

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

**AB-8292**

File: 20-347826 Reg: 03054470

NEW WEST STATIONS, INC.  
7737 Balboa Avenue, San Diego, CA 92111,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: June 2, 2005  
Los Angeles, CA

**ISSUED AUGUST 26, 2005**

New West Stations, Inc. (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which revoked its license for having made sales to minors on four occasions within a 36-month period, violations of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant New West Stations, Inc., appearing through its counsel, Spencer T. Malysiak, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

**FACTS AND PROCEDURAL HISTORY**

Appellant's off-sale beer and wine license was issued on January 11, 1999. The Department instituted an accusation against appellant on February 10, 2003, charging that employees of appellant sold alcoholic beverages to minors in violation of Business and Professions Code section 25658, subdivision (a), on two separate occasions in the

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<sup>1</sup>The decision of the Department, dated May 6, 2004, is set forth in the appendix.

year 2002, and that appellant had previously been disciplined for sales to minors in violation of section 25658, subdivision (a), in each of the years 2000 and 2001.

An administrative hearing was held on March 10, 2004. At that hearing, appellant, through its counsel, stipulated that the allegations of the accusation were true, and, through representatives of appellant, presented evidence of its training programs for its clerks as mitigation.

Subsequent to the hearing, the Department issued its decision which determined that, despite appellant's mitigation evidence, revocation was an appropriate remedy in light of appellant's employees having sold to minors on four occasions within a 36-month period.

Appellant has filed a timely notice of appeal. In its appeal, appellant contends that the decision is not supported by the findings, and the findings are not supported by substantial evidence. More specifically, appellant contends that the Department erred in failing to distinguish, during the penalty phase of the proceeding, between the acts of the licensee and those of his employees.

#### DISCUSSION

Appellant argues that the Department failed to consider appellant's rigid training program and employee requirements, and, therefore, did not properly distinguish the acts of appellant's employees from appellant's own actions in selecting and training its employees and complying with the law,

It is disingenuous of appellant to assert that the Department failed to consider appellant's rigid training program and employees requirements. The administrative law judge's (ALJ's) proposed decision itself summarizes (in Findings of Fact IV-A, paragraphs 1 through 6, and IV-B) the testimony of appellant's president in which he

described the training program and the employee requirements. The ALJ recommended that appellant's license be revoked despite the "impressive" mitigation evidence, and explained why he did so (Finding of Fact V-B):

Although the mitigation evidence presented at the hearing is impressive, the steps taken by the Respondent failed to prevent the two sales to minors that occurred in 2002. These two sales occurred about six weeks from each other. Furthermore, the Respondent had already experienced two prior sales to minors over a five-month period in 2000. Perhaps a stayed revocation would have been a reasonable penalty if we were dealing here with only one additional sale to a minor in 2002 in light of the efforts made by the Respondent in attempting to prevent further sales to minors. However, the reality is that we are dealing here with a third and a fourth [sic] sale to a minor during a thirty-six month period and these two additional violations occurred in spite of the Respondent's efforts. Under these circumstances, a penalty consisting of an outright revocation is appropriate and justified.

The Appeals Board may not disturb a Department penalty order in the absence of a clear abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd.* (1959) 52 Cal.2d 287 [341 P. 296]. Can we say on this record that the Department abused its discretion? We do not think so.

In Business and Professions Code section 25658.1, the Legislature specifically empowered the Department to revoke a license for a third sale-to-minor violation of section 25658, while preserving the Department's authority and discretion to revoke a license for even fewer violations when circumstances warrant.

Appellant concedes that it is responsible for the acts of its employees. Through its employees, appellant committed four sale-to-minor violations in a 30-month period. Two of these violations occurred before the implementation of some of the intended prophylactic measures instituted by appellant. Two additional violations occurred despite the new measures. The record does not indicate what aspect of appellant's compliance efforts misfired, and we are not inclined to speculate. Whatever the

problem, the evidence is that appellant's training and preventative actions have proven woefully ineffective. The Department is not required to wait until appellant finally gets everything right. The Legislature has made it clear that an inordinate number of violations may result in revocation.

ORDER

The decision of the Department is affirmed.<sup>2</sup>

SOPHIE C. WONG, MEMBER  
FRED ARMENDARIZ, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup> 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.