

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

AB-8763

File: 21-440050 Reg: 07065143

ROMEO DEASIS AMIDO and NILDA PUNO FUNTANAR, dba White House Liquor
16302 South Clark Avenue, Bellflower, CA 90706,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: August 7, 2008
Los Angeles, CA

ISSUED: NOVEMBER 18, 2008

Romeo Deasis Amido and Nilda Puno Funtanar, doing business as White House Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale general license for co-licensee Amido having on three occasions purchased distilled spirits he believed had been stolen, a violation of Penal Code sections 664/496, subdivision (a).

Appearances on appeal include appellants Romeo Deasis Amido and Nilda Puno Funtanar, representing themselves, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree Wortham.

PROCEDURAL HISTORY

Appellants' license was issued on June 19, 2006. On February 28, 2007, the

¹ The decision of the Department, dated October 11, 2007, is set forth in the appendix.

Department instituted an accusation against appellants charging the purchase by co-licensee Amido of distilled spirits believed by him to have been stolen.

At the administrative hearing held on August 8, 2007, documentary evidence was received and testimony concerning the violation charged was presented by Los Angeles County Sheriff's detectives Manuel Avino and Michael Wolfe. Romeo Amido testified on behalf of appellants. The evidence established that Amido purchased bottles of distilled spirits on three separate dates in December 2006 (December 1, 14, and 15), after having been told the items offered to him had been stolen from Costco.

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

DISCUSSION

Appellants filed a timely appeal, but have not filed a brief. At the Appeals Board hearing, Amido argued that the penalty of revocation was excessive and would work a hardship on his family. He did not contest the Department's findings.

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].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue (*Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board* (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183]) as we do here.

Department Rule 144 sets forth the Department's penalty guidelines. Its standard penalty for the offense of receiving stolen property, when the licensee commits the offense on the licensed premises, is revocation. The offense is one that

relates directly to the honesty of the licensee, and the Department can not be said to have abused its discretion by ordering revocation in such circumstance. 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.