

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

YOUNG OK CHOI, BYOUNG DAE	)	AB-7194
CHOI, and KYONG AE AN)	
dba Rhea's Deli	)	File: 21-290948
800 Valencia Street	)	Reg: 98043322
San Francisco, CA 94110,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Sonny Lo
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	July 22, 1999
Respondent.	)	San Francisco, CA
)	

Young Ok Choi, Byoung Dae Choi, and Kyong Ae An, doing business as Rhea's Deli (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale general license for 25 days, for co-appellant Young Ok Choi having sold alcoholic beverages (beer) to two minor decoys, 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 Young Ok Choi, Byoung Dae Choi,

¹ The decision of the Department, dated July 30, 1998, is set forth in the appendix.

and Kyong Ae An, appearing through Young Ok Choi, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on January 18, 1994. Thereafter, the Department instituted an accusation against appellants charging that, on February 27, 1998, co-appellant Young Ok Choi sold an alcoholic beverage (beer) to each of two minor decoys.

An administrative hearing was held on July 2, 1998, at which time appellants stipulated that the charges in the accusation were true. Co-appellant Young Ok Choi testified that the transaction resulted from a miscommunication with her husband. She testified that she asked him if the minors' identification had been requested, and he misunderstood her to be asking about the price of the beer and gave her a nod.

Subsequent to the hearing, the Department issued its decision, which ordered the license suspended for 25 days.

Appellants thereafter filed a timely notice of appeal, and request the Appeals Board to set the penalty aside, because the transaction was the result of a mistake.

DISCUSSION

Appellants urge the Board to set aside the suspension. They argue that co-appellant Young Ok Choi's explanation that the sales resulted from a miscommunication with her husband was not given sufficient consideration, and

argue that the suspension would result in hardship.

The penalty, a 25-day suspension, was described by Department counsel as its standard penalty for a second sale-to-minor violation within a three-year period. Our experience in other cases confirms to us that this is true.

The Appeals Board will not disturb the Department's penalty order 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].)

The fact that, as appellants claim, the sales were the result of a breakdown in communication, does not excuse them, or provide a basis for setting aside a penalty which is not so excessive as to constitute an abuse of discretion.

The 25-day suspension does not appear to be excessive. This was appellants' second sale-to-minor violation, and actually involved two unlawful sales. The Department appears to have exercised its discretion reasonably.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

Abstaining:

JOHN B. TSU, MEMBER

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 order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.