

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

AB-8611

File: 21-369787 Reg: 05060629

MOHAMAD POURNAMDARI, INC., dba Mobile Mart
3950 West Imperial Highway, Inglewood, CA 90303,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: May 1, 2008

ISSUED: JULY 10, 2008

Mohamad Pournamdari, Inc., doing business as Mobile Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its off-sale general license for 12 days for its clerk, Jose Morales, having sold a 40-ounce bottle of Miller Lite to Michael R. Martinez, an 18-year-old Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Mohamad Pournamdari, Inc., appearing through its president, Mohamad Pournamdari, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on April 9, 2001. On September 8, 2005, the Department instituted an accusation against appellant charging the sale of an alcoholic

¹The decision of the Department, dated June 15, 2006, is set forth in the appendix.

beverage to a minor.

An administrative hearing was held on April 19, 2006, at which time documentary evidence was received and testimony concerning the violation charged was presented by Ricardo Carnet, a Department investigator, and Michael R. Martinez, the minor decoy. Mohamad Pournamdari testified on behalf of appellant.

Investigator Carnet testified that, while inside the store, he observed the decoy remove a 40-ounce bottle of Miller Lite beer, proceed to the counter, and wait in line to be served by the female clerk at the register. Jose Morales, another clerk, opened a second register, and called those over who were waiting in line. Martinez took the beer to Morales' register, where he paid for it. Morales bagged the beer and completed the sale. Carnet further testified that, after the decoy identified Morales as the person who sold him the beer, he, Carnet, obtained a receipt, returned the beer to Morales, and issued him a citation. Martinez, the decoy, described the transaction in the same manner as had Department investigator Carnet.

Mohamad Pournamdari testified on behalf of appellant. He disputed the testimony of the Department investigator and the decoy as to what had transpired, and denied that any sale had taken place.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged in the accusation and ordered appellant's license suspended for 12 days.

Appellant filed a timely notice of appeal in which he contends that although the investigator claimed the purchase was made with a marked five dollar bill, no marked bill was found in the store register; that the investigator was unable to provide a receipt

proving when the alcoholic beverage was purchased; and that he could not confirm from which register station the actual purchase was made. For these reasons, appellant contends, the evidence does not support the findings.

DISCUSSION

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (*Universal Camera Corporation v. National Labor Relations Board* (1951) 340 US 474, 477 [71 S.Ct. 456]; *Toyota Motor Sales USA, Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of California* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

Findings of Fact II-A and II-E state the essential facts relevant to this appeal:

FF II-A: On June 15, 2005, an employee of the Respondent, Jose Morales, sold an alcoholic beverage to an eighteen-year-old police decoy, Michael R. Martinez (hereinafter "the decoy"). The decoy went to the Respondent's premises with Department investigators. After entering the premises alone at approximately 9:00 p.m., the decoy went to the coolers, selected a forty ounce bottle of beer that was labeled Miller Lite beer, took the beer to the sales counter and waited in line behind some customers. While the decoy was waiting in line, a male clerk later identified as Jose Morales (hereinafter "the clerk") opened a second register and waved the decoy over to his register. After arriving at the second register, the decoy placed the beer on the counter. The clerk then rang up the sale, stated the total, took the five dollar bill tendered by the decoy, placed the money

in the register, gave some change to the decoy and bagged the beer in a brown paper bag. After receiving his change, the decoy picked up the bag containing the beer and exited the premises. The clerk did not ask the decoy for identification or for his age before he left the premises.

FF II-E: The Respondent's president, Mohamad Pournamdari, testified that he was not at the premises when the sale to the decoy took place. However, he feels that the Department did not establish that his clerk sold beer to the decoy. Mr. Pournamdari stressed the fact that there was a discrepancy in the testimony of the decoy and the testimony of Investigator Carnet as to where the sales receipt marked as Exhibit A came from. The decoy testified that the clerk gave him a receipt and that he handed that receipt to the investigators along with the beer and the change. Investigator Carnet testified that he obtained the receipt from the clerk. Although there was this minor discrepancy, the testimony of the decoy and the testimony of Investigator Carnet were consistent in all material matters and the preponderance of the evidence did establish that the Respondent's clerk sold an alcoholic beverage to an underage decoy.

Appellant's clerk did not testify. Given that Pournamdari was not at the store when the transaction took place, there was no one to contradict the testimony of the investigator and the decoy that the transaction took place.

The discrepancy in the testimony of the investigator and the decoy as to who did or did not get a receipt, or any question regarding the origin of the receipt marked as Exhibit A, are simply not of the substance that would warrant our disregard of the testimony of the investigator and the decoy, which the administrative law judge found credible, about the critical aspect of the transaction, i.e., that there was a sale to a minor.

There is clearly substantial evidence to support the findings and decision.

ORDER

The decision of the Department is affirmed.²

TINA FRANK, ACTING CHAIR PERSON
SOPHIE C. WONG, 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.