

ISSUED NOVEMBER 14, 2000

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

| | | |
|---------------------------|---|--------------------------|
| FAWZI A. ZEIDAN |) | AB-7451 |
| dba Haight & Cole Liquors |) | |
| 1699 Haight Street |) | File: 21-135187 |
| San Francisco, CA 94117, |) | Reg: 99046366 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | Robert R. Coffman |
| |) | |
| DEPARTMENT OF ALCOHOLIC |) | Date and Place of the |
| BEVERAGE CONTROL, |) | Appeals Board Hearing: |
| Respondent. |) | September 22, 2000 |
| |) | San Francisco, CA |

Fawzi A. Zeidan, doing business as Haight & Cole Liquors (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 10 days for appellant having sold an alcoholic beverage to a person under the age of 21, 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 August 5, 1999, is set forth in the appendix.

Appearances on appeal include appellant Fawzi A. Zeidan, appearing through his counsel, Bruce J. Levitz, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on February 23, 1983. Thereafter, the Department instituted an accusation against appellant charging that, on February 3, 1999, appellant Fawzi A. Zeidan sold an alcoholic beverage, beer, to Ke-Ita Reid, who was then 17 years of age. Reid was acting as a decoy for the San Francisco Police Department at the time.

An administrative hearing was held on July 7, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented on behalf of the Department by Reid ("the decoy") and by San Francisco police officer Lynda Zmak. Zeidan and two of his long-time customers, Gerald Brewster and Kenneth Thompson, testified for appellant.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been sustained.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends that the determination is not supported by the findings and the findings are not supported by substantial evidence.

DISCUSSION

Appellant contends that there is not substantial evidence to support the findings and determination because the testimony of both the police officer and the decoy was not credible, while that of appellant and his two customers was.

The officer and the decoy testified that the decoy went in, got a can of Budweiser beer from the cooler at the back of the store, took it to the counter, paid appellant for it with a marked \$5 bill, received \$4 in change, carried the beer out, gave it to the officer, and went back inside the store with the officer, where she identified appellant as the person who sold the beer to her. The decoy testified she was not asked her age or for an ID.

Appellant testified that the decoy came in, asked if he had potato chips for sale, was told where they were, came back with a bag of potato chips, paid for them with a \$5 bill, received \$4 in change, and took the chips, in a bag, out of the store. Brewster testified that he came in the store while the decoy was at the counter paying, and he saw her purchase a bag of potato chips.

Appellant's attack on the evidence is solely by impugning the credibility of the officer and the decoy, implying that either they both lied or that the decoy fooled the officer by buying chips, but telling the officer she purchased beer and giving the officer a can of beer that she had secreted on her person before she entered the store.

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]; Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

The ALJ found the officer and the decoy more credible than appellant and his customers, concluding that appellant's "contention is contrary to the weight of the evidence." (Finding III.) We find no reason to disagree.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., 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 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.