

ISSUED NOVEMBER 28, 2000

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

MOUTIH WANIS	)	AB-7553
dba Pinon Hills Market)	
10602 Mountain Road	)	File: 21-309452
Pinon Hills, CA 92372,	)	Reg: 99045894
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 5, 2000
	)	Los Angeles, CA

Mouth Wanis, doing business as Pinon Hills Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ made pursuant to Government Code § 11517, subdivision (c), which revoked his on-sale general license, but stayed revocation for 180 days to permit the transfer of the license, and imposed an actual suspension of 30 days, and indefinitely thereafter, further providing that if the business is not sold within 180 days, the Director may,

¹The decision of the Department made pursuant to Government Code §11517, subdivision (c), dated December 9, 1999, is set forth in the appendix, together with the decision proposed by the Administrative Law Judge.

without further notice, revoke the license, for appellant having purchased federal food stamps at half their face value, a crime involving moral turpitude, 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 §24200, subdivision (a), in conjunction with Title 7, United States Code §2024(b)(1) and 7 C.F.R. §271.2.

Appearances on appeal include appellant Mouth Wanis, representing himself, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued in June 1955. In an accusation filed March 12, 1999, the Department charged that appellant made three separate purchases of federal food stamps at half their face value, in violation of Title 7, United States Code, §2024, a public offense involving moral turpitude.

An administrative hearing was held on May 27, 1999, at which time Department investigator Laura Flores and appellant testified. Following the hearing, the Administrative Law Judge (ALJ) entered his proposed order, revoking appellant's license, but staying revocation for a period of 180 days to permit the sale of the business by appellant. The order provides that if the business is not sold within the stayed period the Director can, without further notice, revoke the license.

By a notice dated August 5, 1999, the Department advised the parties that it had considered, but did not adopt, the proposed decision, and intended to make its

own decision pursuant to Government Code § 11517, subdivision (c), and invited the parties to submit written arguments on any matters they thought necessary. Appellant, through counsel, submitted a brief urging the Department to impose the penalty originally imposed in the proposed decision.

On December 9, 1999, the Department entered its own decision and order. The order differed from that proposed by the ALJ in one material respect. While the ALJ's proposed order did not include a suspension, the Department's order imposed an actual suspension of 30 days, to be followed by an indefinite suspension until the business was sold.

Appellant has filed a timely appeal, and now asks that the Board reverse the Department and order the reinstatement of the penalty imposed by the Administrative Law Judge.

DISCUSSION

Appellant argues that the Department, by adding a 30-day suspension and an indefinite suspension thereafter until the license is transferred to the ALJ's proposed penalty requiring merely the transfer of the license within 180 days, goes beyond what is necessary to protect the public, and punishes appellant. Appellant also argues that the crime which was committed, the purchase of federal food stamps at half their face value, is not a crime involving moral turpitude. We find neither of these arguments persuasive.

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].) We do not

find such an abuse in this case.

Appellant contends that the effect of the Department's enhancement of the penalty leaves him nothing but the license to sell, while the ALJ's proposed penalty would have permitted the sale of a going business. This argument assumes, without record support, that appellant's inability to sell alcoholic beverages spells the demise of his business. We are unwilling to acquiesce in that assumption. For all that the record indicates, a buyer will be purchasing a going business that simply lacks the ability to sell alcoholic beverages, but which will regain that ability upon the advent of the new owner.

The argument that the purchase of food stamps at one-half their face value, in violation of federal law is not a crime involving moral turpitude is equally unpersuasive. Case law treats crimes involving fraud or intentional dishonesty for purposes of personal gain as crimes involving moral turpitude. (See Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30 [152 Cal.Rptr. 152].) Here, appellant, knowing what he was doing was wrong, acted for personal gain. His testimony that he was doing the investigator a favor rings hollow - that he paid one-half the face value of the food stamps suggest to us that he was doing himself a favor, at the expense of the food stamp program.

Appellant contends that there must first be a judicial pronouncement to the effect that the conduct of the type engaged in by appellant involved moral turpitude. We believe, instead, that the broad standards examined in Rice, supra, make it undeniable that appellant's unlawful conduct involved moral turpitude, and that the penalty imposed is well within the Department's discretion.

ORDER

The decision of the Department is affirmed.²

RAY T. BLAIR, JR., ACTING CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district 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.