

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

ALTAGRACIA FRANCO MARTINEZ	)	AB-7297
dba El Jalisco Bar)	
11611 Ingelwood Avenue	)	File: 48-304555
Hawthorne, CA 90250,	)	Reg: 98043418
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 5, 1999
	)	Los Angeles, CA

Altagracia Franco Martinez, doing business as El Jalisco Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended her license for 30 days, with 10 days stayed for a probationary period of one year, for employing or knowingly permitting Maria Martinez Ramirez to loiter in the premises for the purpose of begging or soliciting patrons of the premises to purchase alcoholic beverages for her, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25657, subdivision (b).

¹ The Department's decision, dated December 3, 1998, is set forth in the Appendix.

Appearances on appeal include appellant Altagracia Franco Martinez, appearing through her counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on April 7, 1995. Thereafter, the Department instituted an accusation against appellant charging that the above-noted violation had occurred on January 22, 1999.

An administrative hearing was held on October 6, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Department investigators Anthony Posada and Eulali Villegas concerning the events charged in the Accusation.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant contends the evidence does not support the determination that appellant, through her employee, knowingly permitted the activity alleged to have violated Business and Professions Code §25657, subdivision (b).

DISCUSSION

Appellant contends the evidence does not support a determination that she, through her employees, employed or knowingly permitted Maria Martinez Ramirez ("Ramirez") to loiter in the premises for the purpose of begging or soliciting patrons to

purchase alcoholic beverages for her. She argues that her manager, Enrique Franco (Franco), specifically told Ramirez that soliciting drinks was not permitted in the premises and, therefore, appellant could not be held to have permitted the activity.

Investigator Posada testified that he saw Ramirez speak to Franco shortly after Ramirez entered the premises, then go to the bar and obtain a beer. He did not see her pay for it [RT 12-14]. Investigator Villegas testified that when he interviewed Franco, Franco said that he was aware of the soliciting activity of Ramirez in the premises and that solicitation was against the law [RT 44-46, 48]. Franco also said that Ramirez had solicited him for a drink shortly after she came in, and he had told her that solicitation was not permitted in the premises, but that he would give her a beer [RT 45].

At the hearing, appellant's counsel objected to the testimony of Villegas about what Franco said on the basis that it was inadmissible hearsay, but his objection was overruled because the statement was an admission against interest and also served to explain what the officers had observed [RT 45; see also Determination I, 3rd ¶].

Appellant relies on Franco's statement to Ramirez that solicitation was not permitted as evidence that he did not knowingly permit Ramirez to solicit. Counsel for appellant attempts to explain away Franco's statements that he knew Ramirez was soliciting, by stating that "[t]he only logical inference to be taken from that statement would be that he had observed [Ramirez] solicit him." However, we would say that counsel's inference is clearly an *illogical* one; it is far more logical to infer that Franco observed Ramirez as she talked to the patrons at the bar and at the pool tables, and drew the logical conclusion that Ramirez was soliciting for drinks in spite of his admonition. Even if counsel's inference were logical, this board must "indulge in all legitimate and reasonable inferences" that support the Department's decision. (

Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737], quoting Gore v. Harris (1964) 29 Cal.App.2d 821, 826-827 [40 Cal.Rptr. 666, 669].)

As Department counsel points out, in this case, Franco's *inaction* spoke louder than his words. This inaction supports the conclusion that he knowingly permitted Ramirez to loiter for the purpose of soliciting drinks, and this knowing permission is imputed to the licensee.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., 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 order as provided by §23090.7 of said code.

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