

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

AB-8387

File: 21-389348 Reg: 04056520

MANJIT S. TOOR dba 7 to Midnite Mini Market
5591 Snell Avenue, San Jose, CA 95123,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: January 5, 2006
San Francisco, CA

ISSUED MAY 4, 2006

Manjit S. Toor, doing business as 7 to Midnight Mini Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 15 days for his clerk, Inderjit Birdi, having sold a 40-ounce bottle of Old English malt liquor, two 200 ml. bottles of Hennessy Cognac, and a 750 ml. bottle of Bacardi Rum to Micah Delbuono, a 19-year-old non-decoy minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Manjit S. Toor, representing himself, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on July 29, 2002. Thereafter, the

¹The decision of the Department, dated January 6, 2005, is set forth in the appendix.

Department instituted an accusation against appellant on January 6, 2004, charging the sale of alcoholic beverages to a minor on July 25, 2003.

An administrative hearing was held on November 19, 2004, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged in the accusation.

Appellant thereafter filed a timely notice of appeal. He was notified by letter dated September 9, 2005, that his brief to the Appeals Board was due on October 11, 2005. He has not filed a brief. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

DISCUSSION

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and *Sutter v. Gamel* (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

There is nothing in the record to suggest that relief is warranted. The 15-day penalty appears reasonable under the circumstances.

The administrative law judge (ALJ) rejected appellant's attempt to establish a defense under Business and Professions Code section 25660. That section provides a defense to a licensee where he has relied on identification issued by a governmental agency purporting to show that the customer was 21 years of age or older, where such reliance has been reasonable.

The minor was not asked for identification when the sale in question took place. However, appellant testified at the hearing that he was told by his clerk that the minor had displayed identification a day earlier, and that is why he was not asked for identification. The clerk did not testify. The minor denied ever purchasing any alcoholic beverages at appellant's store, nor had he ever displayed to anyone in the store the false California driver's license found on him at the time.

The Department investigator testified that it took him only seconds to determine that the license was not genuine. The minor's true license showed him to be 19 years of age.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, 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.