

ISSUED MARCH 6, 1997

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

KHALIL Y. FARSAKH,	)	AB-6689
dba P & R Liquor)	
1205 Fresno Street	)	File: 21-261917
Fresno, CA 93706,	)	Reg: 96035450
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing
	)	Michael B. Dorais
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing
	)	December 4, 1996
	)	Sacramento, CA
)	

Khalil Y. Farsakh, doing business as P & R Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellant's off-sale general license for a period of 25 days, with 5 days stayed for a probationary period of one year, for selling alcoholic beverages (a four-pack of wild berry wine coolers) to a 19-year-old police decoy, being contrary to the universal and generic

¹ The decision of the Department, dated July 3, 1996, is set forth in the appendix.

public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Khalil Y. Farsakh; and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas Loehr.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on August 5, 1991. Thereafter, the Department instituted an accusation against appellant's license on March 5, 1996. Appellant requested a hearing.

An administrative hearing was held on June 4, 1996. At that time oral and documentary evidence was presented to the effect that appellant had sold alcoholic beverages, consisting of a four-pack of wild berry wine coolers, to Monica Hurtado, a 19-year-old police decoy acting on behalf of the Fresno Police Department.

Thereafter, the Administrative Law Judge (ALJ) issued his proposed decision, which suspended appellant's license for a period of 25 days, with 5 days stayed for a probationary period of one year. The Department adopted that decision on July 3, 1996. Appellant thereafter filed a timely notice of appeal.

In his appeal, appellant raises the following issues: (1) his store is located in a neighborhood where his customers expose him to verbal abuse, and that at the time he made the sale to the minor he was distracted because he had just removed an abusive customer from his store; and (2) he has not personally sold to a minor during the time

he has been licensed.

DISCUSSION

I

Appellant does not deny making the sale in question. In his letter brief, he contends that he was distracted at the time of the sale, which, he asserts, took place immediately after he had been required to remove an abusive customer from the store. At the hearing, however, he testified that he was unable to request identification or proof of age because the decoy and her companion (also a minor decoy) were engaged in conversation throughout the time she made the purchase [RT 39-41]. He also testified at the hearing that he thought the decoy “looked older” [RT 47], “more than 20” [RT 48].

Appellant’s explanation to this Board of the circumstances of the transaction are at variance with his explanation to the ALJ. In either case, however, the explanation is inadequate. As counsel for the Department stressed at the administrative hearing, the licensee has an affirmative duty to interrupt a conversation if it is necessary for him to do so in order to assure himself that he is not making an illegal sale of alcoholic beverages to a minor. Similarly, if he is upset from being subjected to abuse by a customer, he must regain his composure before again waiting on customers.

Appellant’s excuse is simply not a valid legal defense.

II

Appellant's letter brief states that this was appellant's first violation since his license was issued. While this is true insofar as appellant personally is concerned, the fact is that one of appellant's employees made a sale to a minor approximately one year earlier. Since it is the license which is being disciplined, appellant is responsible for his employee's indiscretion as well as his own.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].) However, we do not read appellant's letter brief as claiming that the Department abused its discretion. It is more an appeal for leniency. In any event, the Department had the following factors to consider: (1) appellant admitted that he made the sale, and did not request identification; and (2) this was the license's second violation involving a sale to a minor in a relatively brief period. Considering these factors, the appropriateness of the penalty must be left to the discretion of the Department. The Department having exercised its discretion reasonably, the Appeals Board will not disturb the penalty.

CONCLUSION

The decision of the Department is affirmed.²

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

² This 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.