

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

AB-7951

File: 21-368744 Reg: 01051019

SAM ELIAS BASSIL, dba Shamrock Liquor
4540 West Avenue L, Quartz Hill, CA 93536,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: November 14, 2002
Los Angeles, CA

ISSUED FEBRUARY 3, 2003

Sam Elias Bassil, doing business as Shamrock Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 30 days, with 10 days stayed for a probationary period of one year, for selling alcoholic beverages to two persons under the age of 21, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Sam Elias Bassil and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew Ainley.

¹The decision of the Department, dated March 7, 2002, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on September 25, 2000. Subsequently, the Department charged appellant with selling, both by himself and through his agent or employee, alcoholic beverages (beer and peppermint schnapps), to Brandon Arnold and Jayson Hall, both of whom were under the age of 21.²

An administrative hearing was held on January 24, 2002, at which time oral and documentary evidence was received. At that hearing, testimony concerning the transaction was presented by the two minors, Arnold and Hall; by Department investigators Anthony Posada, John Sutton, and Caroline Montgomery; and by appellant.

The ALJ found the following facts to be true:

Department investigators Posada and Sutton observed two young-looking males (later identified as Arnold and Hall) enter the premises. Posada followed them in and saw Hall take a 20-pack of Budweiser beer from the cooler. Appellant's son, Mario Bassil (Mario), was at the counter helping appellant, although he was not regularly employed at the premises. Hall brought the beer to the counter, accompanied by Arnold, who asked Mario for Peppermint Schnapps, which Mario obtained and placed on the counter with the beer.

Appellant asked Hall for identification, but Hall said he didn't have it with him and needed to go to his car to get it. Appellant told Hall he would not sell him any alcoholic beverages without evidence of his identity and majority. The minors left the store, leaving the alcoholic beverages on the counter.

²The accusation describes both minors as 17 years old, but only Brandon Arnold was 17 years old; Jayson Hall was 16 years old at the time.

Posada saw Mario leave the premises right after the minors and go to his own car, where Arnold approached Mario, told him he had no identification with him, and asked Mario to buy the alcoholic beverages for him. Mario, Hall, and Arnold re-entered the store and went to the counter where the alcoholic beverages still sat. Mario told appellant to ring up the alcoholic beverages. Appellant asked Mario if he had checked the minors' identification, and Mario said "It's o.k., ring 'em up." Appellant then rang up the sale and Hall paid for it. Mario carried the alcoholic beverages to the minors' car and put them in the trunk. Investigator Sutton approached the minors, identified himself, and determined that Hall was 16 and Arnold was 17.

Appellant denied selling to the minors. He testified that, after Hall, Arnold, and Mario left the premises, his son re-entered the premises alone and took the alcoholic beverages from the counter, saying he was taking them to a party he was attending. Mario also told appellant that the minors were giving him a ride to his party. The ALJ apparently did not believe appellant's testimony, because he stated in Finding 11: "There is not a shred of credible evidence in the record to support this contention."

Subsequent to the hearing, the Department issued its decision which determined that all counts of the accusation had been proven.

Appellant thereafter filed a timely notice of appeal in which he contends that the penalty is excessive.

DISCUSSION

Appellant contends the penalty – 30 days' suspension with 10 days stayed for a probationary period of one year – is excessive. He asserts that he will suffer undue hardship and may lose his business as a result of the 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].)

This is a much harsher penalty than the 10 to 15 days' suspension ordinarily imposed for a first sale-to-minor violation. The ALJ found no basis for mitigation, but found aggravation because "both minors were juveniles under the age of 18." The ALJ rejected as mitigation the licensee's reliance on his son's representation that it was "o.k. to ring 'em up" because appellant did not acknowledge that such a conversation took place.

"If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Beverage Control Appeals Board* (1965) 62 Cal.App. 2d 589, 594 [43 Cal.Rptr. 633, 636].)

This Board cannot say that the ALJ was wholly unreasonable in concluding that appellant lied about what happened and so should not get the benefit of the mitigation that might be found in such facts. Similarly, we cannot say that it was unreasonable to find aggravation in the fact that the minors here were only 16 and 17. While the penalty may be rather harsh, we cannot say that the Department abused its discretion in imposing it.

ORDER

The decision of the Department is affirmed.³

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

³This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.