

ISSUED SEPTEMBER 24, 1997

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

KOUROSE SHENASSA	)	AB-6756
dba Venice Ranch Market)	
425 Rose Avenue	)	File: 20-300264
Venice, CA 90291,	)	Reg: 96035605
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,)	
Respondent.	)	Date and Place of the
	)	Appeals Board Hearing:
	)	August 6, 1997
	)	Los Angeles, CA
)	

Kourose Shenassa, doing business as Venice Ranch Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his off-sale beer and wine license suspended for 10 days, with five days thereof stayed for a probationary period of one year, for having violated a condition of his license obligating him to control litter in the area adjacent to his premises, and for being in

¹ The decision of the Department dated October 17, 1996, is set forth in the appendix.

possession of distilled spirits on the premises, contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §23804.

Appearances on appeal include appellant Kourose Shenassa, appearing through his counsel, Ralph Barat Saltsman; and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on November 7, 1995. Thereafter, the Department instituted an accusation alleging that appellant violated conditions on his license restricting his sale of malt beverages and obligating him to keep the area adjacent to his premises litter-free, and violated Business and Professions Code §25607 by having distilled spirits on the premises.

An administrative hearing was held on August 29, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Department investigators concerning the purchase by one of them of a 32-ounce container of Coors Beer, their observations of the littered condition of the area adjacent to appellant's premises, and the finding of three bottles of distilled spirits in an office area of the premises in the course of their search of the premises.

Appellant testified that he understood his license permitted him to sell single containers in sizes not customarily marketed in six-packs; that he employed a person to

police the area adjacent to his premises, and blamed the littered condition on persons unknown; and that the distilled spirits (bottles of Cinnamon Schnapps, Peppermint Schnapps and Kahlua) were a gift from a supplier that he did not intend to sell, but intended to take home with him. Appellant also presented the testimony of the donor that the distilled spirits were a gift.

Subsequent to the hearing, the Administrative Law Judge (ALJ) issued a proposed decision that found appellant had violated the condition of his license relating to litter, and had violated §25607 by possessing the distilled spirits on the premises, although not licensed to do so. The ALJ found that appellant had not violated the condition of his license relating to malt beverage sales.² The Department adopted the proposed decision, and appellant has filed a timely notice of appeal. Appellant contends that there is not substantial evidence in support of the findings of a litter violation and the presence of distilled spirits on the licensed premises.

DISCUSSION

I

Appellant challenges the finding that he violated the condition of his license

² This count of the accusation involved the sale of a 32-ounce bottle of beer. The license condition prohibited sales of malt beverages "in less than six-pack quantities." The ALJ found that the sale did not violate the license condition, finding the Appeals Board decision in Basem M. Hawamdeh (1996) AB-6518 instructive because of the similarity of the condition to the condition in that case, and in light of evidence of the licensee's understanding the condition did not apply to items not customarily packaged in six-packs.

which required him to keep the area adjacent to his premises free of litter,³ contending that the evidence shows that for only one point in time, while the investigator viewed the premises and photographed the littered condition of the area adjacent to appellant's premises, was the dumpster overflowing. Appellant cites the absence of any complaints from neighbors, and the affirmative testimony that the area is policed several times a day for trash and the dumpster collected three or four times weekly. Appellant argues that the effect of the decision is to require a licensee to maintain a "sixty-minute per hour, twenty-four hour per day, seven day a week surveillance of the area in order to make sure that litter, once it touches the ground, is instantly captured." The finding of a violation, appellant argues, is the result of an interpretation of the condition with which the licensee could not possibly comply.

There is no dispute that at the time the investigator visited the premises, the area adjacent to the premises was not free of litter. The photos offered by the Department (Exhibits 9-A, 9-B and 9-C) depict the area surrounding the dumpster. The parties stipulated [RT 95] that witness Cesar Cruz, if sworn, would testify that he routinely cleans the area in question twice a day, and has been employed to perform such services for approximately two years.

Investigator Raymond testified that he spoke to the licensee about the litter, and

³ The license condition states: "The Licensee shall be responsible for keeping the area adjacent to the premises over which the licensee has control and the off-street parking lot free of litter."

was told by the licensee that he did not have time to clean the area [58]. Appellant denied the litter was his, and blamed a near-by restaurant and passers-by for the litter situation [RT 118]. Recalled as a rebuttal witness, investigator Raymond testified that in his conversation with appellant, appellant admitted that some of the litter was his [RT 132-133].

Thus, the ALJ was confronted with conflicting evidence as to the source of the litter, and an absence of any indication as to how long the litter observed by investigator Raymond had been there. From the scattered condition of the boxes and cartons shown in the photos, it could reasonably be inferred that the litter had accumulated over a period of time. If there actually is a problem of the restaurant and passers-by contributing to the litter problem, then it does not seem unreasonable to require more diligence than simply following a twice-a-day routine. Indeed, following the incident in question, appellant increased his efforts in keeping the premises free of litter, and the ALJ acknowledged these efforts in arriving at the level of discipline imposed. But, as the ALJ observed, appellant agreed to be responsible for the areas in question, and must do what is required to keep the premises free of litter.

II

Appellant contends that, while there is no dispute as to the existence or presence of the distilled spirits, there is no evidence in the record demonstrating that the distilled spirits were in a portion of the licensed premises. Appellant points to an

"X" on Exhibit 4 which, according to appellant, is where the investigator marked the spot where he found the distilled spirits. Appellant suggests that the "X" places the location of the spirits somewhere well outside the licensed premises, near the intersection of Fifth and Rose.

Appellant is simply mistaken in his interpretation of the markings on Exhibit 4. It is probably an innocent mistake, flowing from the fact that the symbol "X" was used in two different places for two different purposes on the same exhibit, and appellant has confused the two.

The "X" to which appellant refers was, in fact, intended to denote a location well outside the licensed premises and near the intersection of Fifth and Rose. However, that particular "X," drawn in red, was placed on Exhibit 4 by investigator Raymond to denote the location of the dumpster which was the focus of the litter violation charge. (See RT 79-80 and RT 82-84.)

The distilled spirits were found in an office area by investigator Lundell. At the direction of the ALJ, the investigator placed an "X" and the word "office" in black ink at the lower left corner of the diagram of the licensed premises. (See RT 15-16.)

Reference to Exhibit 4 and to the pages of the transcript which have been cited compels the conclusion that appellant's contentions with respect to the violation of Business and Professions Code §25607 are simply without merit.

CONCLUSION

The decision of the Department is affirmed.⁴

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

⁴ This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this decision as provided by §23090.7 of said Code.

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