

ISSUED JUNE 5, 2000

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

FLORA RAHMAN	)	AB-7359
dba Neighborhood Market)	
1911 North Glenoaks Blvd.	)	File: 20-304957
Burbank, CA 91504,	)	Reg: 97039926
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	April 6, 2000
	)	Los Angeles, CA

Flora Rahman, doing business as Neighborhood Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which conditionally revoked her off-sale beer and wine license pursuant to allegations that appellant was not the sole or true owner of the premises, but stayed imposition of revocation for a probationary period of two years, along with a suspension of 30 days and a restriction that her brother is to have no control, interest, or management in the licensed operation, or perform any services within the premises,

¹The decision of the Department, dated January 28, 1999, is set forth in the appendix.

being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivisions (a) and (b), arising from violations of Business and Professions Code §§23300 and 23355.

Appearances on appeal include appellant Flora Rahman, appearing through her counsel, Ahmed M. Abdallah, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on July 5, 1995. Thereafter, the Department instituted an accusation against appellant charging that there was a failure to disclose a partial or sole owner other than appellant.

An administrative hearing was held on October 21, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the allegations as found in count I of the accusation were true.²

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant raised the issue that the findings were not supported by substantial evidence.

DISCUSSION

Appellant contends that the findings were not supported by substantial evidence, arguing that her brother was only a business agent for her and was also a guarantor of

²The accusation's count II alleging that appellant had misrepresented material facts on her application, was dismissed.

her debts and obligations, therefore, there was no ownership in the premises' operation or license by her brother. The record shows otherwise, with heavy involvement by the brother.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

A. OWNERSHIP

The Administrative Law Judge (ALJ) found that while the funds to open and operate the premises were appellant's, appellant allowed her brother who, contrary to appellant, was proficient in English, to effectively control and operate the premises. The brother owned a "consulting firm specializing in these situation [sic]." The ALJ rejected the Department's allegation that the brother was using appellant as his "front"

to operate the premises [Finding F-supplemental], and found, that as appellant acquired the necessary skills of English comprehension and business techniques, the brother reduced his involvement in the premises' operation [supplemental Findings A, C, D, and F].

Exhibit 3 is the lease for the premises' location. It was negotiated exclusively by the brother, with amendments and payment made by the brother. The unfortunate thing (for appellant) is that the brother signed the lease, not appellant [RT 12-16].

Exhibit 5 is a memo from the brother concerning the negotiations for the lease, wherein he writes as if he is the owner of the premises. The brother goes into great detail as to the years of the lease, and periods of rent that should be free.

Exhibit 8 is a check for the rent, on which there are statements concerning post dated checks, all signed by the brother.

Exhibit 13 is an invoice for beverages, with notation of appellant and Bobby Ullah, the brother, on the invoice.

Exhibit 16 is a notice to employees concerning loss of shopping carts and improper inventorying of cigarettes. The brother states therein:

“... If you do not like to count cigarette packs, which is a part of your job, may be [sic] you should find a job, where you do not have to count cigarettes. I really mean it. I do not want you to work here, if you do not count cigarettes. From now on, I will frequently make security checks on your cash drawer and your cigarette & milk counts. If I find that you just copied the counts from the previous shift – whatever I find short – you will be liable for all of that, even though it may not all happened [sic] on your shift and I will take it out of your pay [underlined in box form]. Furthermore, if I find that you just cheated the count from the previous shift, I will fine you \$10.00 [underlined in box form] for each and every instance...” (Underlining in the original.)

On September 15, 1996, the brother sent a letter to an employee at the

premises, stating:

“... You better put more attention to your job than anything else. (¶) As a business owner, I have the right to refuse service to anyone. I am refusing service to all your room mates and Thomas while you work no exceptions will be tolerated. (¶) I will send mystry [sic] shoppers in your shift to check you out. Your drawers will be randomly checked too. (¶) One more incident will not only cost your job, but it will go further more than that ... You are only supposed to write the dropped amount and [unintelligible]. This is the last time I am telling you. I don't want to repeat this anymore. You must give receipts to every customers [sic] after purchase – no exceptions” (Underlining in the original.)

A reading of the entire record shows the brother in substantial control of the day-to-day operation at the premises.

B. PENALTY

The penalty of a stayed revocation to insure conformity to the law that demands that the Department knows who is running the premises, is appropriate. Not so with the 30-day suspension. The decision states:

“... [Appellant] is a shy, diminutive lady who has few English skills, and in 1994, did not have the necessary skills and business experience to run a licensed premises operation.” [Finding A-supplemental.] “[Appellant] was far over her head in attempting to operate the venture” [Finding C-supplemental.] “... [Appellant] represented the facts in her application truthfully, to the best of her ability.” [Finding C-supplemental.] “While [the brother] acted as [appellant's] ‘alter ego’ in the operation of the premises, this was not shown to be a permanent arrangement but one that was driven by the exigencies of the situation in which [the brother] overstepped his role as a rescuer of his ‘baby sister’ and took over the role of owner.” [Finding F-supplemental.] “... [Appellant] is ‘operating the business pretty much on her own with only occasional assistance from her brother” [Finding F-supplemental.] “... ‘ignorance of the law is no excuse’ ... However, the discipline to be just, must take into account that the misconduct arose not out of a deliberate intent to violate the law, but by a[n] [appellant] who in ignorance of her own limitations, stepped into the deep end of a pool without knowing how to swim and needing to be rescued, was rescued by one whose judgment was not much better than the [appellant's].” [finding G-supplemental.]

Considering those observations by the ALJ, the Department's request to the ALJ to revoke the license appears to be thoughtless. A suspension of 30 days as a penalty

in this factual circumstance, is unjust punishment in view of the stayed revocation, and in view of the compassionate observations of the ALJ. The suspension penalty must be substantially reduced.

ORDER

The decision of the Department is affirmed, with the penalty reversed and remanded to the Department to reconsider the suspension portion of the penalty in light of the views expressed herein.³

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

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 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.