

ISSUED SEPTEMBER 30, 1998

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

THE SOUTHLAND CORPORATION,	)	AB-6910
PARDEEP K. PANNU, and)	
SUKHSAGAR PANNU	)	File: 20-247118
dba 7-Eleven #16464	)	Reg: 97039041
5120 Zelzah Avenue)	
Encino, California 91316,	)	Administrative Law Judge
Appellants/Licensees,	)	at the Dept. Hearing:
	)	Sonny Lo
v.)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	July 8, 1998
Respondent.	)	Los Angeles, CA

The Southland Corporation, Pardeep K. Pannu, and Sukhsagar Pannu, doing business as 7-Eleven #16464 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale beer and wine license for 20 days, with the suspension of 10 days thereof stayed for two years, for their clerk, Manjit Singh, having sold an alcoholic beverage (beer) to Heidi Merrin, an 18-year-old minor participating in a decoy operation conducted by the Los Angeles Police department, 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).

Appearances on appeal include appellants The Southland Corporation,

¹ The decision of the Department, dated June 19, 1997, is set forth in the appendix.

Pardeep K. Pannu, and Sukhsagar Pannu, appearing through their counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on May 28, 1991. Thereafter, the Department instituted an accusation against appellant charging that appellants violated Business and Professions Code §25658, subdivision (a), by reason of the sale of beer by their clerk to a minor decoy on November 22, 1996.

An administrative hearing was held on May 9, 1997, at which time oral and documentary evidence was received. At that hearing, appellant admitted the allegation of the sale to a minor, and the Administrative Law Judge (ALJ) based his finding of a violation on the admission. The Department presented the testimony of the minor, Heidi Merrin, in support of its contention the offense was aggravated. Merrin testified she was asked for identification, which she produced, after which she was sold the beer. She also testified that as a decoy, she shopped 40 other licensed locations, was asked for identification at 34 of those locations, which then would not sell to her, and at five of the six locations which did sell to her.

Sukhsagar Pannu testified that as soon as he arrived at his store, one of three licenses he holds, and learned what had occurred, he terminated the clerk. Pannu stated that the clerk had attended a 7-Eleven alcohol sales training program as well as a LEAD training program.

Pannu also testified and demonstrated, as a matter of mitigation, a device he

invented and which is currently being used in his stores, which reads date of birth information recorded on the magnetic stripe on the back of the license.

Subsequent to the hearing, the Department issued its decision which found the violation as charged, and suspended appellants' license for 20 days, with 10 days thereof stayed, resulting in a net suspension of ten days. This was instead of the 45-day suspension, with 15 days stayed, which Department counsel had recommended.

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

DISCUSSION

Appellants contend that the penalty is excessive, arguing that the evidence indicates the clerk merely made an honest mistake in calculating the decoy's age, and that the violation was only appellants' second in seven years.

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, as here, an appellant raises the issue of an excessive penalty, we will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].) In so doing, we do not simply substitute our judgment for that of the Department. It is only when we are satisfied that the Department has exceeded the bounds of the discretion bestowed upon it by statute that we may intervene. This is not such a case.

Neither of appellants' arguments are persuasive. The argument that the clerk made a mistake in calculating the decoy's age may or may not be true.

The evidence is more suggestive that what occurred was an act of simple negligence in failing to read what was prominently shown on the identification - "21 in 1999". That the same "mistake" was made by five other clerks that evening, from a total of 40, simply indicates that the problem is a common one, one which should not be encouraged by unwarranted leniency.

The argument that the offense was only the second in seven years, while true,² does not overcome the fact that it was also the second sale-to-minor violation in a single year. (See Finding of Fact 1). Given the close proximity of the two violations, the penalty appears to be reasonable.

CONCLUSION

The decision of the Department is affirmed.³

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

² It is also true, as the Department argued, that it was appellants' fourth offense in the same, approximate, seven-year period; it is simply how one chooses to view the numbers.

³This 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.