

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

AB-8896

File: 21-393482 Reg: 07067345

HARSIMRAN SINGH BEDI and SATINDER SINGH BEDI, dba Express Liquor
18184 Valley Boulevard, Bloomington, CA 92316,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: March 3, 2011
Los Angeles, CA

ISSUED APRIL 22, 2011

Harsimran Singh Bedi and Satinder Singh Bedi, doing business as Express Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license, but stayed the revocation on the condition that appellants complete 36 months of discipline-free operation, and also suspended their license for 15 days, for delivering, furnishing or transferring drug paraphernalia while on the licensed premises, a violation of Health and Safety Code section 11364.7.

Appearances on appeal include co-appellant Harsimran Singh Bedi, appearing in propria persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated May 2, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on December 9, 2002. On November 15, 2007, the Department instituted an accusation against appellants charging that co-appellant Satinder Singh Bedi, while on the licensed premises, delivered, furnished or transferred drug paraphernalia to an undercover law enforcement officer.

At the administrative hearing held on March 28, 2008, documentary evidence was received and testimony concerning the violation charged was presented by co-appellant Harsimran Bedi, and two deputies from the San Bernardino Sheriff's Department who participated in the undercover operation: Marc Bracco and James Wiebeld.

Subsequent to the hearing, the Department issued its decision which determined that the charges were proven and no defense was established.

Appellants have filed a timely appeal making the following contention: The penalty is excessive.

DISCUSSION

The facts of the case are not disputed by appellants. As recounted by the administrative law judge (ALJ) in Findings of Fact 6:

Bracco [one of the undercover officers] went to the coolers and selected a 24 ounce can of Bud Light beer and took it to the counter. The clerk on duty was later identified as Satinder Bedi, co-licensee and father of Harsimran Bedi. Bracco set the can of beer on the counter and asked Satinder Bedi if he had any "meth" pipes. "Meth" is street vernacular for methamphetamine, a controlled substance. Clerk Satinder Bedi said "yes" and pointed to the smoke shop. Bedi walked through the open interior door into the smoke shop and Bracco followed. Bedi produced a 6 inch glass tube with a ball on one end from behind the counter. Based upon his training, Bracco recognized the object as the type used to ingest methamphetamine. Bracco said that he would take it. Bedi wrapped the

glass pipe in paper and told Bracco that the total for the beer and the pipe was \$6.25. Bracco handed money to Bedi. Bedi opened the cash register inside the smoke shop. Bracco noted that the cash register was empty. Bedi then took Bracco back into the liquor store and rang up the \$6.25 for the beer and meth pipe on the liquor store cash register. Bracco exited the store with the beer and meth pipe.

Health and Safety Code section 11364.7, subdivision (a), provides that a misdemeanor is committed when anyone “delivers, furnishes, or transfers, [or] possesses with intent to deliver, furnish, or transfer, . . . drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to . . . ingest, inhale, or otherwise introduce into the human body a controlled substance” Subdivision (d) states that any business or liquor license may be revoked if any of the preceding subdivisions of section 11364.7 are violated in the course of a licensee’s business.

Appellants' only contention on appeal is that the penalty is excessive. The Appeals Board may examine the issue of excessive penalty if it is raised by an appellant (*Joseph's of California. v. Alcoholic Beverage Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183]), but will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Beverage Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296] (*Martin*).)

The Department has wide discretion in determining appropriate discipline for licensee misconduct. (*Martin, supra*, at p. 299. “If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

In his proposed decision, the ALJ devoted a separate section to the discussion of the penalty in which he said:

The Department recommends that the license be subjected to a stayed revocation for two years and a twenty day suspension.

Harsimran Bedi argues that the penalty is too harsh. According to Bedi, a suspension for twenty days will be devastating to his business. He stated that he will lose customers permanently because they will go to other locations and not return to his store. He was advised of the possible consequences of the stayed revocation but is not concerned with it because immediately after finding out about this incident he closed the smoke shop and it has not been open since. Bedi is in the process of selling the smoke shop and its inventory. Bedi also indicated that the interior door connecting the smoke shop and liquor store has been permanently closed and shelves of items now cover the door on both sides.

The remedial measures taken by Respondent are commendable and certainly worthy of some type of mitigation. On the other hand, the seriousness of the violation must be taken into account. The penalty recommended takes both sides into consideration.

The standard penalty for the sale of drug paraphernalia as set forth in the Penalty Guidelines Appendix to rule 144 (4 Cal. Code Regs. §144), is revocation stayed for three years and a 20-day suspension. The ALJ took the noted factors in mitigation into account, and recommended revocation stayed for three years and a 15-day suspension.

We believe the ALJ's penalty recommendation is reasonable, supported by substantial evidence, and well within his discretion as trier of fact.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
MICHAEL A. PROSIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq.