

ISSUED APRIL 10, 1998

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

JOSEPH A. ZOREE and LATIF ZOURA	)	AB-6880
dba Mr. Liquor)	
10227 Mast Boulevard	)	File: 21-296540
Santee, California 92071,	)	Reg: 97038714
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	February 4, 1998
	)	Los Angeles, CA

Joseph A. Zoree and Latif A. Zoura, doing business as Mr. Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 20 days, for appellant Joseph A. Zoree having sold an alcoholic beverage (beer) to a 19-year-old minor 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 Professions Code §25658, subdivision (a).

¹The decision of the Department, dated June 5, 1997, is set forth in the appendix.

Appearances on appeal include appellants Joseph A. Zoree and Latif A. Zoura, appearing through their counsel, Richard W. Trost, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on August 3, 1994. Thereafter, the Department instituted an accusation against appellants charging that appellant Joseph Zoree sold an alcoholic beverage to a minor decoy.

An administrative hearing was held on April 16, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the circumstances of the transaction. Julene Kuehni, the minor decoy, and Deputy Sheriff Scott Kleinhesselink, testified about the purchase by Kuehni of a six-pack of Budweiser beer from appellant Joseph Zoree, in the course of which Kuehni was asked for her identification and produced her driver's license, which showed her date of birth and bore the red-striped legend "21 in 1998." Zoree testified he mistakenly consulted a wall calendar applicable to the sale of cigarettes rather than the calendar which applied to alcoholic beverages.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged. The penalty, a suspension of 20 days, reflected a reduction from the 25 days recommended at the administrative hearing. This reduction was attributed to mitigation by the Administrative Law Judge (ALJ), based upon his acceptance as credible Zoree's explanation of how he mistakenly consulted the wrong calendar while examining Kuehni's license.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issue: the penalty is excessive in light of the context in which the violation occurred.

DISCUSSION

Appellants contend that the penalty is disproportionate to the offense, citing the California Constitution's provisions proscribing cruel and unusual punishment.

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].)

Appellants do not characterize the penalty as an abuse of discretion, instead relying on the constitutional provisions relating to cruel and unusual punishment. Because the penalty is disproportionate to the offense, they say it is "unusual."

There are several reasons why we must reject appellants' argument.

License suspension flowing from administrative proceedings under the Alcoholic Beverage Control Act is disciplinary in nature, and is not considered punishment within the meaning of Article 1, §17, of the California Constitution.

Appellants paid a fine in lieu of a suspension for a sale-to-minor violation in 1995. Thus, this was a second violation in a relatively short period of time. The ALJ acknowledged that mitigation was appropriate by reducing the penalty from

that recommended by the Department at the administrative hearing.

Based upon the penalties in similar cases reviewed by the Appeals Board, the 20-day suspension would appear to be well within the discretion of the Department.

CONCLUSION

The decision of the Department is affirmed.²

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., 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.