

ISSUED JANUARY 15, 2009

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

AB-8693

File: 21-430408 Reg: 06064021

VAN ANH TRAN, dba Quincy Liquor
982 East El Camino Real, Sunnyvale, CA 94087,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: October 2, 2008
San Francisco, CA

Van Anh Tran, doing business as Quincy Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for having, on two occasions in June and July, 2006, purchased distilled spirits and cigarettes he believed to have been stolen, violations of Penal Code sections 664/496, subdivision (a).

Appearances on appeal include appellant Van Anh Tran, appearing through his counsel, Allen C. Speare, 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 October 26, 2005. On October 5, 2006, the Department instituted an accusation against appellant charging Penal Code violations for his having purchased, on two occasions, distilled spirits and

¹The decision of the Department, dated April 5, 2007, is set forth in the appendix.

cigarettes from an undercover San Jose police officer after being told the goods he was purchasing had been stolen.

An administrative hearing was held on February 14, 2007, at which time documentary evidence was received and testimony concerning the violation charged was presented by Alex Nguyen, the undercover officer involved in both transactions, and the appellant, Van Anh Tran. Nguyen testified that he sold appellant distilled spirits on June 29, 2006, for approximately \$250 to \$300, and distilled spirits and cigarettes on July 13, 2006, for approximately \$10,000, each time having told appellant the goods had been stolen. Appellant testified on his own behalf, and denied knowing the cigarettes and distilled spirits were stolen. He testified that because of the large quantity of merchandise involved, he thought Nguyen was exaggerating when Nguyen told him the cigarettes and distilled spirits had been stolen. He also testified that he believed Nguyen was implying that he and the confidential informant were going to divide the proceeds of the transaction.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and ordered appellant's license revoked.

Appellant filed a timely notice of appeal, but did not file a brief. Written notice of the opportunity to file briefs in support of the appellant's position was given on June 24, 2008. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

Appellant's counsel appeared at the hearing, and argued that the penalty was excessive. Although, where an appellant raises the issue of an excessive penalty, the Appeals Board may examine that issue (*Joseph's of Calif. v. Alcoholic Beverage*

Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183]), the Appeals Board may not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (*Martin v. Alcoholic Beverage Control Appeals Board & Haley* (1959) 52 Cal.2d 287 [341 P.2d 296].)

The Department demonstrated knowing and intentional conduct on the part of the licensee that violated the law and amounted to a crime involving moral turpitude. Under such circumstances, the appropriateness of the penalty must be left to the discretion of the Department. The Department having exercised its discretion reasonably, the Appeals Board will not disturb the penalty.

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.