

ISSUED APRIL 30, 1996

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

HEZAM SALEH ELZOFRI and	)	AB-6601
ABDO SAIF)	
dba Family Market	)	File: 21-246287
700 Pennsylvania Avenue	)	Reg: 95032862
Richmond, CA 95801)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	[no hearing held]
)	
THE DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 6, 1996
	)	San Francisco

Hezam Saleh Elzofri and Abdo Saif, doing business as Family Market (appellants), appealed from a decision of the Department of Alcoholic Beverage Control¹ which unconditionally revoked appellants' off-sale general license, for appellants withholding and concealing property which they believed to be stolen and possessed personal property which had the manufacturer's serial numbers removed, in violation of Penal Code §§496, 573(e), and 664.

Appearances on appeal included appellants Hezam Saleh Elzofri and Abdo Saif, appearing through their counsel John A. Hinman and Richard D. Warren; and the Department of Alcoholic Beverage Control, through its counsel Nicholas R. Loehr.

¹The decision dated November 9, 1995 and the stipulation and waiver form dated October 23, 1995 upon which the decision was based, are set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on May 17, 1990. Subsequently on April 13, 1995, the department instituted an accusation against appellants. Thereafter, Penelope W. Cooper, an attorney for co-appellant Abdo Saif, signed a stipulation and waiver form waiving all rights to a hearing, reconsideration, and appeal, and allowing for the revocation of the license. On November 9, 1995, the department issued its decision revoking appellants' license. Appellants filed a timely notice of appeal.

In their appeal, appellants raised the issue that Saif's act may not prejudice Elzofri's right to due process under the law.

DISCUSSION

Appellants contended that the department's use of Saif's signed stipulation and waiver form revoking the partnership's license denied the "innocent" Elzofri his due process rights.

The record shows that appellants were co-licensees under a license issued by the department, and therefore constituted a partnership.²

The accusation filed by the department in the present matter contained three counts: count I alleged that both appellants concealed stolen property at the premises,

²Corporations Code §15006 states: "A partnership is an association of two or more persons to carry on as coowners a business for profit...."

"Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership...." Corporations Code §15009(1); see also De Santis v. Miller Petroleum Co. (1938) 29 Cal.App.2d 679, 683, 85 P.2d 489; and California Canning Peach Growers v. Bardell & Oregoni (1933) 132 Cal.App. 153, 167, 22 P.2d 764.

count II alleged Saif concealed stolen property, and count III alleged Saif possessed property which had the manufacturer's serial numbers removed.

Thereafter, on October 23, 1995, Penelope W. Cooper, counsel for Saif, signed a stipulation and waiver form agreeing that Saif's right of appeal was waived and that the license could be revoked. Attorney Cooper signed the form as attorney for Saif.

The appeals board reaffirms the right of the department to revoke a license under appropriate circumstances, where one of the licensees commits unlawful acts involving moral turpitude, even if one of the co-licensees is innocent of the unlawful acts.³ The crimes alleged in the present matter are crimes of moral turpitude.

The case of Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 34, 152 Cal.Rptr. 285, concerned a licensee who was convicted in two court proceedings of crimes involving moral turpitude, which occasioned the department to revoke the license, even though one of the licensees was innocent of the crimes pled to by the co-licensee. The Rice court at 89 Cal.App.3d at 39 stated: "The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or court to substitute its own judgment therein...nor does the circumstance of forfeiture of the interest of an otherwise innocent colicensee sanction a different and less drastic penalty...."

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In another matter, Ivankovich (1985) AB-5206 and AB-5207, the co-licensee

³See People v. Bautista (1990) 217 Cal.App.3d 1, 7, 265 Cal.Rptr. 661; Rice v. Alcoholic Beverage Control Appeals Board, infra; Cisneros (1996) AB-6503; and Ullah (1994) AB-6414.

pled guilty to crimes involving moral turpitude. His innocent spouse, who operated two separate businesses with alcoholic beverage licenses, suffered the penalty of unconditional revocation of both licenses, even though her husband had no part in the actual operation of either business. The appeals board affirmed the department's decision of revocation, and the appeals board's decision was upheld on appellate review.

However, the record shows that attorney Cooper signed for co-appellant Saif only.⁴

The arguments of the department's counsel are well taken and the authorities cited are proper, though not in point. The issue is not whether the department can revoke the indivisible license due to the unlawful acts of a partner or whether a partner can bind a co-partner as set forth in Coletti v. State Board of Equalization (1949) 94 Cal.App.2d 61, 209 P.2d 984. The matter of Kato & Talia (1995) AB-6451, is a matter where the facts are not similar to the crucial question in this matter, in that in Kato the one partner signed the cancellation and all the partners repudiated the cancellation. It appears the surrendering partner was the ostensible agent of the other

⁴"An act of a partner which is not apparently for carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners." Corporations Code §15009(2).

"Unless authorized by the other partners or unless they have abandoned the business, [a partner has] no authority to:...(c) Do any other act which would make it impossible to carry on the ordinary business.... (d) Confess a judgment...." Corporations Code §15009(3); see also Petrikis v. Hanges (1952) 111 Cal.App.2d 734, 738, 245 P.2d 39.

partners. It also appears that the attorney who appeared at the administrative hearing was the attorney for all the partners.

The crucial issue in the present matter is whether Saif's attorney by her exclusive representation of Saif, can deprive Eloffri of his due process rights under the law --rights which form the very basis of our system of jurisprudence.

Therefore, there is a legitimate question of balancing: the license is indivisible and the revocation of the license terminates all partners' rights thereto; and due process demands that a person cannot be deprived of a property right without due process of law .

The department created this dichotomy by not being alert to a signator who qualified the representative signature of Saif. The department also failed to consider Corporations Code §§15006 and 15009(1). The attorney's signature for her client Saif comes within the Corporations Code's sections referenced, as it is clear the implications of the signature were diametrically opposed to the "carrying on of the business of the partnership in the usual way [manner]...."

While Saif may not realistically contest the ultimate action of the department in any action against the license, Eloffri is entitled to his due process right to a proceeding which can test his interest in the license, and which thereby would entitle him to appeal to this board any such action and decision by the department.

We conclude that the "qualified" signature of Saif's attorney cannot deprive Eloffri of his due process rights accorded under law , the Alcoholic Beverage Control Act, and the California Constitution, without his consent. Additionally, we conclude

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under the same reasoning that Elzofri may not be deprived of his right to appeal on the issues of any future deprivation of his property rights in the license.

Saif has not shown any substantial interest in the present matter, and the decision against him was entered by his counsel and not repudiated by him. Additionally, his counsel has conceded he has no interest in the appeal. His appeal will be dismissed (Kunza v. Gaskell (1979) 91 Cal.App.3d 201, 206, 154 Cal.Rptr. 101; and Delagrange v. Sacramento Savings & Loan Assn. (1976) 65 Cal.App.3d 828, 831, 135 Cal.Rptr. 614).

CONCLUSION

The appeal of Abdo Saif is dismissed. As to Hezam Saleh Elzofri, the decision of the department is reversed and remanded to the department for such proceedings as may be necessary in accordance with the views expressed herein.⁵

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

⁵This 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.