

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

AB-8928

File: 20-145970 Reg: 07067511

JOANN, STANLEY, and PETER ZAMOYTA, dba Stan's Tesoro
1740 West Texas Street, Fairfield, CA 94533,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: January 7, 2010
San Francisco, CA

ISSUED APRIL 21, 2010

Joann, Stanley, and Peter Zamoyta, doing business as Stan's Tesoro (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for co-licensee Joann Zamoyta selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Joann, Stanley, and Peter Zamoyta, appearing through co-licensee Stanley Zamoyta, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

¹The decision of the Department, dated August 6, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 30, 1983. On December 17, 2007, the Department filed an accusation against appellants charging that, on June 13, 2007, co-licensee Joann Zamoyta sold an alcoholic beverage to 18-year-old Edder Botello. Although not noted in the accusation, Botello was working as a minor decoy for the Fairfield Police Department at the time.

At the administrative hearing held on June 10, 2008, documentary evidence was received and testimony concerning the sale was presented by Botello (the decoy), by Joann Zamoyta, and by Dana Carnes, a customer present during the decoy operation. Stanley Zamoyta testified about training and policies at the premises.

The Department's decision determined that the violation charged was proved and no defense was established. This was appellants' third sale-to-minor violation in less than 36 months.

Appellants have filed an appeal contending the penalty of revocation is excessive and an abuse of discretion.

DISCUSSION

Appellants contend that the penalty imposed is an abuse of discretion because the findings ignore mitigation evidence, the decision that the evidence was insufficient to demonstrate mitigation was not supported by the findings, and mitigation evidence was wrongly discounted for appellants' failure to take the Department's LEAD training.

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].) If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "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 Beverage Control Appeals Bd.* (1965) 62 Cal. 2d 589, 594 [43 Cal.Rptr. 633].)

Unless some statute requires it, an administrative agency's decision need not include findings with regard to mitigation. (*Vienna v. California Horse Racing Bd.* (1982) 133 Cal.App.3d 387, 400 [184 Cal.Rptr. 64]; *Otash v. Bureau of Private Investigators* (1964) 230 Cal.App.2d 568, 574-575 [41 Cal.Rptr. 263].) Appellants have not pointed out a statute with such requirements. Findings regarding the penalty imposed are not necessary as long as specific findings are made that support the decision to impose disciplinary action. (*Williamson v. Board of Medical Quality Assurance* (1990) 217 Cal.App.3d 1343, 1346-1347 [266 Cal.Rptr. 520].)

Appellants do not dispute that the Department's findings support the decision that a sale-to-minor violation occurred on June 13, 2007, and that this was the third such sale within 36 months. Therefore, no abuse of discretion resulted from the lack of findings regarding mitigation or the Department's conclusion that there was insufficient evidence to demonstrate mitigation.

Appellants appear to be operating under the mistaken notion that the Department is required to reduce a penalty if some evidence exists that can somehow be labeled "mitigating." This is not correct. The Department's discretion, while not unfettered, is very broad, and this Board is not entitled to disturb the exercise of that

discretion unless there is palpable abuse. It is appellants' responsibility to demonstrate such abuse, and nothing in their contentions, even if given full credit, reaches the level of palpable abuse.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, 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.