

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

AB-7639

AHMAD M. TALEB and SALEH TALEB dba Oak Tree Grocery
1601 28th Avenue, Oakland, CA 94601,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 20-204555 Reg: 99047822

Administrative Law Judge at the Dept. Hearing: Robert R. Coffman

Appeals Board Hearing: May 24, 2001
San Francisco, CA

ISSUED SEPTEMBER 27, 2001

Ahmad M. Taleb and Saleh Taleb, doing business as Oak Tree Grocery (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for appellant Ahmad Taleb having purchased infant formula and cigarettes while believing such to be stolen property, contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Penal Code §§664 and 496.

Appearances on appeal include appellants Ahmad M. Taleb and Saleh Taleb, appearing through their counsel, Earl D. Johnson, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

¹The decision of the Department, dated April 27, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 20, 1987.

Thereafter, the Department instituted an accusation against appellants alleging five instances in July and August 1999 of purchases by Ahmad Taleb and/or one of his employees of purchases of Enfamil Infant Formula and cigarettes while believing such property to have been stolen.

An administrative hearing was held on March 24, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Oakland police officer John Clement concerning his transactions with Ahmad Taleb; by Oakland police officer Jeffrey Ferguson, part of the police arrest team; by Ahmad Taleb, who denied any knowledge or belief the property was stolen; and by Saleh Taleb, Ahmad's brother, who described an arrangement with his brother pursuant to which each operates the store in alternate years; and by four patrons of the store who testified that the store's continued operation was important to the community. In addition, Ralph Nuno, a security investigator employed by the Safeway Company, testified in rebuttal concerning the wholesale prices of the items purchased by Taleb.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established, and that appellants' license should be revoked.

Appellants thereafter filed a timely appeal in which they contend (1) the findings are not supported by substantial evidence; (2) the continuation of appellants' license would not be contrary to welfare and morals; (3) the Department exceeded its jurisdiction by attempting to regulate the purchase and sale of non-alcoholic beverages; (4) the Department failed to carry its burden of proof; and (5) the penalty is excessive.

Issues 1 and 4 will be discussed as a single issue, as will issues 2 and 5.

DISCUSSION

I

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

Appellants acknowledge that the Administrative Law Judge (ALJ) determined that officer Clement's testimony was credible and that he found Ahmad Taleb's version of events not credible. Nonetheless, they ask the Board to conduct its own review of the evidence and draw its own conclusions as to the facts.

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

² California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

We have reviewed the record and have concluded that there is no reason for the Board to ignore these settled rules. Officer Clement's testimony clearly established a total of five purchases of infant formula and cigarettes from him, despite his having represented either that the products had been stolen or had been obtained through the use of a stolen credit card - in either case, resulting in the purchase of property believing it had been stolen.

The ALJ was in a much better position to assess the relative credibility of the competing versions of events than is this Board. He saw the witnesses as they testified, and was in a far better position than the Board to decide who told the truth. We have not been persuaded that his conclusions were erroneous.

Nor are we persuaded that the officer's use of the term "hook up" was such as to mislead appellants. While he conceded he used that term, he also testified that, on each of the five occasions, he made statements to the effect that the property had either been stolen or was purchased with a stolen credit card. We find it doubtful that a store owner who has lived in the United States for twenty years, as in the case of Ahmad Taleb, would be so lacking in his knowledge of the English language as not to

understand when he has been told something had been stolen, or purchased with a stolen credit card.

II

Appellants contend the penalty is excessive, and that the continuation of their license would not be contrary to welfare and morals. They argue, based upon testimonials by several residents of the area where the store is located, that they provide a public service to the community through the operation of their store.

In all probability, just about every store owner facing disciplinary action by the Department would be able to offer testimony from selected customers to the effect his or her store serves an important role in the community. Appellants are no exception.

Nonetheless, the Department must balance that supposed need against the need for honesty in its licensees. Appellants have failed that test, and, in our view, the Department has ample support for its determination that appellants' license should be revoked.

It is well settled that 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 believe that discretion has been abused in this case.

III

Appellants contend that the Department exceeded its jurisdiction, citing Business and Professions Code §24200, subdivision (b), which empowers the Department to suspend or revoke a license for violations of any law or regulation prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors.

Section 24200, subdivision (b), is not the sole source of the Department's ability

to discipline a licensee.

Section 24200, subdivision (a), for example authorizes the Department to suspend or revoke a license when its continuance would be contrary to public welfare and morals. Additionally, §24200, subdivision (a), is explicit that it is not a limitation on the Department's authority under section 22 of Article XX of the California Constitution. Under that constitutional provision, the Department may suspend or revoke a license if it determines that good cause has been shown for it to do so, or where there has been a violation of any law prohibiting conduct involving moral turpitude.

Appellants misjudge the focus of the Department's jurisdictional exercise. The Department is not exercising jurisdiction over non-alcoholic products. It is exercising jurisdiction over a licensee. That the conduct giving rise to the exercise of jurisdiction may involve something other than alcoholic beverages is essentially irrelevant.

ORDER

The decision of the Department is affirmed.³

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

³ 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.