

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

AB-8853

File: 20-398147 Reg: 07065610

ONKAR SINGH DOSANJH, dba Dosanjh Market
2101 Tully Road, Modesto, CA 95350,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: January 15, 2009
San Francisco, CA

ISSUED MAY 22, 2009

Onkar Singh Dosanjh, doing business as Dosanjh Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for appellant's clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Onkar Singh Dosanjh, in propria persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Gary Agerbek.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on May 9, 2003. On March 5, 2007, the Department filed an accusation against appellant charging that, on

¹The decision of the Department, dated March 21, 2008, is set forth in the appendix.

January 27, 2007, appellant's clerk, David Figueroa (the clerk), sold an alcoholic beverage to 18-year-old Ashley Kennedy. Although not noted in the accusation, Kennedy was working as a law enforcement minor decoy.

At the administrative hearing held on February 21, 2008, documentary evidence was received, and testimony concerning the sale was presented by Kennedy. Kennedy testified that she was asked for her identification, and handed the clerk her valid California driver's license. The license showed her true date of birth, and carried a red stripe with the words "Age 21 in 2009." Appellant Dosanjh testified with respect to the training and admonitions given his clerks, and asked for leniency.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellant has not raised any legal issues in this appeal, but asks for leniency on the basis of potential hardship. He faces losing his franchise if his license is suspended for a period in excess of 30 days.

DISCUSSION

This is one of two sale-to-minor cases on the current calendar involving this appellant. Both were preceded by an earlier sale-to-minor violation on June 14, 2005. That matter was resolved by payment of a fine in lieu of a 15-day suspension. The administrative hearings in both cases on the current calendar were held on the same day. In this case, a 25-day suspension was imposed. In the other case (AB-8854, Registration No. 07066198), a 25-day suspension was also imposed, but with a further condition that, if and when the appeal in this matter is affirmed and final, the order in that matter shall be revocation.

There is little in this case the Board can do for Mr. Dosanjh, whose clerks seem to have been uniformly careless in their examination of the documents presented them as proof of legal age. It is well settled that 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].) We cannot say there was an abuse of discretion, since the violation was conceded, and the licensee did have a prior violation. (See Department Rule 144 (4 Cal. Code Regs., §144).

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.