

ISSUED JANUARY 14, 1998

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

AMIR Z. TALIA	)	AB-6842
dba Palm Liquor)	
4095 Mission Boulevard	)	File: 21-136421
San Diego, CA 92108,	)	Reg. 96037598
Appellant,Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	November 5, 1997
	)	Los Angeles, CA
)	

Amir Z. Talia, doing business as Palm Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his license suspended for 30 days, with 10 days of the suspension stayed for a two-year probationary period, for having sold an alcoholic beverage (beer) to a 19-year-old police decoy, 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

¹ The decision of the Department, dated April 3, 1997, is set forth in the appendix.

Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Amir Z. Talia, appearing through his counsel, John J. McCabe; and the Department of Alcoholic Beverage Control, appearing through its counsel David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on March 18, 1983. On September 27, 1996, the Department instituted an accusation alleging that on July 19, 1996, appellant's clerk sold an alcoholic beverage (beer) to a 19-year-old police decoy.

An administrative hearing was held on March 12, 1997, at which time oral and documentary evidence was received. Josh Morris, the minor decoy, testified that he entered the store, took a bottle of Budweiser beer from the cooler, and was able to purchase it without being asked his age or for identification [RT 7-8]. Police officer Sherry Jackson, who witnessed the transaction, confirmed Morris's testimony [RT 19-20]. Appellant's son, Duraid Talia, also testified, and acknowledged that Jose Zamudio, the person who sold the beer, although not employed as a cashier, was allowed from time to time to handle the cash register when the other clerks were busy [RT 39].

Appellant's counsel conceded that the transaction had taken place as described by the Department's witnesses. He argued that the regular clerk's attention having

been diverted by a problem concerning another customer should be a mitigating factor, as should the fact that a suspension would work a financial hardship on appellant's family.

Following the hearing, the Administrative Law Judge (ALJ) submitted his proposed decision, concluding that appellant had failed to establish a defense to the accusation.

Appellant filed a timely notice of appeal. In its brief, appellant again argues that the person who made the sale in question had never operated the cash register as part of his duties, but did so in this instance only because the regular cashier was distracted by another customer. The ALJ, however, made a finding to the contrary, that Zamudio works as a cashier when the regular clerk is busy with other duties. There is sufficient evidence to support such a finding.

DISCUSSION

We have reviewed the record in this matter. Appellant conceded that the violation had occurred, and argued that the suspension recommended by the Department (and ordered by the ALJ) would work a hardship on appellant's family. The Department's recommendation was based on appellant's prior disciplinary record, which reveals multiple sales to minors, including instances as recently as 1994 and 1995. Under the circumstances, we see no reason to disturb the Department's exercise of discretion.

CONCLUSION

The decision of the Department is affirmed.²

BEN DAVIDIAN, CHAIRMAN
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD³

² This 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.

³ Ray T. Blair, Jr., Member, did not participate in the oral argument or decision in this matter