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

AB-9235
File: 20-419032 Reg: 11075125

7-ELEVEN, INC. and KAREN KAUR GILL, dba 7-Eleven Store #29518C-2131
2441 Jamacha Road, Suite 101, El Cajon, CA 92019,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: December 6, 2012
Los Angeles, CA

ISSUED JANUARY 17, 2013

7-Eleven, Inc. and Karen Kaur Gill, doing business as 7-Eleven Store #29518C-2131 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which suspended their license for 10 days for their 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 appellants 7-Eleven, Inc. and Karen Kaur Gill, appearing through their counsel, Ralph Barat Saltsman and Autumn M. Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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[1]The decision of the Department, dated January 4, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on December 20, 2004.

The Department instituted an accusation against appellants on May 25, 2011, charging that, on March 4, 2011, appellants' clerk sold an alcoholic beverage to 18-year-old Daniel Navarro. Although not noted in the accusation, Navarro was working as a minor decoy for the San Diego County Sheriff's Department at the time.

An administrative hearing was held on October 18, 2011, at which time documentary evidence was received, and testimony concerning the sale was presented by Navarro (the decoy) and by Albert Carrillo, a San Diego County Sheriff's Department deputy.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and that no defense had been established. A penalty of 10 days suspension was imposed, with no days stayed.

Appellants filed a timely appeal contending that the ALJ failed to explain his reasons for imposing the penalty.

DISCUSSION

Appellants contend that the ALJ failed to explain his reasons for imposing a penalty of 10 days suspension with no days stayed. Appellants describe the severity of this penalty as an abuse of discretion in light of a discipline-free history dating back to the issuance of the license on December 20, 2004

The Department is granted broad discretion in assigning a penalty. Rule 144[2] states:

[2]Cal. Code Regs., tit. 4, §144.

> In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*) the Department shall consider the disciplinary guidelines entitled "Penalty Guidelines" (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department *in its sole discretion* determines that the facts of the particular case warrant such a deviation–such as where facts in aggravation or mitigation exist.

(Emphasis added.)

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].)

"This Board's review of a penalty looks only to see whether it can be considered reasonable, not what considerations or reasons led to it. If it is reasonable, our inquiry ends there." (*7-Eleven, Inc. v. Ghuman & Sons, Inc.* (2011) AB-8997 at p. 4.) "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].)

Appellants appear to assert that the ALJ miscalculated the amount of time appellants' license had been discipline-free:

With respect to the penalty, the ALJ found that the premises had been

> licensed for 8 years without prior discipline, yet he concludes that a 10-day suspension without any days stayed is appropriate. Although the ALJ does not explain why this penalty is appropriate, the conclusion is presumably based on the Department's recommendation, which, in turn, was based on the premises being licensed for *6 years* without prior discipline.

(App.Br. at p. 2, emphasis in original.) Appellants later imply the same error:

> The ALJ fails to explain the basis for his conclusion that a 10-day suspension is appropriate in this matter. This is particularly troubling when the conclusion is viewed in light of Findings of Fact ¶1, which state that the premises had been licensed without prior violations for *six* years:
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> 1. The named Respondents have been licensed by the Department at the above-captioned premises with an Off-Sale Beer and Wine License since December 20, 2004 with no record of disciplinary action.
>
> In fact, based on the parties' stipulation regarding the date the premises were licensed, it is unclear if the ALJ is even referring to the same premises in his findings of fact and his conclusion.

(App.Br. at p. 5, emphasis in original.)

We can discern no such error. The parties indeed stipulated that appellants had been discipline-free since acquiring their license on December 20, 2004. [RT 6.] The ALJ repeated precisely this date in his Findings of Fact, ¶ 1. The violation occurred on March 4, 2011, just over six years later. While the ALJ does not discuss this six-year period in his conclusions, he is not required to do so, and there is absolutely no indication that he based the penalty on a misapprehension of the stipulated facts.

A 10-day suspension with no days stayed is within the guidelines of rule 144 and is fully reasonable for a first violation. Appellants have shown no abuse of discretion, and we can find no other cause to reconsider the penalty imposed.

ORDER

The decision of the Department is affirmed.[3]

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

[3]This 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.