

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

AB-8897

File: 21-412051 Reg: 07066262

MOHINDER PAL, dba Chima Liquor Store
5049 Franklin Avenue, Sacramento, CA 95820,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: October 1, 2009

ISSUED: DECEMBER 22, 2009

Mohinder Pal, doing business as Chima Liquor Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 15 days for his clerk having sold an alcoholic beverage to an obviously intoxicated patron, a violation of Business and Professions Code section 25602, subdivision (a).

Appearances on appeal include appellant Mohinder Pal, appearing through his counsel, Ralph B. Saltsman and Alicia R. Ekland, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

¹The decision of the Department, dated June 13, 2008, issued pursuant to Government Code section 11517, subdivision (c), is set forth in the appendix, together with the proposed decision.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on May 3, 2004. Thereafter, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to an obviously intoxicated patron on May 2, 2007.

An administrative hearing was held on October 25, 2007, at which time documentary evidence was received and testimony concerning the violation charged was presented. Sacramento police officer John Houston testified that while doing a routine compliance check, he observed Richard Mendoza walking across Franklin Boulevard, a multi-lane street. Mendoza was walking slowly and swaying unsteadily, exhibiting little concern for passing cars. Houston watched as Mendoza finished crossing the street and entered the licensed premises. Houston contacted Mendoza as he left the premises with a bottle of Potter's Vodka, an alcoholic beverage, and observed Mendoza's disheveled appearance, his bloodshot, watery eyes, odor of alcoholic beverages, a fresh wetness on his crotch and leg, and a strong odor of urine on his person. A PAS device registered Mendoza's blood alcohol content at .30. Houston concluded that Mendoza was intoxicated. Appellant presented no witnesses or testimony.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and ordered the suspension from which this timely appeal has been taken.

Appellant's appeal contends that the clerk could not reasonably have been aware that the patron was obviously intoxicated, and to find a violation under these circumstances holds appellant to a strict liability standard.

DISCUSSION

This is a case where the Department drew inferences from the record evidence and reached a result opposite that of the administrative law judge. Agreeing with the Department that the totality of the circumstances must be considered to determine whether the clerk in this case had an adequate opportunity to know and observe that the patron was obviously intoxicated, we believe its decision should be affirmed.

Appellant does not dispute the testimony of Officer Houston regarding the aspects of Mendoza's appearance and behavior that led him to believe Mendoza was obviously intoxicated. His argument is that the very brief - 15 seconds - period of time the clerk had to observe Mendoza could not reasonably have permitted him to observe enough about Mendoza's appearance and behavior to cause him to believe Mendoza was obviously intoxicated.

To a large extent, appellant's argument asks this Board to make its own examination of the facts and reach its own conclusion as to what the clerk could have learned while Mendoza was in the store. Of course, the Board is not permitted to conduct a trial de novo. But even on what appellant concedes, it was not unreasonable for the Department to conclude that the clerk had sufficient time to observe sufficient indicia of obvious intoxication. "Fifteen seconds," when those words are spoken, may seem a very brief period of time, but the time it takes for a clock's second-hand to advance fifteen seconds would have been ample for the clerk to notice symptoms of intoxication displayed only three or four feet from him.

Appellant acknowledges that the visible signs of intoxication are such as to be obvious to a person having normal powers of observation. Manifestations of obvious intoxication may include bloodshot or glassy eyes, flushed face, alcoholic breath, loud

or boisterous conduct, slurred speech, unsteady walking, or an unkempt appearance. (*Jones v. Toyota Motor Co.* (1988) 198 Cal.App.3d 364, 370 [243 Cal.Rptr. 611].)

According to Officer Houston, Mendoza displayed bloodshot, watery eyes, a strong odor of alcoholic beverages and urine from a wet area in the crotch of his pants when he was confronted while leaving the store. Officer Houston had previously observed the urine stain on Mendoza's pants while he was entering the store. It was reasonable for the Department to infer that these same symptoms were present and observable while Mendoza stood three feet from the clerk while the transaction was conducted.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, 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.