

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

AB-7882

File: 21-343539 Reg: 00049874

MARWAN ABOEID dba Shawn's Market
55555 29 Palms Highway, Yucca Valley, CA 92284,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: June 4, 2002
Los Angeles, CA

ISSUED SEPTEMBER 12, 2002

Marwan Aboeid, doing business as Shawn's Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 20 days, with 10 days thereof conditionally stayed for one year for his clerk having sold an alcoholic beverage to a minor, 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 §25658, subdivision (a).

Appearances on appeal include appellant Marwan Aboeid and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on September 22, 1998. Thereafter, the Department instituted an accusation against appellant charging that, on

¹The decision of the Department, dated September 20, 2001, is set forth in the appendix.

August 18, 2000, Bassam Aboeid, an agent or employee of appellant, sold, in separate transactions, alcoholic beverages to two minors. Count 1 of the accusation charged the sale of wine to Javier Lopez, who was then approximately 16 years of age. Count 2 charged the sale of beer to Joseph Panichello.

An administrative hearing was held on July 26, 2001, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that only the charge of count 2 had been established.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends that a continuance granted by the Administrative Law Judge resulted in the unavailability of a critical witness.

DISCUSSION

Appellant has submitted a letter brief in which his principal contention appears to be that the Administrative Law Judge granted a continuance which resulted in the unavailability of a critical witness. Unfortunately, the brief does not identify who that witness was, other than by a reference to "a crew member," nor does it indicate what the missing witness might have said had he or she been present. Appellant also appears to attack the penalty.

The facts of the case are interesting. The San Bernardino County Sheriff's Department had received a call from a parent alerting it to the fact that the caller's son and two other minors were on their way to appellant's store to purchase alcoholic beverages. Deputies at the scene, on the alert for three "white" males, observed three Hispanic males approach the store. One of the three, Javier Lopez, a 15-year old minor, purchased two 750 ml. bottles of a beverage labeled "Wild Vines Strawberry

White Zinfandel.” This was the subject of count 1. The bottles were not produced at the hearing. Despite a finding (Finding of Fact IX) that appellant admitted that Wild Vines Strawberry Zinfandel might have been sold at his store on the date in question, and that appellant knew was an alcoholic beverage for which a purchaser must be over 21, the ALJ concluded that it was not clear that the Wild Vines Strawberry White Zinfandel beverage was an alcoholic beverage covered by the Alcoholic Beverage Control Act, and dismissed count 1.

Lopez and his two companions, it turned out, were not the three minors who were the subject of the parental alert. As the deputies were busy with Lopez, Joseph Panichello, an 18-year old minor, approached the store, accompanied by two companions. These were the three “white” males who were the subject of the call from the parent.

Linda Lomell, a sheriff’s deputy, observed Panichello enter the store, and then emerge with two 12-packs of Busch Natural Ice beer. Panichello testified that the clerk initially refused to sell to him without him furnishing identification. Panichello then told the clerk he was 21, shopped in the store every day, and would take his business elsewhere if the clerk refused to sell him the beer. Needless to say, the clerk sold him the beer.

The ALJ found that the clerk’s decision to make a sale he knew he should not make in order protect future business was an aggravating factor. This appears to be within the Department’s broad discretion with respect to penalty.

Appellant’s letter brief also appears to question why it took the deputies so long to bring the minors back into the store, but does not point to anything which might raise a question as to the merits of the case.

We find no merit in appellant's appeal.

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.