

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

AB-7685

File: 41-332203 Reg: 99047632

JOSEFINA GONZALEZ and OCTAVIO GONZALEZ dba Dos Amigos Restaurant
8546 Chapman Avenue, Stanton, CA 90680,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

AB-7686

File: 41-325985 Reg: 99047633

JOSEFINA GONZALEZ and OCTAVIO GONZALEZ dba Mariscos Dos Amigos No.2
3701 West McFadden, Suites H and I, Santa Ana, CA 92704
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Consolidated Dept. Hearing: John P. McCarthy

Appeals Board Hearing: August 16, 2001
Los Angeles, CA

ISSUED OCTOBER 25, 2001

In these consolidated appeals, Josefina Gonzalez appeals from decisions of the

Department of Alcoholic Beverage Control¹ which revoked two on-sale beer and wine public eating place licenses held jointly with Octavio Gonzalez at separate locations in Stanton, California, and Santa Ana, California, following the entry by Octavio Gonzalez of a plea of guilty to a charge of selling and transporting a controlled substance, in violation of Health and Safety Code §11352, subdivision (a), a public offense involving moral turpitude.

Appearances on appeal include appellant Josefina Gonzalez, appearing through her counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants have jointly held an on-sale beer and wine public eating place license since September 9, 1997, for a location in Stanton, California. They have also jointly held a similar license at a Santa Ana, California location since December 22, 1997.

On November 9, 1999, the Department filed separate, identical accusations against appellants as to each of the licenses, alleging the entry by appellant Octavio Gonzalez of a plea of guilty to a violation of Health and Safety Code §11352, subdivision (a), a public offense involving moral turpitude.

An administrative hearing was held on June 8, 2000 on the consolidated accusations. At that hearing, the parties stipulated that appellant Octavio Gonzalez

¹The consolidated decisions of the Department, dated August 17, 2000, are set forth in the appendix.

sold a quantity of heroin inside the Stanton premises,² that the offense was one involving moral turpitude, and that appellant Josefina Gonzalez did not participate in any way in the unlawful conduct. Subsequent to the hearing, the Department issued its decision which determined that both licenses should be revoked.

The appeal seeks a reversal of the Department decisions on the ground that there exists relevant evidence obtained subsequent to the administrative hearing. Specifically, appellant Josefina Gonzalez contends that the finalization of dissolution proceedings which were pending at the time of the administrative hearing, and the award to her of the Stanton premises as her separate property, provide a basis for the Department's reconsideration of its order of revocation with respect to the license for the Stanton premises. Accompanying appellant's brief is a copy of what purports to be the judgment of dissolution of the marriage of Josefina Gonzalez and Octavio and the award to Josefina Gonzalez of the business at the Stanton premises.

DISCUSSION

The Department opposes the appeal, pointing out that the appellants have failed to comply with the requirements of Business and Professions Code §23090 as well as Board rule 198, by failing to support their claim of newly discovered evidence with a supporting declaration. The Department further points out that the so-called newly discovered evidence - the divorce - did not come into existence until after the Department's decision had been filed.

² The stipulation was that negotiations for the sale of 20 ounces of heroin took place inside the Stanton premises, with delivery to be made outside the premises.

Even assuming that the divorce is bona fide, and not a ploy by appellants to keep one of the licenses, it comes too late to be of any assistance to appellants on this appeal. Both §23090 and Board rule 198 assume that the newly discovered evidence pre-exist the hearing.

ORDER

The decision of the Department is affirmed.³

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

³ 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.