

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

FAYEZ A. DALIA	)	AB-6325a
dba Eden's Liquor & Deli)	
1086 A Street	)	File: 21-143260
Hayward, CA 94541,	)	Reg: 91026048
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Stewart A. Judson
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	September 4, 1996
	)	San Francisco, CA
)	

Fayez A. Dalia, doing business as Eden's Liquor & Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for ten days for appellant's clerk having sold an alcoholic beverage to a person under age 21, in violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Fayez A. Dalia; and the Department of Alcoholic Beverage Control, represented by its counsel, Robert M. Murphy.

¹The decision of the Department dated July 6, 1995, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued August 8, 1983. Thereafter, the Department instituted an accusation against appellant on August 22, 1991, alleging a sale of an alcoholic beverage to a minor. Appellant requested a hearing. An administrative hearing was held on October 23, 1992. At that hearing, it was determined that appellant's brother, Mohammed Dalia, who was working as appellant's clerk, sold an alcoholic beverage to a nineteen-year-old female who was acting as what is commonly referred to as a police decoy, under the authority of the Hayward Police Department.

Subsequent to the hearing, the Department issued its decision which suspended appellant's license for ten days. Appellant filed a timely appeal.

The Appeals Board heard the matter and issued its decision on February 14, 1995, reversing the Department's decision and remanding the matter for a full opportunity for appellant to present any evidence in his defense.

The Department again conducted an administrative hearing on May 26, 1995, and thereafter issued its decision suspending appellant's license for ten days. Appellant thereafter filed a timely notice of appeal.

On November 20, 1995, a written notice of the opportunity to file briefs in support of the appellant's position was sent to appellant. Thereafter, another notice of the opportunity to file a brief was sent to appellant on April 5, 1996. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The Appeals Board is not required to make an independent search of the record

for error not pointed out by appellant. It was the duty of appellant to show the Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Appellant appeared before the Appeals Board during the oral argument calendar and argued concerning the differences in the testimony of the witnesses. However, the credibility of a witness's testimony is an issue to be determined by the reasonable discretion accorded to the trier-of-fact which, in the present matter, is the Administrative Law Judge (ALJ). (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) A review of the record does not show any abuse of discretion in the ALJ's accepting some witnesses' testimony over other testimony.

A proceeding before the Appeals Board is an appellate function within which the Board may not accept new evidence or reconsider evidence which the ALJ has concluded is true. The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing a Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but must 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.²

It is the Department and not the Appeals Board which is authorized by the California Constitution to exercise its discretion whether to suspend or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the continuance of such license would be contrary to public welfare or morals.

Appellant also argues that his clerk was exonerated in the criminal courts of a violation of the very law for which appellant's license is now subject to discipline. However, criminal proceedings have a different standard than administrative proceedings. In criminal law, the trier-of-fact must find guilt by the highest standard of proof ("beyond a reasonable doubt"), while in the present proceeding, the finding of fault is by the lowest standard of proof ("preponderance of the evidence.")

We therefore conclude that the findings are supported by the record and the decision is supported by those findings.

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

CONCLUSION

The decision of the Department is affirmed.³

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.