

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

LAKHBIR DOSANJH	)	AB-6818
dba Rice Wine Liquors)	
147 Atlantic Avenue	)	File: 21-293507
Pittsburg, California 94565,	)	Reg: 96035143
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	March 4, 1998
	)	San Francisco, CA

Lakhbir Dosanjh, doing business as Rice Wine Liquors (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his off-sale general license suspended for 20 days, with 5 days thereof stayed for a probationary period of one year, for appellant's substitute clerk having sold alcoholic beverages (a bottle of Mad Dog wine and a 40-ounce bottle of St. Ides beer) to Matthew Stice, who was 19 years old at the time of the transaction, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

¹The decision of the Department, dated March 6, 1997, is set forth in the appendix.

Appearances on appeal include appellant Lakhbir Dosanjh, appearing through his counsel, Anthony Guy Ashe, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert M. Murphy.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on June 29, 1991.

Thereafter, the Department instituted an accusation against appellant charging that on December 8, 1995, appellant, through an agent or employee, sold the above-described alcoholic beverages to Matthew Stice, a minor.

An administrative hearing was held on January 9, 1997, at which time oral and documentary evidence was received. At that hearing, Stice testified that he was not asked for identification when he purchased the beer and wine. When Stice left the store, he was stopped by a man with a badge, who had apparently been inside the store and had witnessed the transaction. Stice later appeared in court and was fined \$180.

At the conclusion of Stice's testimony, appellant's counsel announced that appellant did not dispute that the transaction had occurred, but wished to present evidence that would go to mitigation [RT 25, 26]. Verinder Dosanjh then testified that she was working alone that day, and asked a family friend, Paul Singh, to watch the store while she went next door to get something to eat. A short time later her father came to the restaurant and told her she should return to the store. The sale to the minor had taken place in her absence.

Lakhbir Dosanjh testified that he, Verinder, and his brother, Radjit, were the only regular employees. He explained that Verinder was usually never alone in the store, but on the evening in question, he and his brother were out of the city.

At the close of the hearing, Department counsel recommended a suspension of 20 days, with no part stayed. Appellant's counsel urged the Administrative Law Judge (ALJ) to instead impose a penalty of 15 days or less, so that it could be the subject of an offer in compromise, arguing that the incident was unlikely to happen again. However, Department counsel opposed the request, arguing that the recommendation of a suspension of 20 days was consistent with a second violation, where the first violation was penalized with a 10-day suspension, and where there were aggravating circumstances.

Following the close of the hearing, the ALJ filed his proposed decision, which ordered a 20-day suspension, in keeping with the Department's recommendation, but stayed five days of the suspension in apparent acknowledgment of appellant's evidence in mitigation. In rejecting appellant's suggestion that the penalty be such as to be the subject of an offer in compromise, the ALJ cited Business and Professions Code §25658.1, subdivision (a), which precludes a licensee from petitioning for an offer in compromise if that licensee has a violation of §25658 occurring within the previous 36 months.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the narrow issue that the only evidence establishing the prior violation was improperly admitted in violation of the hearsay rule.

DISCUSSION

Appellant challenges the admissibility, as an exception to the hearsay rule, of Exhibit 2, a compilation of five single-page documents which, collectively, was the evidence offered by the Department to establish the prior sale-to-minor violation.

Appellant contends that before Exhibit 2 was admissible under the public records exception to the hearsay rule embodied in Evidence Code §1280, there must be independent evidence, or the ALJ must take judicial notice, that the document was prepared in such a manner as to assure its trustworthiness.

Appellant asserts neither occurred.

Appellant's brief states that "no other evidence of prior conviction appears in the record of the State's case in chief." (App.Br. 5, emphasis supplied.) The reason for the limiting reference to the Department's "case in chief" would appear to be that when appellant testified, he was asked by his counsel about the prior violation and acknowledged that it had occurred [RT 44-45]:

"Q. [by Mr. Ashe]: I want to ask you about the incident that happened on January 13th of 1995. There was another individual other than you, Verinder, or Radjit who was operating the cash register, right?

"A. Right.

"Q. What was that person's name?

"A. Howard Beasley.

"Q. Was he an employee of the store?

"A. No.

. . .

"Q. How was it that he had got behind the register on that day?

"A. It was just an emergency incident, too, that day. . . .

"Q. So at that day, you actually empowered him to make sales, right?

"A. Yeah. I -- I -- I asked him, I said, 'Can you just, you know, watch. I'll be back in like half an hour . . . And as soon as -- it was just like that, and as soon as I came back, he told me that.

"Q. Have you learned anything about these two incidents?

"A. Of course."

This testimony, unmistakably given in reference to the violation reflected in Exhibit 2, is ample independent evidence of the trustworthiness of the exhibit.

Indeed, appellant concedes the prior violation in his brief (App.Br. 6):

"Appellant does not dispute that a sale of alcohol to a minor took place on December 8, 1995, nor does he dispute that on January 13, 1995, that a prior incident took place. What is objected to is the manner in which the prior incident was allegedly proved."

Further, appellant's counsel essentially conceded the prior violation when he suggested the ALJ levy a fine double the amount for which "the first-time incident" was settled [RT 50].

This appeal reduces to an attempt to capitalize on what appellant claims to be an erroneous evidentiary ruling that, even if incorrect, was made irrelevant by testimony subsequently elicited in the course of the hearing, and rendered moot as a consequence of the admissions in his brief to the Appeals Board.

In any event, the ALJ's ruling on admissibility was correct.

Exhibit 2 consists of a copy of the accusation relating to the January 13, 1995 sale; a copy of a stipulation and waiver executed by appellant; a copy of the decision entered pursuant to the stipulation and waiver, ordering a 10-day suspension; a copy of the order granting the offer in compromise and acknowledging payment of \$2,935.63; and a certificate of Department counsel stating that the documents affixed to the certificate are true and correct copies of documents on file and of record in the headquarters office of the Department.

The key document is the decision, which concludes that appellant violated Business and Professions Code §25658, subdivision (a).

In the absence of any evidence to the contrary, the ALJ was correct in receiving the exhibit pursuant to the public records exception to the hearsay rule, embodied in Evidence Code §1280.

CONCLUSION

The decision of the Department is affirmed.²

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

²This 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 decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate 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.