

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

AB-7776

File: 20-33407 Reg: 99046888

HECTOR FLORES LLAMAS and MARIA O. LLAMAS dba Flores Market
233 West Marshall Street, San Gabriel, CA 91776,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: November 1, 2001
Los Angeles, CA

ISSUED DECEMBER 28, 2001

Hector Flores Llamas and Maria O. Llamas, doing business as Flores Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for co-appellant Hector Flores Llamas having been convicted of violating California Penal Code §209, subdivision (a) (kidnapping for ransom), and Penal Code §12022, subdivision (a)(1) (use of firearm in commission of felony), public offenses involving moral turpitude, contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, in conjunction with Business and Professions Code §24200, subdivisions (a) and (d).

Appearances on appeal include appellants Hector Flores Llamas (hereinafter "Hector") and Maria O. Llamas (hereinafter "Maria"), appearing through their counsel, Stephen M. Romero, and the Department of Alcoholic Beverage Control, appearing

¹The decision of the Department, dated March 15, 2001, is set forth in the appendix.

through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 13, 1976. On July 26, 1999, the Department instituted an accusation against appellants alleging the conviction of Hector of the crimes of kidnapping for ransom and the use of a firearm in the commission of a felony, public offenses involving moral turpitude.

An administrative hearing was held on January 31, 2001, at which time oral and documentary evidence was received. At that hearing, the parties stipulated to the fact of Hector's conviction on March 12, 1999, to his sentence of life imprisonment with possibility of parole, and to the fact that neither Maria nor the licensed premises played any role in the offenses committed by Hector. In addition, the parties stipulated to the allegations in the amended accusation to the effect that appellants had incurred discipline in 1986 for an offense involving receipt of stolen property. Maria, the only witness at the hearing, testified that she had caused the formation of a corporation, of which she was the sole shareholder, in an attempt to retain the alcoholic beverage license, that she was dependent upon the store for her income, and that she was in poor health.

Subsequent to the hearing, the Department issued its decision which determined that the offenses committed by Hector were crimes involving moral turpitude, that Department Rule 58 (4 Cal. Code Regs. §58) requires each spouse to be qualified, that Hector is no longer qualified, and the license must be revoked. The decision rejected the possibility of the revocation order being stayed to permit a transfer of the license to

persons acceptable to the Department, explaining that the type of license has no inherent value.

Appellants thereafter filed a timely appeal in which they raise the following general issues: (1) appellants' predecessor counsel inappropriately stipulated that Hector's offenses were crimes involving moral turpitude, thereby precluding Maria from offering mitigation evidence; (2) the Department gave inadequate consideration to Maria's formation of a corporation to hold the alcoholic beverage license; (3) the Department erred in considering the appellate process final as to Hector; (4) there is no evidence that the continued sale of alcoholic beverages at the Flores Market would be contrary to public welfare or morals. In addition, appellants offer general contentions which seem to suggest that the Department has misapplied Business and Professions Code §24200 and Rule 58 by revoking the license in spite of the fact that Maria is qualified to hold a license.

Appellants' arguments do not lend themselves to a linear response. Instead, they intermingle attempts to retry the criminal proceeding with arguments that it is unfair to invoke Department Rule 58 as a reason why Maria cannot continue to hold the license while Hector remains her spouse and imprisoned. Consequently, our discussion of her contentions will not be as organized as one might desire.

DISCUSSION

I

Appellants contend that their previous counsel ill-advisedly stipulated that the crimes committed by Hector involved moral turpitude, thus precluding Maria from

offering evidence in mitigation.

This contention is wrong in its premise and in its conclusion.

The transcript [RT 9] reveals the following colloquy:

“The Court: Let me ask you. It’s alleged that the offenses are – under the circumstances, involve moral turpitude.

“Mr. Sakamoto: Right.

“The Court: Is it your contention that they are, per se, involving moral turpitude?”

“Mr. Sakamoto: Yes. We contend that kidnapping for ransom with a firearm would constitute that kind of offense.

“The Court: The stipulation doesn’t extend that far, I take it.

“Mr. Rub (appellant’s former counsel): No.”

Maria was permitted to testify about her family, her financial situation, and the hardship that she believed would flow from the loss of the license. The Department simply was not swayed by those considerations.

Finally, the Administrative Law Judge (ALJ) concluded that the crime committed by Hector - kidnapping for ransom with use of a firearm - was a crime involving moral turpitude because it possessed “qualities of depravity, vileness and social repugnance,” citing People v. Castro (1985) 38 Cal.3d 301, 314-315 [211 Cal.Rptr. 719] and Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 38 [152 Cal.Rptr. 285]. The ALJ did not need a stipulation to reach that conclusion, and neither do we.

II

Although appellants refer to Maria’s efforts to form a corporation to hold the license, they do not explain why it binds the Department to any course of action. It appears to be little more than a device to avoid the application of Business and

Professions Code §24200 and Department Rule 58.

Rule 58 requires, among other things, that, while a license may, in certain circumstances, be held in the name of one spouse alone, the unlicensed spouse must be qualified to hold a license and unable to participate in the operation of the business. Given Hector's plight, appellants cannot meet that requirement.

Additionally, Rule 58(d) provides that the provisions of the rule apply to the ownership, by either spouse, of 10 percent or more of the stock of any corporation holding a license. Consequently, the formation of a corporation will not permit Maria to avoid the impact of Rule 58.

III

Appellants' brief cites a number of excerpts from the preliminary hearing and trial transcripts from the criminal proceeding in which Hector was convicted, attempting to dispute his guilt, and fault the Department for not taking these matters into consideration.

The Board is well aware of the fact that it is not its function nor desire to sit as a trial court de novo. Appellants have offered nothing more than hearsay testimony that they claim casts doubt on Hector's guilt. Hector was tried and convicted in a court of record, and his conviction was affirmed on appeal. Any further post-conviction proceedings are irrelevant. He cannot retry his case before the Appeals Board.

We do not believe the Department is obligated to wait until a licensee has exhausted all post-conviction appeals to undertake disciplinary action. Where, as here, the conviction has been affirmed on appeal, disciplinary action may commence. Anything less leaves the public at undue risk.

IV

Appellants contend that the Department has failed to show that the continued sale of alcoholic beverages by the Flores Market would have any effect on public welfare and morals.

We believe the Department had no obligation to show any such effect. Business and Professions Code §24200 specifies certain “grounds which constitute a basis for the suspension or revocation of licenses.” Among them, identified in subdivision (a) are “the plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude ...”

In addition, appellants are unable to come within any of the provisions of Rule 58 which permit the holding of a license by only one spouse.

This is no more than another instance where an innocent co-licensee must suffer as a consequence of an act of another co-licensee of such nature as to warrant license forfeiture. (See Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30 [152 Cal.Rptr. 285], and Coletti v. State Board of Equalization (1949) 94 Cal.App.2d 61 [209 P.2d 984].)

The ALJ declined to consider any order short of outright revocation. Given appellants’ insistence that they intend to remain husband and wife, any separate ownership of the business by Maria seems no more than an illusion.

ORDER

The decision of the Department is affirmed.²

TED HUNT, 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.