

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

AB-7670

TAN VAN VUONG dba Estrella Liquor and Deli
1263 University Avenue, San Diego, CA 92103,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 21-359918 Reg: 00048309

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: June 7, 2001
Los Angeles, CA

ISSUED JULY 31, 2001

Tan Van Vuong, doing business as Estrella Liquor and Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for his having pled guilty to grand theft, 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 violations of Business and Professions Code §24200, subdivisions (a) and (b), in conjunction with Business and Professions Code §24200, subdivision (d), and Penal Code 487, subdivision (a) .

Appearances on appeal include appellant Tan Van Vuong, appearing through his counsel, Daniel E. Marshall, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated June 29, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on October 27, 1999.²

Thereafter, the Department instituted an accusation against appellant charging the entry by appellant of a guilty plea to a complaint charging him with grand theft in violation of Penal Code §487, subdivision (a), a public offense involving moral turpitude.

An administrative hearing was held on April 21, 2000, at which time appellant stipulated to the truth of the charge of the accusation and offered testimony in mitigation.

Subsequent to the hearing, the Department issued its decision which determined that appellant's mitigation evidence - the impact of revocation on Aida Theodore, appellant's lessor and previous licensee and owner of the premises in question - was insufficient to overcome the Department's recommendation that the license be revoked. The decision also recommended that the Department look with favor on the application of Theodore, the witness who provided the mitigation testimony, in light of the evidence presented at the hearing.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends, in substance, that the Administrative Law Judge, and the Department, erred in ordering the license revoked rather than permitting the transfer of the license.

DISCUSSION

Appellant's contentions in this appeal are directed at the Department's unwillingness to accede to his request that, instead of revoking his license, it permit

² Appellant was a co-licensee of the premises from 1988 until October 27, 1999.

transfer of the license to his lessor, who previously was a licensee and operator of the premises. In effect, this is a challenge to the penalty.

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 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].)

Appellant does not contend the Department lacked the power to order his license revoked. Instead, he argues the Department should not have exercised that power, but instead should have processed the pending application for transfer of the licensee to appellant's lessor. Presumably, this would have resulted in funds flowing to appellant as part of the transfer.

As noted, the Department has considerable discretion in the imposition of discipline. A licensee who has pled guilty to a crime involving moral turpitude would, we would think, have to make an extraordinarily strong showing of mitigation to persuade the Department that a penalty short of revocation is appropriate. The evidence appellant believes should militate against revocation is really no more than a showing that the course he would have the Department follow would result in his ability to salvage some of whatever value there may be in the license itself. This is not mitigation.

We do not see any abuse of discretion in the Department's refusal to permit appellant the opportunity to transfer the license. The Department's action comes well

within the bounds of a reasonable exercise of discretion as to what is an appropriate level of discipline.

ORDER

The decision of the Department is affirmed.³

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