

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

AB-9390

File: 42-505198 Reg: 13078791

CRUZ ZAMORA LARA,
dba College Inn
8640 Lindley Avenue, Northridge, CA 91325,
Appellant/Co-licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: August 7, 2014
Los Angeles, CA

ISSUED AUGUST 20, 2014

Cruz Zamora Lara, co-licensee, doing business as College Inn (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her jointly held license after both licensees pled guilty/nolo contendere to a public offense involving moral turpitude, a violation of Business and Professions Code section 24200(d).

Appearances on appeal include appellant Cruz Zamora Lara, appearing through her counsel, Armando H. Chavira,² and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated November 19, 2013, is set forth in the appendix.

²Co-licensee Jorge Rodriguez Alcantar made no appearance, and is not participating in this appeal. Counsel represents appellant Lara alone.

FACTS AND PROCEDURAL HISTORY

Appellant's jointly held on-sale beer and wine public premises license was issued on December 23, 2010. On June 28, 2013 the Department instituted a two-count accusation against appellant and her co-licensee husband, Jorge Rodriguez Alcantar, charging that both licensees had pled guilty to a public offense involving moral turpitude, in violation of section 24200(d).

At the administrative hearing held on October 17, 2013, documentary evidence was received. No testimony was presented by either party.

The pertinent facts, however, are undisputed. On November 14, 2012, co-licensee Jorge Rodriguez Alcantar pled guilty to a violation of Penal Code section 182(a)(1), conspiracy to sell a quantity of methamphetamine exceeding four kilograms in violation of Health and Safety Code section 11379(a), a felony. Appellant does not dispute that this is a crime of moral turpitude.

On the same day, appellant herself pled guilty to a violation of Penal Code section 31500, felony possession of an unconventional pistol.

At the time the pleas were entered, appellant and Alcantar were married. On March 19, 2013, four months after the pleas were entered, appellant filed for divorce. Seven months later, at the administrative hearing, the divorce was not yet final.

After the hearing, the Department issued its decision which determined that the charges were proven and no defense was established, and assigned a penalty of outright revocation.

Appellant has filed this appeal contending (1) her conviction under Penal Code section 31500 was not admissible to show moral turpitude, and (2) she is an innocent spouse and should be allowed to keep the license.

DISCUSSION

Appellant contends first that her conviction under Penal Code section 31500 does not constitute a crime of moral turpitude meriting revocation under Business and Professions Code section 24200(d), and second, with regard to Alcantar's conviction of a crime of moral turpitude, she is an "innocent spouse" and should be allowed to keep the license.

We first observe that either of the two counts in the accusation mandate revocation under section 24200(d). We will not address the question of whether appellant's conviction under Penal Code 11379(a) constitutes a crime of moral turpitude, and will dispose of this case based on the "innocent spouse" defense alone.

The relevant facts are not in dispute. Appellant's co-licensee and then-husband, Jorge Rodriguez Alcantar, pled guilty to a felony violation of Penal Code section 182(a)(1), conspiracy to sell methamphetamines. Appellant concedes this is a crime of moral turpitude.

This Board is left with pure questions of law — does the so-called "innocent spouse" doctrine exist, and, if so, does it provide a defense in this case?

In a case predating the creation of the Department of Alcoholic Beverage Control, the court of appeals addressed the Board of Equalization's revocation of license for violations of law committed by one co-licensee without the knowledge or participation of the other. (*Coletti v. State Bd. of Equalization* (1949) 94 Cal.App.2d 61 [209 P.2d 984].) Business partners Coletti and Gerbosi operated, as co-licensees, a premises serving beer, wine, and distilled spirits. Additionally, Gerbosi individually held an alcoholic beverage license for a second premises, and operated a third unlicensed cafe with his wife. (*Id.* at p. 985.) Gerbosi was found to have committed a number of

liquor violations involving the unlicensed cafe. (*Ibid.*) It was undisputed that Coletti held no interest in the cafe where the violations took place, and had no knowledge of Gerbosi's conduct. (*Ibid.*) Nevertheless, the Board of Equalization revoked not only Gerbosi's individual alcoholic beverage license, but the license held jointly with Coletti as well. (*Ibid.*)

On appeal, Coletti raised what is perhaps best characterized as the "innocent partner" defense — that is, he was innocent of the illegal conduct and ought to be permitted to keep the license as an individual. (*Ibid.*) The superior court accepted this defense and ordered the license restored to Coletti. (*Id.* at p. 984.)

The court of appeals, however, rejected the argument and reversed. It first observed that the lower court had no authority to simply remove Gerbosi's name from the license:

The provision of the judgment that the [Board of Equalization] must restore physical possession of the license to Coletti might indicate a purpose to make him the sole licensee. If this was the purpose, it is clearly one that cannot be accomplished by the judgment. The act contains elaborate provisions for the transfer of licenses, including the giving of notice, establishment of an escrow, payment of claims against the transferor, payment of a transfer fee, and the application for transfer must have the approval of the [Board of Equalization], following a complete investigation to be made by the State Liquor Administrator. [Citation.] A transfer from a partnership to one of the partners is clearly subject to these provisions. . . . It was not competent for the court to create a new license with Coletti as licensee. If he to be made the sole licensee it must be through action by the [Board of Equalization].

(*Id.* at pp. 985-986.) The court acknowledged that "[r]evocation of a partnership license brings about a harsh result as to an innocent partner," but found that result unavoidable. (*Id.* at p. 986.) It observed:

Certainly the [Board of Equalization] does not act arbitrarily in revoking a partnership license where one partner has been found guilty of violations of law which call for revocation. There is no force in the argument that

one partner in a liquor license cannot be bound unauthorized acts of a copartner which place the license in jeopardy. When two or more persons apply for a partnership license, each of them necessarily assumes responsibility for the acts of the others with relation to the conditions under which the license is held.

(*Ibid.*)

Coletti, of course, did not involve a spousal partnership. Subsequent case law holds that this distinction does not change the result. In *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30 [152 Cal.Rptr. 285], the appellant argued that the penalty of revocation was excessive, and that the co-licensee spouse's innocence called for revocation only subject to conditions permitting transfer of the license. (*Id.* at p. 39.) The court of appeals rejected the argument and noted:

The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or court to substitute its own judgment therein (*MacFarlane v. Dept. Alcoholic Bev. Control* (1958) 51 Cal.2d 84, 91 [330 P.2d 769]); nor does the circumstance of forfeiture of the interest of an otherwise innocent co-licensee sanction a different and less drastic penalty. (See *Coletti v. State Board of Equalization* (1949) 94 Cal.App.2d 61, 64 [209 P.2d 984]; see also Cal. Admin. Code, tit. 4, § 58).

(*Ibid.*) The discretion to select between outright or conditional revocation rested solely with the Department, and could not be disturbed absent a showing of palpable abuse. (*Ibid.*, citing Cal. Const. art. XX, § 22; Bus. & Prof. Code § 24200; *Harris v. Alcoholic Bev Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].) This Board had — and has — no authority to reverse or condition a penalty of revocation simply because an ostensibly innocent co-licensee spouse is harmed by the penalty.

Moreover, there are strong policy reasons for treating spousal co-licensees as business partners. First, this Board has neither the constitutional authority nor the expertise to delve into the complex and often fraught realm of community property law.

Second, even if we attempted to do so, we could not apply the law fairly. If, for instance, we preserved an innocent spouse's interest in a jointly held license in order to insure an income, perhaps for a family, then what are we to do in cases where an innocent spouse is *not* a co-licensee, but nevertheless stands to lose all support income by virtue of the revocation? In such a case, the innocent spouse suffers just as much as if he or she were a co-licensee, but we cannot grant a remedy within any conceivable interpretation of alcoholic beverage law. Finally, the act of marriage and the act of holding an alcoholic beverage license are separate endeavors involving disparate benefits and responsibilities. Two individuals may be co-licensees, but not married (see, e.g., *Coletti, supra*), or they may be married, but not co-licensees. (See Cal. Code Regs., tit. 4, § 58, Applications by Married Persons [license may be held individually as separate property, or as community property where unlicensed spouse cannot participate in business for reasons of disability or absence from the state].) Marriage is an institution implicating an array of emotional, personal, religious, civil, and family issues. The decision to hold an alcoholic beverage license together, on the other hand, is a joint business venture, and is best treated as such.

In this case, it is undisputed that Alcantar pled guilty to and was convicted of a crime of moral turpitude. It is also undisputed that appellant and Alcantar were married on the date Alcantar entered his guilty plea and were still married on the date of the administrative hearing,³ and that appellant and Alcantar were co-licensees at the College Inn premises.

³Appellant Lara has moved to augment the record with a certified Judgment of Dissolution, finalized on July 16, 2014. (See App. Closing Br. at p. 2.) This Board, however, does not have fact-finding authority. In any event, the dissolution is irrelevant.

Appellant argues that she is an innocent spouse. Her defense turns largely on rule 58 (Cal. Code Regs., tit. 4, § 58) and a comparison of the present facts with those addressed in *Carrera* (1996) AB-6624. Neither source is supportive. Rule 58 addresses the qualifications of a spouse at the *issuance* of a license. We are not asked to determine whether appellant is individually qualified for a new license or a license transfer. We are instead asked whether she should be allowed to keep *this* license. Rule 58 does not grant authority to simply strike a wayward spouse's name from the license upon divorce,⁴ and therefore offers no safe harbor for an innocent spouse facing revocation.

Moreover, though the facts bear some similarities, *Carrera* fundamentally does nothing to support appellant's case — quite the opposite, in fact:

The Appeals Board has examined numerous cases similar to the instant matter and has consistently reached conclusions such as it did in *Wantuch* (1985) AB-5111:

"[J]udicial precedent holds that the department reasonably exercises its discretion by treating co-licensees identically when imposing discipline for the misconduct of one of the licensees. The rationale for this principle is that there is but a single license, although standing in the names of two partners. When two or more persons apply for a partnership license, each of them necessarily assumes responsibility for the acts of the others with relation to the conditions under which the license is held. [quoting *Coletti v. State Board of Equalization* (1949) 94 Cal.App.2d 61 [209 P.2d 984].]"

The Board in *Wantuch* concluded: "The license is thus revocable in its entirety for the offense of only one of the licensees." The Appeals Board was even more specific in the early case of *Hernandez* (1961) AB-1546,

⁴The plain language of rule 58 shows that it cannot serve Lara's case. More importantly, however, the interpretation appellant advocates would encourage any innocent spouse to seek a swift divorce in order to sidestep license revocation. This is poor public policy, particularly in cases where the marriage has produced children. We decline to interpret a Department rule in a way that undermines basic social structures.

when it concluded that the joint interests of the husband and wife in an Alcoholic Beverage Control (ABC) license were not severable.

That Elena Carrera, as an innocent party, must share in the penalty is unfortunate. However, it is well settled that the penalty imposed for the conduct of an offending partner must be suffered by the innocent partner as well. (*Coletti, supra.*) The revocation of the license does not result in the denial of "any rights granted to the wife by the Constitution or extended to her by statutory definition." (*Hernandez, supra.*) We must conclude, by extension, there is also no violation of public policy.

(*Carrera, supra*, at pp. 4-5.) *Carrera* squarely holds that revocation of the license in its entirety is proper.

Even if appellant were an utterly innocent spouse — and we are not convinced she is — we could not offer relief. Under *Coletti*, this Board cannot simply strike Alcantar from the license. To do so would circumvent Department licensing procedures and effectively issue a new license in appellant's name alone. Where the Department determines that a truly innocent partner has suffered unduly, it alone has the discretion to conditionally stay revocation and allow transfer of the license. Under *Rice*, however, this Board has no authority to reverse or alter the Department's penalty determination simply because a purportedly innocent spouse suffers as a result.

ORDER

The decision of the Department is affirmed.⁵

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵This 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.