

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

R.I.P. ROCAS, INC. (formerly known	)	AB-6945
as Rocas, Incorporated))	
dba Stripper (formerly Playtime Bar)	)	File: 48-158499
13324 Sherman Way	)	Reg: 97039067
North Hollywood, California 91605,)	
Appellant/Licensee,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	John P. McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 8, 1998
	)	Los Angeles, CA
)	

R.I.P. Rocas, Inc. (formerly known as Rocas Incorporated), doing business as Strippers (formerly Playtime Bar) (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license, but stayed revocation subject to the imposition of a 20-day suspension and other conditions, for its waitress having served an alcoholic beverage (Budweiser beer) to Onofre Lopez, an obviously intoxicated patron, and for having failed to maintain good

¹The decision of the Department, dated September 11, 1997, is set forth in the appendix.

corporate standing, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code § 25602, subdivision (a), and 24200, subdivision (a).

Appearances on appeal include appellant R.I.P. Rocas, Inc. (formerly known as Rocas Incorporated), appearing through its counsel, Karineh Avanesian, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general license was issued on July 25, 1984. On February 24, 1997, the Department instituted an accusation against appellant charging violations of Business and Professions Code §25602, subdivision (a), for having served beer to an obviously intoxicated person, and 24200, subdivision (a), and Revenue and Taxation Code §23302, for having failed to maintain good corporate standing while operating as a licensee.

An administrative hearing was held on May 16, 1997, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been sustained.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the general issues outlined in Business and Professions Code §23084, and specifically contends: (1) the Department has no authority to impose discipline where the corporation regained good standing prior to the filing of the accusation;

and (2) since the corporation had no power to act during the period its rights were suspended, it could not exercise the rights or privileges under its license; therefore, the acts of the natural persons who could be charged with a violation of §25602 cannot be charged to the corporation.

DISCUSSION

Appellant challenges the power of the Department to institute disciplinary proceedings against a corporate licensee for failing to maintain its corporate good standing by becoming or remaining delinquent in payment of its franchise taxes, in violation of Revenue and Taxation Code §§23301 and 23302, if the corporation has obtained a certificate of revivor from the Franchise Tax Board pursuant to Revenue and Taxation Code §23305. Appellant claims, in addition, that since it had no power to act during the period of delinquency and suspension of corporate rights, it cannot be held liable for the acts of the natural persons who sold, or served, an alcoholic beverage to an obviously intoxicated person.

Appellant's position, once understood, fails to satisfy law or logic, and borders on the absurd.

Appellant is saying, in effect, that all through the suspension period, it had no power to act as a corporation, and, therefore, no power to act as a licensee; consequently any sale or service of liquor by natural persons in its employ, and any violations of the Alcoholic Beverage Control Act, could only have been committed by someone else.

Accepting this argument, it follows that natural persons purportedly managing or employed by this powerless entity acted as unlicensed sellers of

alcoholic beverages for the ten or so years the corporation was delinquent in its franchise tax obligations. Appellant's initial brief to the Appeals Board could be read to imply this; its reply brief asserts it explicitly.

Although the natural result which would follow from the Board's acceptance of appellant's argument might seem a suitable reward for such ingenuity, it would, conceivably, expose a large number of natural persons, many of them otherwise innocent and undeserving of any sanction or punishment, to possible criminal prosecution for selling alcoholic beverages without a license to do so. This follows from appellant's argument that it could not have been exercising its privileges under the license. It is apparent from the record - two disciplines during the suspension period - that someone was selling alcohol from the premises. That appellant may have been precluded from the lawful exercise of its corporate powers, it does not follow that its violations of the Alcoholic Beverage Control Act were done as if under an inadvertent grant of immunity.

As for appellant's argument that the issuance of the certificate of revivor rendered the Department's subsequent accusation untimely, appellant has cited no authority for the proposition, and the argument has no persuasive value of its own.

It follows that the count charging the sale to an obviously intoxicated person should also be sustained. Appellant has not challenged the testimony of Los Angeles police officer Lorenzo Barbosa describing the symptoms of obvious intoxication that would have been readily apparent to the waitress, who was standing no farther than 15 feet from Lopez during the time he was observed by Barbosa.

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 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.