

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

AB-7893

File: 48-341593 Reg: 01050559

BETTY L. MILLER and RONALD J. MILLER dba First and Last Chance Saloon
14734 Hornbrook Road, Hornbrook, California 96044,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: July 11, 2002`
San Francisco, CA

ISSUED SEPTEMBER 12, 2002

Betty L. Miller and Ronald J. Miller, doing business as First and Last Chance Saloon (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for appellant Betty L. Miller having furnished an alcoholic beverage to a minor, permitting consumption of an alcoholic beverage by the minor, and permitting the minor to remain in the premises without lawful business therein, 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 §§25658, subdivisions (a) and (b), and 25665.

Appearances on appeal include appellants Betty L. Miller and Ronald J. Miller, appearing on their own behalf, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

¹The decision of the Department, dated September 27, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general public premises license was issued on October 29, 1998. Thereafter, on April 2, 2001, the Department instituted an accusation against appellants charging, in three counts, that, on January 4, 2001, appellant Betty Miller furnished an alcoholic beverage to a minor, permitted the minor to consume an alcoholic beverage, and permitted the minor to remain in the premises without lawful business therein, in violation of provisions of the Alcoholic Beverage Control Act.

An administrative hearing was held on August 21, 2001, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which sustained the charges of the accusation, and concluded that appellants had not established a defense under Business and Professions Code §25660.

Appellants thereafter filed a timely appeal in which they contend that the minor presented a false California driver's license purporting to show she was a few months older than 21.

DISCUSSION

This appeal is governed by well settled legal principles.

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 - it does not retry the case - 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

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.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (*Universal Camera Corporation v. National Labor Relations Board* (1951) 340 US 474, 477 [71 S.Ct. 456]; *Toyota Motor Sales USA, Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of California* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

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 Control* (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and *Lorimore v. State Personnel*

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].

Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

The minor denied displaying false identification at any time. Appellant Ronald Miller claimed the minor had displayed a California driver's license on at least two prior occasions. The Administrative Law Judge (ALJ) chose to believe the minor's testimony, and there is little in the record that suggests he erred in doing so.

The minor did say to a police officer that she had used false identification on prior occasions, but the ALJ found "clear and convincing" her explanation that she was trying to protect the licensees when she made that statement.

The ALJ and the Department are the primary triers of fact. It is not the province of this Board to substitute its judgment for that of the Department and the ALJ on factual issues. Where, as here, there is substantial evidence that supports those findings, they may not be set aside.

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.