

ISSUED FEBRUARY 11, 1998

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

ABDO & NAJAH ASKAR	)	AB-6853
dba Monrovia Liquor Mart)	
120 West Huntington Drive	)	File: 21-272914
Monrovia, CA 91016,	)	Reg: 97038625
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John A. Willd
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 5, 1997
	)	Los Angeles, CA
)	

Abdo and Najah Askar, doing business as Monrovia Liquor Mart (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 20 days for appellants' clerk having sold malt liquor to two minors, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of

¹The decision of the Department, dated April 24, 1997, is set forth in the appendix.

Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Abdo Askar, appearing without counsel, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on July 7, 1992. Thereafter, the Department instituted an accusation against appellant charging that, on October 11, 1996, appellants' clerk sold malt liquor to two 18-year-old minors.

An administrative hearing was held on February 20, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the sale of malt liquor by the Department investigator who witnessed the sale, by the two minors, and by appellants' clerk.

Subsequent to the hearing, the Department issued its decision which determined that the two minors did not appear to be over the age of 21, it was clear that the malt liquor was being purchased for the two minors by a third person who was over the age of 21, and the minors were not asked their age or for their identification. The Department ordered the license suspended for 20 days.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants argue that the penalty imposed is excessive.

Written notice of the opportunity to file briefs in support of appellants' position was given on August 28, 1997. No brief was filed by appellants. We have reviewed the notice of appeal and have found insufficient assistance in that

document which would aid in review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellants. It was the duty of appellants to show to the Appeals Board that the claimed error existed. Without such assistance by appellants, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Although no brief was filed, appellant Abdo Askar appeared at the oral argument before this board on November 5, 1997. He argued then that the penalty was too severe. He also contended that no violation had occurred.

We have, however, reviewed the record and are satisfied that the penalty is not excessive. The testimony of the minors and the officer differed from that of appellants' clerk, but the findings of the Administrative Law Judge (ALJ) recite the facts related by the minors and the officer, showing that he found them more credible. This determination of credibility is within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) In any case, appellants' notice of appeal does not contest the findings or determinations of the Department, only the penalty.

Appellants had two prior accusations brought against them resulting in

discipline: a 1994 sale to a minor, for which appellants paid a fine in lieu of serving a 15-day suspension; and a 1996 violation of Penal Code 313.1, subdivision (e) [harmful matter not in an area labeled "adults only"], for which appellants served a 15-day suspension [25-day suspension with 10 days stayed]. Under the circumstances, it does not appear that the Department abused its discretion in imposing the 20-day suspension.

CONCLUSION

The decision of the Department is affirmed.²

BEN DAVIDIAN, CHAIRMAN
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.