

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

AB-8888

File: 20-398147 Reg: 08067669

ONKAR SINGH DOSANJH, dba Dosanjh Mart
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: July 2, 2009
San Francisco, CA

ISSUED: OCTOBER 22, 2009

Onkar Singh Dosanjh, doing business as Dosanjh Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for his clerk having sold an alcoholic beverage (beer) to a 19-year-old police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

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

¹The decision of the Department, dated May 13, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on May 9, 2003.

Thereafter, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to a minor.

An administrative hearing was held on April 8, 2008, at which time documentary evidence was received and testimony concerning the violation charged was presented. The minor testified concerning the transaction, and appellant testified about his conversations with the clerk following the sale.

Subsequent to the hearing, the Department issued its decision which determined that the violation had been proved

Appellant filed a timely notice of appeal.

DISCUSSION

Appellant does not claim there was no violation. The decoy's testimony stands unrefuted. In the ordinary case, the Board would simply affirm the decision. The Department's order - a suspension of 25 days - would ordinarily also be affirmed, because appellant had an earlier sale-to-minor violation.

The troubling part of the Department's order is its proviso that if either of two cases appellant has pending on appeal (Reg. Nos. 07065610 and 07066918) is affirmed, the license shall be revoked at that time. In one of those two cases (*Dosanjh* (May 22, 2009) AB-8854 (Reg. No. 07066918), the Board said that a similar proviso in the Department's decision in that case deprived the order of finality, and deprived the Board of jurisdiction to hear the appeal. As a consequence, the Board dismissed the appeal in that case as premature. On the same day, the Board affirmed the other

decision (AB-8853, Reg. No. 007065610).²

Upon reflection, we think we erred in treating the decision in AB-8854 as less than final. The Department found a violation, and Dosanjh had not challenged that finding. The proviso in this case is nothing but surplusage, totally unnecessary to the decision in the case.

Dosanjh is now faced with four violations within 36 months, and has not contested any of the Department's findings and decisions with any meaningful defense, except to ask the Board to reduce the penalty, something the Board would not be inclined to do.

We consider the proviso as surplusage, and no barrier to finality. Thus, we read the decision, insofar as it imposes a 25-day suspension, as constituting a final order. The surplus language is of no force or effect.

ORDER

The decision of the Department, to the extent it orders a 25-day suspension, is affirmed.³

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

² The Department decision reviewed in AB-8853 did not contain a proviso; it simply ordered a 25-day suspension.

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.