

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

AB-8193

File: 20-226927 Reg: 03054737

FARAMARZ SHOKOUHIRAZI, dba Arco Food Mart
2799 Clayton Boulevard, Concord, CA 94519,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

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

ISSUED AUGUST 20, 2004

Faramarz Shokouhirazi, doing business as Arco Food Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for violation of Business and Professions Code sections 24200, subdivisions (a), (b), and (d); 25658, subdivision (a); and 25658.4, and Health and Safety Code sections 11351 and 11377, subdivision (a).

Appearances on appeal include appellant Faramarz Shokouhirazi, appearing through his counsel, Richard Stoll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 9, 1989. On March 24, 2003 the Department filed an accusation against appellant charging that he

¹The decision of the Department, dated October 2, 2003, is set forth in the appendix.

had entered a plea of no contest to Health and Safety Code violations involving moral turpitude; his clerk sold an alcoholic beverage to a police minor decoy; and appellant failed to provide a clerk's application and acknowledgment as required by Business and Professions Code section 25658.4.

At the administrative hearing held on August 14, 2003, documentary evidence was received, and testimony concerning the violations charged was presented by Contra Costa Sheriff's detective Rudolph Oest, police minor decoy Colin Highsmith, and Department investigator Eric Zakacs. Appellant testified about his business at the premises, his criminal convictions, and remedial measures taken after the sale to the minor.

At the hearing it was established that on October 17, 2002, appellant entered a plea of no contest to violations of Health and Safety Code sections 11351 (possessing a controlled substance for sale, a felony) and 11377, subdivision (a) (possession of a controlled substance, a misdemeanor). The charges arose from appellant's receipt, at the licensed premises, of a package from Kuwait containing opium. The package, addressed to appellant's premises, had been intercepted by federal drug enforcement officers, examined, and then put back in the mail. The federal agents had alerted the Contra Costa Sheriff's Department and an anticipatory search warrant was obtained.

When the package was delivered, appellant's clerk signed for it and placed it at the register. Appellant took the package into his office when he arrived about 20 minutes later. In a short while he left his office carrying a briefcase, and he was detained outside in the parking lot. He gave his office key to the investigators, who entered his office, where they discovered the unopened package, some opium in his desk, packaging material, a scale, and a water pipe. Appellant said the opium in his

desk was given to him by a friend from Iran, and that he smoked the opium once a day for an asthmatic condition. Besides approximately three-quarters of a pound of opium in the package and about 7.8 grams of opium in appellant's desk, the investigators found approximately \$19,000 in appellant's briefcase and \$800 on his person.

On December 6, 2002, appellant's clerk sold a bottle of Budweiser beer to 17-year-old Colin Highsmith, who was working with the Concord Police Department as a minor decoy. When asked for identification, the decoy gave the clerk his California driver's license which indicated that it was provisional until the decoy was 18 years old in 2001, and that he would be 21 years old in 2006. The clerk put on his glasses and looked at the identification, then turned to another person behind the counter, who also looked at the license, but he did not swipe the card through a scanner. He returned the document to the decoy and completed the sale. After giving the beer to officers waiting outside, the decoy went back inside and made a face-to-face identification of the clerk as the seller.

Subsequent to the hearing, the Department issued its decision which determined that the violations had occurred as charged and ordered appellant's license revoked.

In his appeal, appellant contends 1) there is no evidence that he committed a crime involving moral turpitude, and 2) substantial evidence does not support the finding that he permitted the sale to a minor.

DISCUSSION

I

Appellant contends there is no evidence that he committed a crime involving moral turpitude. He argues that no evidence was presented showing that he sold opium; the evidence showed that appellant only used opium to relieve his asthma,

which is not a crime involving moral turpitude; and his plea of no contest to the charge of possession for sale was simply the result of a plea bargain.

It makes no difference whether or not evidence was presented at the hearing that appellant sold opium. First, he was not charged with having sold opium, but with possessing it for sale. Second, the cause for discipline arose as a result of appellant's plea of no contest to the charge of possessing opium for sale.

Business and Professions Code section 24200, subdivision (d), provides that a "plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude" is a ground for suspension or revocation of an alcoholic beverage license. Determination of Issues I states that appellant "was convicted of a crime involving moral turpitude" based upon Finding VI. That finding is that, on October 17, 2002, appellant entered a plea of no contest to the charge of violating Health and Safety Code section 11351, which makes it a felony to possess controlled substances, including opium, for sale.

While it is possible that the mere possession of opium may be considered not to involve moral turpitude, it has long been settled that, for purposes of alcoholic beverage license disciplinary actions, possession of a controlled substance for sale is a crime involving moral turpitude. (*Rice v. Alcoholic Beverage etc. Appeals Bd.* (1979) 89 Cal.App.3d 30, 38 [152 Cal.Rptr. 285].) Appellant's plea of no contest to the charge is, by itself, sufficient to subject the license to discipline.

II

Appellant contends the evidence does not support the finding that appellant permitted the sale to a minor. He argues that the sale was a single, isolated incident; that appellant was not present when the sale occurred; that the clerk tried to read the

license and sought help from another employee; that appellant has retrained the clerk in the use of a license-scanning device; and there have been no further sales to minors.

Appellant's arguments are unavailing. The vicarious responsibility of a licensee for the unlawful on-premises acts of his or her employees is well settled by case law. (*Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, 514 [22 Cal.Rptr. 405]; *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 180 [17 Cal.Rptr. 315]; *Mack v. Department of Alcoholic Beverage Control* (1960) 178 Cal.App.2d 149, 153 [2 Cal.Rptr. 629].) "The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and as a matter of general law the knowledge and acts of the employee or agent are imputable to the licensee." (*Munro v. Alcoholic Bev. Control Appeals Bd.* (1960) 181 Cal.App.2d 162, 164 [5 Cal.Rptr. 527].)

In *Mantzoros v. State Board of Equalization* (1948) 87 Cal.App.2d 140,144 [196 P.2d 657], the court said, in response to the licensees' contention that they should not be held liable for an unlawful after-hours sale by their employee made without their knowledge or authorization:

The licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license, else we would have the absurd result that liquor could be sold by employees at forbidden hours in licensed premises and the licensees would be immune to disciplinary action by the board.

A single instance may be the basis for discipline. (*Santa Ana Food Market, Inc. v. Alcoholic Beverage Control Appeals Bd.* (1999) 76 Cal.App.4th 570, 574 [90 Cal.Rptr. 2d 523]; *Reimel v. Alcoholic Bev. etc. Appeals Bd.* (1967) 252 Cal.App.2d 520, 523 [60 Cal.Rptr. 641].)

Appellant bears responsibility for the violation whether or not he was present at the time:

Even though the owners elected to remain absent from the premises . . . and to delegate the management of the premises to the bartender . . . they could not thereby render themselves immune from their responsibilities, under the license, on the asserted basis that they did not have actual knowledge of the acts of their employee. Under such a method of operating the business, it is obvious that the owners would never be in a position to observe the acts of their employee while he was representing them in the position of bartender. The licensee had the responsibility to see to it that the license was not used in violation of law.

(Harris v. Alcoholic Bev. Control Appeals Bd. (1961) 197 Cal.App.2d 172, 180-181.)

The clerk looked at the decoy's driver's license, put on his glasses and looked at it some more, and had another person who was behind the counter with him look at the license. Despite all the apparent scrutiny of the license, which clearly showed that the decoy was under the age of 21, the clerk still sold the alcoholic beverage to the decoy. Far from exonerating appellant from responsibility, this failure on the part of his clerk to comply with the law suggests that appellant was deficient in training his clerk.

Appellant's subsequent actions, while they could be considered in mitigation, cannot relieve appellant of responsibility for the violations.

ORDER

The decision of the Department is affirmed.²

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

²This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.