

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

| | | |
|--------------------------|---|--------------------------|
| PEDRO GARCIA CABRAL |) | AB-7510 |
| dba Tony's Bar |) | |
| 4310 West Pico Boulevard |) | File: 42-325643 |
| Los Angeles, CA 90019, |) | Reg: 99046551 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | Ronald M. Gruen |
| |) | |
| DEPARTMENT OF ALCOHOLIC |) | Date and Place of the |
| BEVERAGE CONTROL, |) | Appeals Board Hearing: |
| Respondent. |) | July 6, 2000 |
| |) | Los Angeles, CA |

Pedro Garcia Cabral, doing business as Tony's Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his on-sale beer and wine public premises license for 30 days, with 10 days thereof stayed, conditioned upon a two-year period of discipline-free operation, for having permitted two women to loiter in or about the premises for the purpose of soliciting the purchase of alcoholic beverages and acting as escorts, companions, or guests of customers, 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 §§25675, subdivision (b), and 23804.

¹The decision of the Department, dated October 7, 1999, is set forth in the appendix.

Appearances on appeal include appellant Pedro Garcia Cabral, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon M. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on February 6, 1997. Thereafter, the Department instituted an accusation against appellant charging that Reyna Canas-Melara ("Canas-Melara") and Vilma Delia Delcid Marin ("Marin") were knowingly permitted to loiter in the premises for the purpose of soliciting the purchase of alcoholic beverages, were employed pursuant to a commission, salary, or other profit sharing plan or conspiracy to solicit patrons (undercover officers) to buy them drinks, and solicited drinks from and accepted money to sit with the undercover officers, in violation of Business and Professions Code §§24200.5, 25657, subdivision (b), and, based upon condition violations, §23804.

An administrative hearing was held on August 3, 1999, at which time oral and documentary evidence was received. At that hearing, conflicting testimony with respect to the charges of the accusation was presented by Los Angeles police officer Louis Alarcon, and by appellant's bartender, Maria Grimaldo (hereinafter "the bartender").

Subsequent to the hearing, the Department issued its decision which determined that the violations of Business and Professions Code §25675, subdivision (b,) alleged in counts 1 and 3 had been established, as well as the

condition violations alleged in counts 5(a) and 5(b).²

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) There was no substantial evidence that the bartender had actual or constructive knowledge that either woman had solicited beer, so as to have knowingly permitted it (counts 1 and 3); and (2) the finding that there was a condition violation (count 5) must also fall, since it was tied to the charges of counts 1 and 3. These contentions will be addressed together.

DISCUSSION

Appellant contends that there was no substantial evidence to support those charges of the accusation which were sustained by the Department. Appellant argues that there is no evidence the bartender overheard the acts of solicitation, or that she was aware the women involved were asking for or taking money from the undercover police officer.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals

² The charges of counts 2 and 4, that the solicitation was pursuant to a commission, salary, or other profit sharing plan or conspiracy, were determined not to have been established, as were the condition violations alleged in counts 5(c) and 5(d), which depended upon the establishment of an employment relationship.

Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.³

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v.

³ California Constitution, article XX, § 22; Business and Professions Code §§ 23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

The issue in this case is simply whether the Department was entitled to infer from the testimony of the undercover police officer that the bartender knew that drinks were being solicited or money extracted from patrons in return for their company. We believe it was. There is substantial evidence from which knowledge, actual or constructive, could have been inferred. Hence, appellant's reliance upon Laube v. Stroh (1992) 2 Cal.App.4th 364 [3 Cal.Rptr.2d 779], is misplaced.

The officer's testimony that the bartender's selection of a 12-ounce can of Miller Light beer in response to Canas-Melara's call "Maria, one," supports the inference that the bartender was previously acquainted with Canas-Melara. How else would she have known that "Maria, one" meant Canas-Melara wanted a Miller Light beer?

Similarly, the Administrative Law Judge (ALJ) was entitled to, and did, disbelieve the bartender's denial that she saw Canas-Melara take a \$5.00 bill from the change given the officer, or that she heard Canas-Melara ask if the \$5.00 was for her, both of which occurred in the bartender's presence when she was only three or four feet away, across the bar.

The same is true of the second solicitation incident. Marin asked for what

she said was her standard \$5.00 for each beer ordered while the bartender was in her immediate presence. We cannot say that the ALJ's rejection of the bartender's denial of seeing or hearing this was unreasonable. Charged with the general duty of ensuring that illegal conduct, such as solicitation or violation of license conditions, not be permitted, it must be assumed that she was either aware of the conduct or deliberately turned a blind eye to it. In either case, liability is established.

Since appellant's position is that the condition violations were tied to the solicitation conduct, there is no need to consider them separately. The evidence clearly showed an exchange of money in return for companionship.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

Board Member Ray T. Blair, Jr., did not participate in the deliberation of this appeal.

⁴ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district 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.