

ISSUED JUNE 12, 1998

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

KHALED ZAKHER and MEDHAT	)	AB-6899
ZAKHER dba Joe's Liquor)	
12519 Victory Boulevard	)	File: 21-245404
North Hollywood, CA 91606,	)	Reg: 96038330
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	April 1, 1998
	)	Los Angeles, CA

Khaled Zakher and Medhat Zakher, doing business as Joe's Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which ordered their off-sale general license suspended for 30 days, with 10 days thereof stayed for a probationary period of one year, for their clerk having sold an alcoholic beverage to a minor, 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).

¹ The decision of the Department, dated June 12, 1997, is set forth in the appendix.

Appearances on appeal include appellants Khaled Zakher and Medhat Zakher, appearing through their counsel, Michele H. Saling, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on October 14, 1993. Thereafter, the Department instituted an accusation against appellants charging that on October 17, 1996, appellants' clerk, Tarek Zakher, sold an alcoholic beverage (malt liquor) to George Woo, a 17-year-old minor. An administrative hearing was held on May 6, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Los Angeles Police Officer Lorenzo Barbosa and George Woo in support of the charge in the accusation, and by Gourghen Simonian and Tarek Zakher on behalf of the licensees.

Officer Barbosa testified that while he was inside appellants' store in the process of conducting an investigation, he observed George Woo speaking to Tarek Zakher, following which Zakher allowed Woo to use the telephone. When Woo completed his call, according to Barbosa, Woo went to the cooler section of the store, retrieved a 40-ounce bottle of Micky's Malt Liquor, took it to the counter, took \$3 from his pocket and paid Zakher, received change, and exited the store. Barbosa and his partner then prevented Woo and his companion, who had apparently remained in their car, from leaving the parking lot. Barbosa seized the

malt liquor and it was produced at the administrative hearing.

George Woo, the minor, testified that he entered the store alone, got the malt liquor, put it in his jacket, showed it to the clerk and paid for it, left the store, returned to buy a bag of chips, and then got in his friend's car. Woo testified the bottle was in the jacket because he did not want to get the clerk in trouble. The malt liquor remained in his jacket when he reentered the store for the chips. Woo knew the price of the malt liquor because he had purchased it before. On cross-examination, Woo said he did not see officer Barbosa in the store, but he was facing the counter, and as far as he knew, there was no one else in the store. He said he was with two friends, one of whom remained in the car, and the other entered the store with him and went to the video game area. On re-direct examination, Woo said he had been in the store before, and considered himself on friendly terms with Zakher.

Gourghen Simonian testified he was in the store from 6:30 to 9:30 on the night in question, visiting Zakher, and playing video games with his daughter. He said he saw Woo come to the counter to purchase the chips, but denied seeing any liquor. Simonian said he did not see Barbosa until he entered the store with Woo after Woo had purchased the chips.

Tarek Zakher acknowledged that Woo had been in the store on prior occasions, but said Woo and his friends simply played the video games and talked.

He denied he had ever sold alcoholic beverages to Woo. He admitted giving Woo permission to use the telephone, and, while acknowledging Barbosa had been in the store, said he only asked for matches and then left the store, and was not in the store when Woo purchased the potato chips. Zakher also testified that one of Woo's friends came by the next day and told him that Woo's friend had stolen the malt liquor Zakher was accused of selling.

Officer Barbosa was recalled and testified that when the citation was issued, at no point was there any claim that the alcoholic beverages had been stolen.

Subsequent to the hearing, the Department issued its decision which determined that the transaction had occurred as alleged in the accusation, and ordered appellants' license suspended.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants contend that there was no sale of an alcoholic beverage, asserting it was stolen by Woo's companion.

DISCUSSION

Appellants contend there never was a sale of malt liquor to Woo; they assert that the malt liquor seized by officer Barbosa had been stolen by Woo's companion, and that Woo perjured himself when he testified he purchased the malt liquor.

Appellants have raised no issue of law in their appeal. Instead, both the notice of appeal and the brief to the Appeals Board simply recite facts which are

not only in conflict with the testimony of both the police officer and Woo, but with themselves. For example, in their notice of appeal, appellants contend Woo's companion stole the beer. In their brief, and in oral argument, they accuse Woo of having stolen the beer by hiding it in his jacket.

The Administrative Law Judge heard appellant's clerk, Tarek Zakher, testify, and deemed his denial of having made the sale not credible. The credibility of a witness's testimony is determined 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].) Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

This appeal is nothing more than an attempt by appellants to retry the case

before the Appeals Board, and, for that reason, must fail.

CONCLUSION

The decision of the Department is affirmed.²

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, 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.