

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

ABEDEL R. ESMAIL dba John's Liquor & Market
16718 Valley Boulevard, Fontana, CA 92335,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent
AB-7609

File: 21-133851 Reg: 99047313

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: December 12, 2000
Los Angeles, CA

ISSUED: MARCH 5, 2001

Abedel R. Esmail, doing business as John's Liquor & Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his off-sale general license, the revocation stayed for 180 days to permit the transfer of the license, and suspended the license for 30 days, and indefinitely thereafter until transferred. Appellant was convicted, upon his plea of guilty, of knowingly using, transferring, selling, purchasing or possessing food stamps or other authorizations to participate in the federal Food Stamp program in a manner not authorized by the

¹The decision of the Department, dated March 2, 2000, is set forth in the appendix.

federal Food Stamp Act or the federal regulations governing that act, in violation of Welfare and Institutions Code §10980, subdivision (g), being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Welfare and Institutions Code §10980, subdivision (g),² in conjunction with Business and Professions Code §24200, subdivisions (a) and (d).³

Appearances on appeal include appellant Abedel R. Esmail, appearing through his counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

² Welfare and Institutions Act §10980, subdivision (g) provides, in pertinent part, that “any person who knowingly uses, transfers, sells, purchases or possesses food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program in any manner not authorized by ... the federal Food Stamp Act” is guilty of a misdemeanor if the face value of the food stamps or authorizations to participate are \$400 or less.

³ Business and Professions Code 24200 provides in pertinent part:

“The following are the grounds that constitute a basis for the suspension or revocation of licenses:

“(a) When the continuance of a license would be contrary to public welfare or morals. However, proceedings under this subdivision are not a limitation upon the department's authority to proceed under Section 22 of Article XX of the California Constitution.

“...
“(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.”

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on February 7, 1983. On September 16, 1999, the Department instituted an accusation against appellant charging him with five separate violations of Welfare and Institutions Code §10980, subdivision (g), all misdemeanors, arising from his plea of guilty to criminal charges of the same code provision.

An administrative hearing was held on January 11, 2000, at which time oral and documentary evidence was received. At that hearing, evidence of appellant's plea of guilty to the charges of food stamp fraud was introduced, and the parties stipulated to certain facts regarding the charges to which the guilty plea applied. Appellant testified on his own behalf, admitting the unlawful conduct and explaining it as "a big mistake," that it was wrong, and that his right to participate in the federal food stamp program had been taken from him. Appellant's counsel urged a penalty of less than outright revocation, suggesting a three-year stay of revocation and a 30-day suspension. Department counsel argued that revocation should be ordered because appellant's conduct involved intentional acts of dishonesty.

Following the hearing, the Department entered the order from which appellant now appeals.

Appellant contends that the penalty is unreasonably harsh, and says that the decision does not set forth a basis or facts of aggravation to support the order.

The Appeals Board has said many times that it 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].) It has also said, however, that where an appellant raises the issue of an excessive penalty, the Appeals Board will examine the issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

In this case, appellant admitted that, on five separate occasions, he had engaged in fraudulent conduct involving the federal food stamp program.

The Administrative Law Judge (ALJ) found, and appellant does not dispute, nor do we, that the offense to which appellant pled guilty is a crime involving moral turpitude. The ALJ also made specific note of Department counsel's argument that the five separate violations precluded any determination that appellant had committed an isolated act.

Appellant's argument that the decision does not disclose any basis for its order of revocation is without merit. The references to the five separate violations, to appellant's dishonesty, and to the need to protect the public, provide ample basis for an order of revocation.

Similarly, appellant's plea for leniency based upon an absence of instances where discipline was required appears to have been met by the Department when it stayed its order of revocation so that appellant could transfer - meaning sell - his license, rather than order it revoked outright.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴ 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.