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

AB-7707
File: 21-276318 Reg: 00048308

AMER POLA dba Campus Liquor & Deli
5425-5427 El Cajon Boulevard, San Diego, CA 92115,
Appellant/Licensee
v.
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: October 4, 2001
Los Angeles, CA
ISSUED DECEMBER 12, 2001

Amer Pola, doing business as Campus Liquor & Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which revoked his on-sale general license for his having pled guilty to federal charges of money laundering and conspiracy, 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 (d), in conjunction with 18 U.S.C. §§1956(h), 1956(a)(3)(B), 1956(a)(3)(C), and 982.

Appearances on appeal include appellant Amer Pola, appearing through his counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on January 5, 1993. Thereafter,

[1]The decision of the Department, dated September 14, 2000, is set forth in the appendix.

the Department instituted an accusation against appellant charging that, on or about October 28, 1999, appellant entered a plea of guilty to a federal charge of conspiracy to launder drug traffic proceeds, a crime involving moral turpitude.

An administrative hearing was held on July 21, 2000, at which time documentary evidence establishing appellant's plea and the ensuing conviction were received. No testimony was taken. Appellant's offer of proof of the proposed testimony of appellant's attorney in the criminal proceeding concerning the nature of the offense and the reason for appellant's guilty plea was rejected.

Subsequent to the hearing, the Department issued its decision which determined that the crime to which appellant had pled guilty was a crime involving moral turpitude, and revoked his license.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends as follows: (1) the crime to which appellant pled was not one involving moral turpitude; (2) Exhibit 2 (the indictment and judgment from the United States District Court) was improperly admitted; (3) the proposed testimony concerning the circumstances surrounding the plea was improperly excluded; and (4) the Department was required to consider the circumstances surrounding the plea in considering an appropriate penalty.

DISCUSSION

I

Appellant contends that the Department did not establish that the crime to which appellant had pled guilty was a crime involving moral turpitude. He asserts that there is no judicial precedent to that effect, and that without such precedent, the Department is

obligated to adduce facts to establish that a violation of 18 United States Code §1956(h) constitutes a crime involving moral turpitude.

The charging paragraph of the indictment in question reads as follows:

> "2. Beginning in and around July 1998 and continuing up to and including November 12, 1998, within the Southern District of California, and elsewhere, defendants AMER POLA and HAITHAM JAMO, did knowingly and intentionally combine, conspire, and agree with each other and with other persons unknown to the grand jury to conduct financial transactions involving property represented to be the proceeds of specified unlawful activity, that is, the felonious importation, receiving, concealment, buying, selling and otherwise dealing in a controlled substance, punishable under the laws of the United States, (hereinafter referred to as 'drug proceeds'), with the intent to conceal and disguise the nature, location, source, ownership and control of said drug proceeds, and to avoid transaction reporting requirements under federal law; in violation of Title 18, United States Code, Sections 1956(a)(3)(B) and (C).
> All in violation of Title 18, United States Code, Section 1956(h).

Paragraphs of the indictment which follow recite that the defendants instructed undercover federal agents how to effect Western Union transactions in a manner which would conceal and disguise the nature, location, source, ownership and control of purported proceeds of drug trafficking. According to the indictment, appellant and his partner in the currency exchange business received, over a five-month period, $25 to $30 for each $1000 transaction conducted in the clandestine manner recommended by them. The indictment also alleged that approximately $134,950 in United States currency was subject to forfeiture upon conviction, as property involved in the criminal offense.

It is black letter law in California and probably every other state and federal jurisdiction that a plea of guilty to an indictment is an admission of each and every element of the charge. Thus, by his plea, appellant admitted conspiring to engage in conduct for personal gain intended to facilitate the clandestine transfer of the proceeds of drug sales in order to evade federal reporting requirements. Can this be said to

involve moral turpitude? We think there can be little doubt that it is, regardless of any claimed lack of judicial precedent.

In In re Hallinan (1955) 43 Cal.2d 243, 248 [272 P.2d 768, 771], where the issue was whether the crime of wilful filing of a false federal tax return was one involving moral turpitude, the court said:

> "While the problem of defining moral turpitude is not without difficulty ... it is settled that whatever else it may mean, it includes fraud and that a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. ... It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude."

It seems clear to us that the conduct alleged in the indictment reflected an intent to defraud the United States by depriving it of the currency transaction reports required by law, and was conduct engaged in for personal gain.

In Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 36-37 [152 Cal.Rptr. 152], the court held that the unlawful possession of marijuana and cocaine for sale was an offense involving moral turpitude, explaining (internal citations and footnotes omitted):

> "Notwithstanding its frequency of use as a legislative standard of conduct for purposes of discipline, the concept by nature defies any attempt at a uniform and precise definition. For nearly 40 years our highest court has defined moral turpitude as 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rules of right and duty between man and man.'... or 'everything done contrary to justice, honesty, modesty, or good morals.' ... yet it is innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality ... whose purpose is not punishment but protection of the public. ...
>
> "While not every public offense may involve conduct involving moral turpitude without a showing of moral unfitness to pursue a licensed activity ... conviction of certain types of crimes may establish moral turpitude as a matter of law. ... Thus,

> moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for personal gain or other corrupt purpose, but not in other crimes which neither intrinsically reflect similar inimical factors nor demonstration a level of ethical transgression so as to render the actor unfit or unsuitable to serve the interests of the public in the licensed activity."

The laundering of drug money undeniably facilitates the unlawful sale of drugs, by permitting those engaged in the direct sale of narcotics and other controlled substances to hide the fruits of their activities and avoid drawing attention to their accumulations of ill-gotten wealth. Given the symbiotic relationship between the money launderer and the drug dealer, it seems ineluctable that, if one is engaged in the commission of a crime involving moral turpitude, the other is as well.

It is clearly not in the interest of the people of the State of California that the special privilege of selling alcoholic beverages be held by persons who have demonstrated a lack of personal honesty and trustworthiness by engaging in drug-related transactions for profit.

Business and Professions Code §24200.5, subdivision (a), provides for the mandatory revocation of a license where the licensee has knowingly permitted the illegal sale or negotiations for sale of narcotics or dangerous drugs on the licensed premises. It boggles the imagination to think that a licensee who facilitates drug trafficking by actively assisting in the transfer and concealment of the proceeds of such transactions would be less exposed to revocation.

II

Appellant contends the Administrative Law Judge (ALJ) erred in admitting into evidence Exhibit 2, certified copies of the indictment to which appellant's guilty plea was

entered and the judgment entered following his plea. He asserts that the information that is contained in those documents "far exceeds" the allegation stated in the accusation. Consequently, he argues, he was not given fair notice and an opportunity to be heard.[2]

The indictment and judgment do contain more information than is set forth in the accusation. However, we do not think appellant was unfairly surprised by these documents when they were offered against him. Appellant was obviously aware of the existence of the documents making up Exhibit 2. Indeed, we would think these would be the documents appellant would most have expected to encounter when the case was heard.

The indictment does no more than describe in detail the same conspiracy that the accusation alleges as the basis for discipline. We do not see how appellant was prejudiced, since he has never denied that the documents making up Exhibit 2 were not authentic.[3]

III

Appellant contends that the attorney who represented him in the criminal proceeding should have been permitted to testify that the crime did not involve moral turpitude; that the plea was pursuant to a plea bargain which resulted in a sentence of probation; that the activity underlying the indictment did not involve moral turpitude; that

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[2] The only reference in appellant's brief to any authority in support of appellant's position is "see Goldsmith," with no opposing party, book or page reference. We have no idea what we are invited to consider.

[3] Appellant's counsel objected to Exhibit 2 on foundational grounds, but declined to specify what those grounds were. He has not preserved the foundation objection in this appeal.

nothing in Exhibit 2 demonstrated appellant's guilt of a crime involving moral turpitude; and that revocation of appellant's license would be an abuse of discretion..

We think that the bulk of the proposed testimony to be offered through appellant's criminal defense attorney - his opinion as to whether laundering of drug proceeds involves moral turpitude - would have been irrelevant, as would have been his opinion as to what would be appropriate discipline. Both of these subjects are for argument, not evidentiary in nature.

Nor does it matter that the guilty plea was part of a plea bargain. Indeed, it is a well-known fact that most criminal cases end with plea bargains. That appellant was able to bargain for leniency does not eliminate the fact that he admitted conspiring to launder the proceeds of drug transactions.

IV

Appellant contends that the refusal of the ALJ to hear the testimony of appellant's criminal defense attorney concerning the circumstances behind the plea and the circumstances of the underlying activity as demonstrated to the United States District Court prevented him from hearing facts which would have warranted a more lenient penalty.

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].) However, 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].)

Business and Professions Code §24200, subdivision (a), permits the Department

to revoke or suspend a license where there has been a plea, verdict, or judgment of guilty to any public offense involving moral turpitude. Section §24200.5, subdivision (a), mandates revocation where a licensee knowingly permits drug transactions on the premises. Although appellant has not been charged with direct participation in drug sales, these statutory provisions reflect a strong antipathy toward retention of a license by one guilty of offenses involving moral turpitude and/or permitting and or being involved in transactions involving narcotics.

It is apparent from the arguments presented by appellant's attorney at the administrative hearing (see RT 20) that it is appellant's position that his money laundering activity was little more than a business transaction unrelated to any drug transaction. In other words, according to appellant, the Department was expected to ignore the charge of the indictment, that appellant engaged in an activity which facilitated drug transactions, and assume instead that appellant was simply guilty of a bad business decision devoid of moral overtones.

We do not believe the ALJ abused his discretion in declining to hear appellant's criminal attorney explain why appellant's crime was of little consequence in the context of alcoholic beverage licensing. Where a licensee has crossed the line and, on a scale indicated by the court documents here, intermingled drug-related activity with his business operations, at least one aspect of which involves the sale of alcoholic beverages, he should expect little sympathy from the Department. If he does not get any, we are not inclined to intervene.

ORDER

The decision of the Department is affirmed.[4]

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

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[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.