

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

AB-7522

File: 48-172509 Reg: 99046845

RON KUBO, dba Tag's Bar
11441 Crenshaw Boulevard, Inglewood, CA 90303,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: June 4, 2002
Los Angeles, CA

ISSUED AUGUST 8, 2002

Ron Kubo, doing business as Tag's Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for his purchase of distilled spirits from a person not holding a wholesaler's license, and for his plea of nolo contendere to the felony of violating Penal Code §§664/496, subdivision (a) (attempted purchase or receipt of stolen property), a public offense involving moral turpitude, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§23402 and 24200, subdivision (d).

Appearances on appeal include appellant Ron Kubo, appearing through his counsel, M.R. Ward, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew Ainley.

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

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on June 5, 1985. Thereafter, the Department instituted a 12-count accusation against appellant charging that on various dates in March and April of 1999, appellant purchased or received cigarettes and liquor believing them to be stolen (counts 1, 2, 4, 5, 7, 8); purchased alcoholic beverages from a person not holding a wholesaler's license (counts 3, 6, 9); passed, or possessed with intent to pass, counterfeit money (counts 10, 11); and possessed at the premises a slot machine (count 12). In an amendment to the accusation, count 13 was added, charging that, on September 7, 1999, appellant pled nolo contendere to an information charging him with felony attempted purchase or receipt of stolen property, a crime involving moral turpitude.

An administrative hearing was held on October 5, 1999, at which time documentary evidence was received and testimony concerning the charged violations was presented by Department investigators Dwight Pickens and Lawrey Michael Spencer and by appellant. Subsequent to the hearing, the Department issued its decision which dismissed counts 3, 10, 11, 12, and that part of count 6 alleging appellant purchased tequila and rum. The remaining counts were found to have been established and appellant's license was ordered revoked.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) a plea of nolo contendere in a criminal proceeding cannot provide a basis for discipline by the Department, and (2) the penalty is excessive.

DISCUSSION

I

Appellant contends that the Department cannot use his plea of nolo contendere in the criminal case against him to impose discipline.

Appellant is wrong. Although a "no contest" plea cannot be used in a subsequent civil action, Business and Professions Code §24200, subdivision (d), provides that an alcoholic beverage license may be suspended or revoked based on "the plea of nolo contendere to any public offense involving moral turpitude."

Appellant does not dispute that he pled nolo contendere to the criminal charge of attempted receipt of stolen property. Attempted receipt of stolen property is a crime involving moral turpitude: "One who unlawfully acts in disregard for the property rights of others, whether known or unknown, demonstrates moral laxity and to some degree a 'readiness to do evil.'" (*People v. Rodriguez* (1986) 177 Cal.App.3d 174, 179 [222 Cal.Rptr. 809]; see also *People v. Turner* (1990) 50 Cal.3d 668, 705 [268 Cal.Rptr. 706]; *In re Conflenti* (1981) 29 Cal.3d 120, 124 [172 Cal.Rptr. 203].)

II

Appellant contends that the penalty is excessive. He argues that mitigation exists since he has already suffered a 60-day suspension ordered by the superior court in the criminal case against him and he has maintained his premises in a lawful manner since these violations occurred.

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].) However, the Board will not

disturb the Department's penalty orders in the absence of a clear abuse of the Department's discretion. (*Martin v. Alcoholic Beverage Control Appeals Board & Haley* (1959) 52 Cal.2d 287 [341 P.2d 296].) "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Beverage Control Appeals Board* (1965) 62 Cal.App. 2d 589, 594 [43 Cal.Rptr. 633, 636].)

The superior court does not appear to have ordered a suspension of appellant's license as alleged by appellant; rather, the court ordered that "Defendant [i.e., appellant] is prohibited from engaging in the sale of alcohol for 90 days or until 12-6-99." (Exhibit 2, p. 4.) This appears to be a prohibition personal to appellant, not to the licensed premises.

If appellant objected to the action of the court, he should have appealed the court's order. The Department's imposition of penalty arises from its responsibility to protect public welfare and morals, which it found would be impaired by the uninterrupted continuation of appellant's license. The court's penalty order, even if erroneous, is not mitigation justifying a reduction in the penalty imposed by the Department.

The maintenance of appellant's premises in a lawful manner from May 1999 to the present is also not a mitigating factor. Appellant is required to maintain his premises in a lawful manner, and subsequent compliance with the law does not negate his prior violation of it.

Appellant, on three occasions, purchased alcoholic beverages he believed to be stolen; the purchases were made from a person who was not a licensed wholesaler; and the alcoholic beverages were added to appellant's legally purchased stock for

resale. Under the circumstances, we cannot say that the Department abused its discretion in revoking appellant's license.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, 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.