

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

GUADALUPE G. and MIGUEL LARA	)	AB-7368
LOPEZ)	
dba California 2001	)	File: 41-236081
914 South Long Beach Blvd.	)	Reg: 98042584
Compton, CA 90221,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Jeffrey Fine
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	June 6, 2000
Respondent.	)	Los Angeles, CA
)	

Guadalupe G. and Miguel Lara Lopez, doing business as California 2001 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 30 days for knowingly permitting a person to loiter in the licensed premises for the purpose of soliciting alcoholic beverages, being contrary to the universal and generic public welfare and morals

¹The decision of the Department, dated March 11, 1999, is set forth in the appendix.

provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25657, subdivision (b).

Appearances on appeal include appellants Guadalupe G. and Miguel Lara Lopez, appearing through their counsel, Cheryl D. Keily, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine license was issued on September 7, 1989. Thereafter, the Department instituted a seven-count accusation against appellants charging various drink solicitation violations under Business and Professions Code §§ 24200.5, subdivision (b), and 25657, subdivisions (a) and (b); Rule 143 [4 Cal. Code Regs. § 143]; and Penal Code § 303.

An administrative hearing was held on November 18, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the events leading to the accusation.

Subsequent to the hearing, the Department issued its decision which determined that only the charge involving Business and Professions Code § 25657, subdivision (b), was proved.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) the findings are not supported by substantial evidence, and (2) discipline was imposed without evidence of fault on the part of appellants.

DISCUSSION

I

Appellants contend that the testimony of former Department investigator Robert Rodriguez, the only Department witness, was “speculative, vague and colored by a pre-conceived notion that conduct violative of the law was taking place.” (App. Opening Br. at 4.) Appellants base this contention on the inability of Rodriguez to testify with certainty about such things as the cost or number of the beers he purchased and their own speculation that the presence at the premises of Compton police officers, which prompted Rodriguez to investigate in the first place, may have “influenced the manner in which he interpreted events within the premises.” (Ibid.)

Whatever lack of certainty Rodriguez may have exhibited in his testimony regarding the cost or number of beers purchased is immaterial, given that the ALJ found a violation of Business and Professions Code §25657, subd. (b).

Business and Professions Code §25657, subdivision (b), provides that is unlawful:

"In any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting."

This section, unlike all the other sections named in the accusation, does not require that the solicitor be employed by the licensee or paid a percentage or commission for the beers purchased. A violation may be premised upon the licensee knowingly permitting a person to loiter in the premises for the purpose of solicitation.

The ALJ found that Aguirre was in the premises, interacting with at least two customers, bringing drinks to them; she was with Rodriguez at the bar counter in close proximity to the two bartenders for an extended period of time; during that time she solicited drinks from Rodriguez; and the bartenders were not very busy during that time. From these facts, all supported by substantial evidence, the ALJ had no trouble inferring that the licensees, through their employees, knew of Aguirre's solicitation of drinks and permitted her to loiter in the premises for that purpose.

Since the facts upon which the ALJ's inference was based were supported by substantial evidence, and the ALJ's inference was a reasonable one, we conclude that the findings are supported by substantial evidence.

II

Appellants contend the use of the words "knowingly permitted" in §25657, subdivision (b),² precludes the imposition of discipline without evidence that appellants or their employees knew of the illegal activity or had knowledge of prior illegal activity which then obligated them to prevent such activity. They point out that the licensees were not present, their manager was only briefly in the bar area, the Department's decision found no evidence to support a finding that the

² Section 25657, subdivision (b), makes it a misdemeanor:

"In any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting."

bartender knew what Aguirre did with the change from the payment for the beers, and there was no evidence that appellants were either actually or constructively aware of any prior problems involving solicitation of drinks.

Although the licensees were not present and their manager was not in the area most of the time, “knowledge may be either actual knowledge or constructive knowledge imputed to the licensee from the knowledge of his or her employees.” (Laube v. Stroh (1992) 2 Cal.App.4th 364,367 [3 Cal.Rptr.2d 779].)

The ALJ found a violation of §25657, subdivision (b), based on facts establishing Aguirre’s loitering, the opportunity for the bartenders to observe the violation and stop it, and their failure to do so. Contrary to appellants’ statement in their brief (p. 6), the violation is *not* based on a finding that appellants were vicariously liable for the conduct of Aguirre; rather, they were vicariously liable for the conduct of the bartenders in knowingly permitting Aguirre’s soliciting.

Aguirre’s loitering was adequately established by the time she spent in the premises and her interactions with at least two patrons. The bartenders were not very busy and had 30 to 45 minutes to observe Aguirre’s solicitation activities while she and Rodriguez were at the bar counter. The ALJ reasonably inferred that the bartenders knew, or reasonably should have known, of Aguirre’s drink solicitations. By not stopping the solicitations of which they were, or should have been, aware, the bartenders knowingly permitted Aguirre to loiter at the bar and solicit drinks. This knowing permission is imputed to appellants.

The finding that the bartender did not know what was done with the change is irrelevant to the ALJ’s determination that §25657, subdivision (b), was violated,

since that provision does not require that the solicitor be engaged in a scheme of profit-sharing or commission with the licensee.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This 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.