a great disadvantage." While this is a true statement, it raises no real issue, since it does not specify the unfairness alleged and fails to point out that Mr. Soto knowingly and willingly represented himself and his wife at the hearing without the aid of an attorney [RT 5].

CONCLUSION

The decision of the Department is affirmed.²

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

²This 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 decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.