

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

AB-8126

File: 21-310435 Reg: 02053883

AMJAD Y. SALAH dba Mission View Food & Liquor
33503 Mission Blvd., Union City, CA 94587,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stewart A. Judson

Appeals Board Hearing: January 8, 2004
San Francisco, CA

ISSUED APRIL 22, 2004

Amjad Y. Salah, doing business as Mission View Food & Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 15 days for his clerk having sold alcoholic beverages (beer) to a minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Amjad Y. Salah, representing himself, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on November 17, 1995. Thereafter, the Department instituted an accusation against appellant charging that his

¹The decision of the Department, dated March 20, 2003, is set forth in the appendix.

agent, employee, or servant, Atef Daoud Najjar (“Najjar”), sold alcoholic beverages (beer) to Jonathan Paz (“Paz”), a person who was then approximately 19 years of age.

An administrative hearing was held on January 29, 2003, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and that the clerk’s reliance upon the identification card displayed by the minor when he purchased the beer did not constitute a defense under Business and Professions Code section 25660.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) the clerk acted in good faith in reliance upon the identification displayed by Paz; and (2) the Department investigators sent Paz into the store as part of a trap.

DISCUSSION

I

Appellant contends that his clerk acted in good faith when he relied upon a voter identification card issued by the Instituto Federal Electoral to Paz’s cousin in Mexico. The card is in Spanish, and contains a name, a photograph, a registration date, and the age (apparently at the time of the card’s issuance in January, 2001) of the person whose photograph appears on the card. The card does not contain a physical description of the subject or his date of birth. Paz testified that he had also purchased alcoholic beverages on an earlier occasion, and at that time displayed the same card. Paz further testified that he had purchased cigarettes at appellant’s store, and that when he did so, he produced his own California DMV identification card to establish that he was 18 years of age or older. That card was issued on August 24, 2000, and

had a red stripe and the legend "Age 21 in 2004." Paz said he also displayed a California driver's license which was issued to him on May 18, 2001, when purchasing cigarettes.

The sale by appellant's clerk violated Business and Professions Code section 25658, subdivision (a) unless appellant is entitled to a defense under business and Professions Code section 25660. Section 25660 provides:

Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

The voter registration card in question lacks two of the required elements of identification in section 25660: the date of birth, and a description of the person to whom the card was issued. The card indicates that the person to whom the card was issued is male, but does not include information about height, weight, hair or eye color, information that is contained on California drivers' licenses and identification cards.

Appellant tells us in his notice of appeal that it is his practice to accept voter registration cards similar to the one exhibited by Paz as proof of age, and appears to contend that an entry on the card translates to the date of birth. Even if that is true, the lack of a description of the person is enough to disqualify the card as a form of identification sufficient to invoke section 25660. Appellant's continued acceptance of such cards as sufficient proof of age is at his own risk.

The defense was properly disallowed.

II

Appellant appears to present this issue as a matter of speculation, stating in his notice of appeal:

Mr. Paz always showed to court wearing cloths [sic] that made him look younger, and dying his hair blond.

I wonder if this whole thing was a set-up by the A.B.C., or given immunity by the A.B.C. The investigators, Timothy Simpson, and Jaime Villonas could not prove their first case so they set this trap for my employees. They sat in front of my store for many hours. When they thought they had some one, they called me from my outing. It turned out that he was over 21. So they sent in Mr. Paz to set me up.

Department investigator Jaime Villonas testified that he and his partner had seen two youthful appearing males leave the store with beer. Villonas approached the two and asked for their identification. He was told they did not have any. Villonas then went into the store, identified himself, and directed the clerk to contact the licensee. While in the store, Villonas saw other youthful looking males, one of whom was Paz. Villonas watched the transaction between Paz and the clerks, and when Paz left the store with the beer, he and his partner apprehended Paz and asked him for identification. Paz initially denied having any identification, but when searched, he was found to be carrying the Mexican voter's registration card discussed above, and a California driver's license and California identification card, both issued to him and showing his true age.

Eventually it was ascertained that the first two youthful appearing males were of legal age. Thus, it was pure coincidence that the investigators were drawn into the store at the time Paz was purchasing the beer.

There is no credible evidence that either investigator engaged in any improper action. The suggestion that they were in some way in league with Paz is totally

unfounded.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
KAREN GETMAN, 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.