

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

AB-8392

File: 20-260873 Reg: 04057692

GHAZWAN FUDIL and SADIE FUDIL dba The Beverage Shop
251-253 East Gladestone Street, Azusa, CA 91702,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: November 3, 2005
Los Angeles, CA

ISSUED: JANUARY 6, 2006

Ghazwan Fudil and Sadie Fudil, doing business as The Beverage Shop (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale beer and wine license for their clerk, Wajih Alchahayed ("the clerk"), having in separate transactions sold beer to 18-year-old Craig Trejo ("Trejo") and 19-year-old Adrian Canal ("Canal"), both transactions in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Ghazwan Fudil and Sadie Fudil, appearing through their counsel, Jeffrey S. Weiss, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on May 21, 1991. Thereafter, the Department instituted a two-count accusation against appellants, each

¹The decision of the Department, dated February 17, 2005, is set forth in the appendix.

count charging a sale of an alcoholic beverage to a minor.

An administrative hearing was held on January 6, 2005, at which time oral and documentary evidence was received. At that hearing, the testimony established that the clerk sold a 12-pack of Corona beer to Trejo after being shown a California driver's license issued to a person other than Trejo, purporting to show that Trejo was 26 years of age. The testimony further established that the clerk that same evening sold beer to Canal but did not ask him for identification. The clerk told the Department investigator that he had previously examined identification showing Canal to be over the age of 21. Canal had on his person a California identification card issued to a person other than Canal, and purporting to show his age as 22. Canal acknowledged that he had displayed that card to the clerk on a prior occasion.

Subsequent to the hearing, the Department issued its decision which determined that both counts of the accusation had been established, and that appellants had failed to establish a defense under Business and Professions Code section 25660 as to either of the two transactions. The administrative law judge (ALJ) concluded that as to each, the clerk's reliance on what he was shown was unreasonable, because, in each case, the appearance of the person presenting the identification did not sufficiently resemble the person whose photograph appeared on that document.

Appellants thereafter filed a timely appeal in which they contend that the decision is not supported by substantial evidence. They challenge the ALJ's determination that the clerk's reliance on the driver's license presented by Trejo and the identification card presented by Canal was unreasonable, asserting there is no evidence to support it.

DISCUSSION

Section 25660 provides a defense to the charge of selling alcohol to minors if the licensee demanded and relied upon bona fide documentary evidence of majority and identity issued by a governmental agency. (*Dept. of Alcohol Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1438 [13 Cal.Rptr.3d 826] (hereinafter "*Masani*").) Even a fake or spurious identification can support a defense under this section if the apparent authenticity of the identification is such that reliance upon it can be said to be reasonable. (*Id.* at p.1445.)

The licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity *and compared with the person depicted*. A brilliant forgery should not ipso facto lead to licensee sanctions. In other words, fake Government ID's cannot be categorically excluded from the purview of section 25660. *The real issue when a seemingly bona fide ID is presented is the same as when actual governmental ID's are presented: reasonable reliance that includes careful scrutiny by the licensee.* (*Masani, supra* at p.1445, italics added.)

The ALJ's determination that the clerk's reliance on the driver's license and identification card presented to him rests on Findings of Fact IV and V, and Determination of Issues III and IV, the pertinent parts of which are here set out:

FF IV (Trejo) The license had the name Ronnie Lopez on it. It indicated that Ronnie Lopez was 5'11" tall, weighed 165 pounds, and was born on September 5, 1977, making him 26 years old. The photograph on the left side of the license shows a man with a very long face. The photograph on the right side of the license shows the same man with a more "normal" looking face. The upper left corner of the card was separated.

Trejo was 5'11" tall and weighed 160 pounds on January 16, 2004. Two photographs were taken of him that day. His face, as shown on the photographs, was nowhere as long as the face on the left side of the Ronnie Lopez driver license.

FF V (Canal) On at least one prior occasion, Canal had shown a California identification card to Alchahayed. The identification card belonged to Orlando Soto and listed Soto as 5'11" tall, weighing 145 pounds, and having black hair and brown eyes. It also indicated that Soto's date of birth was December 28,

1981, making him twenty-two years old.

Canal was 6'2" tall and weighed approximately 150 pounds on January 16, 2004. His eyes and his hair were black. Two photographs were taken of him that day. His upper lip, as shown in the photographs, was not as thick as Soto's upper lip as shown on Soto's driver license. And, his ears were noticeably different from Soto's. Not only were Canal's ears larger than Soto's, they were also situated higher. The bottoms of Canal's ears are approximately even with Canal's nose, whereas the bottoms of Soto's ears are approximately even with Soto's mouth.

DI III (Trejo) As stated in Paragraph IV of the Findings of Fact, Trejo's appearance is not similar to Lopez's appearance on Lopez's fake driver license. In fact, the two photographs of Lopez on the license do not appear similar to each other, with one of the photographs showing a person with an elongated face, and the other photograph showing a person with a more "normal" face. Moreover, the upper left corner of the license was separated. And, the 19-year old Trejo did not have the appearance of a person who was twenty-six years old. Therefore, if Alchahayed relied upon the Lopez driver license as proof of Trejo's majority, he did not carefully scrutinize it, and his reliance on it was not reasonable.

DI IV (Canal) As stated in Paragraph V of the Findings of Fact, Canal's upper lip and his ears are not similar to Soto's on Soto's identification card. Therefore, if Alchahayed relied on Soto's identification card as proof of Canal's majority, he did not carefully scrutinize it, and his reliance on it was not reasonable.

Whether or not a licensee has made a reasonable inspection of an ID to determine that it is bona fide is a question of fact. (*Masani, supra*, 118 Cal.App.4th at 1445; *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820].)

Both Trejo and Canal testified at the hearing, affording the ALJ the opportunity to compare them in the flesh to the photographs on the driver's license and identification card presented to the clerk. In so doing, he exposed flaws and discrepancies in each of the ID's that would have been reasonably apparent to one who had carefully scrutinized them.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board

may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

We think the evidence supports the ALJ's findings and determinations. He concluded that the ID's displayed did not reasonably resemble the persons proffering them, and the clerk's reliance upon them, therefore, was not reasonable. Since we believe his findings are supported by substantial evidence, and since it appears he applied the correct legal standard, we think the decision should be affirmed.

ORDER

The decision of the Department is affirmed.³

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

²The California Constitution, article XX, section 22; Business and Professions Code sections 23084 and 23085; and *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

³ 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.