

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

AB-9469

File: 21-524698 Reg: 14080058

TUMBER INVESTMENTS, INC.,
dba Avenue Liquors
2147 Roosevelt Avenue,
Redwood City, CA 94061-1351,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Nicholas R. Loehr

Appeals Board Hearing: April 2, 2015
Sacramento, CA

ISSUED APRIL 22, 2015

Tumber Investments, Inc., doing business as Avenue Liquors (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking its license, subject to a conditional stay to permit license transfer and 25 days' suspension, because its clerk and, at the time, corporate president sold marijuana on the licensed premises in violation of Business and Professions Code section 24200.5(a) and Health and Safety Code section 11360.

Appearances include appellant Tumber Investments, Inc., by Raghvir Singh, in propria persona, and the Department of Alcoholic Beverage Control, through its counsel, Heather Hoganson.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on October 25, 2012. On March

¹The decision of the Department, dated July 23, 2014, is set forth in the appendix.

5, 2014, the Department instituted an eight-count accusation against appellant charging four violations each of Business and Professions Code section 24200.5(a) and Health and Safety Code section 11360.

At the administrative hearing held on May 8, 2014, appellant was represented by Gregg Lee Kays, a disbarred attorney acting as a lay consultant.² Appellant stipulated that the factual allegations underlying all counts are true and correct. Mitigating testimony was presented by Raghvir Singh, appellant's owner and the father of the offending corporate principal, Balwinder Singh.³ In light of appellant's stipulation, the Department presented no witnesses.

Testimony established that Balwinder's arrest and conviction for selling drugs affected the whole Singh family. Singh testified that his son "shamed the family." Singh told his son that what he did was wrong. Additionally, Singh apologized to the Department for his son's actions.

Singh terminated Balwinder's status in the appellant corporation as a result of Balwinder's criminal activity and subsequent felony convictions. Balwinder is no longer a corporate officer and owns no stock. Singh also removed his son's name from the lease on the licensed premises, leaving himself as the sole signatory and lessee of the property. Approximately three and a half years remain on the lease.

Balwinder ran the premises since its inception. Singh had very little involvement in the operation of the store. He visited the premises only four or five times while his

²Kays was disbarred on February 11, 2011 — more than three years before the date of the hearing.

³At the time of the violation, Raghvir Singh, identified herein as "Singh," was appellant's corporate secretary. Balwinder Singh, hereinafter "Balwinder," was its corporate president.

son was running the business. This is explained, in part, by Singh's other licensed store in Mountain View, California. Singh is the sole proprietor and licensee at the Mountain View store, which he operates with one other employee.

The licensed premises are now being operated by Harpreet Singh (hereinafter Harpreet), Raghvir Singh's youngest son. Harpreet dropped out of college to run the licensed premises for his father. Singh wants Harpreet to go back to college. Singh would like to keep the licensed premises open. Now, he helps open the licensed premises on Saturdays and Sundays at 8:00 a.m. He stays until 4:00 or 5:00 p.m. Harpreet closes the store at 11:00 p.m.

Singh has been in the United States for twelve years. In 2002, he started working in a 7-Eleven as a clerk. Ultimately, he became the manager. Singh left 7-Eleven in 2009 to open his Mountain View store. While at the 7-Eleven, Singh was never cited for selling alcohol to minors.

After the hearing, the Department issued its decision which determined that all eight counts had been proven and no defense was established. The decision found that revocation was proper pursuant to Business and Professions Code sections 24200(a) and (b), particularly since a corporate principal sold drugs on the premises in a systematic fashion and as an ongoing enterprise. However, the lack of involvement of other family members and the total removal of Balwinder from the operation of the business established a degree of mitigation. Accordingly, the decision imposed a penalty of revocation, conditionally stayed for 180 days to permit license transfer, along with a concurrent 25-day suspension.

Appellant filed a timely appeal through Kays,⁴ and written notice of the opportunity to file briefs in support of appellant's position was given on December 29, 2014. This Board contacted Kays to inform him that, as a disbarred attorney, he was prohibited from appearing in administrative proceedings, and referred him to the court of appeal's ruling in *Benninghoff v. Superior Court of Orange County* (2006) 136 Cal.App.4th 61 [38 Cal.Rptr.3d 759].

Appellant's opening brief was due January 30, 2015. No brief was filed, and there was no request to extend the time for the filing of briefs or to continue the hearing date of April 2, 2015. At oral argument, Singh stated that Kays had assured him he would take care of everything.

On February 9, 2015, the Department filed a motion to dismiss the appeal. Appellant did not respond. At oral argument, the Department renewed its motion. Given that Singh's representative appears to have abandoned him, we will deny the Department's motion and decide this case based on the notice of appeal and oral argument.

DISCUSSION

Although appellant failed to file a brief, it argued in its Notice of Appeal that "insufficient mitigation was recognized and too harsh a penalty imposed" in light of Balwinder's removal from operation of the licensed premises.

The Appeals Board may examine the issue of an excessive penalty if it is raised

⁴At oral argument, Singh stated that appellant's attorney had been hired by Balwinder Singh. Singh and his son, Harpreet, appeared shocked to discover that their "attorney" had in fact been disbarred. We feel this case underscores the public policy reasons for prohibiting disbarred attorneys from practicing as lay representatives in administrative proceedings. (See *Benninghoff v. Superior Ct. of Orange Co.* (2006) 136 Cal.App.4th 61, 70-71 [38 Cal.Rptr.3d 759].)

by an appellant. (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183]). However, it will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. 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 Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

The Penalty Schedule appended to rule 144 recommends revocation for narcotics transactions taking place on the licensed premises. (Cal. Code Regs., tit. 4, § 144.) Whether evidence is sufficient to merit mitigation is a discretionary determination left in the hands of the Department. (*Ibid.*)

At the administrative hearing, appellant argued that the removal of Balwinder Singh from the operation of the licensed premises, combined with the fact that the business is family-operated and no other family members were involved, merited a mitigated penalty. Appellant suggested a 10 to 20-day suspension.

The Department, on the other hand, sought outright revocation. It argued that Balwinder Singh was a corporate principal and was essentially running the store to sell drugs.

The assigned penalty acknowledges the validity of both positions and represents a sound compromise. Moreover, it falls squarely within rule 144's penalty recommendations. We find no abuse of discretion.

At oral argument, Singh expressed a desire to transfer the license to his younger

son, Harpreet. That decision lies solely with the Department, not this Board. This case, however, underscores the importance of relying on competent legal counsel, and the consequences of failing to do so. We recommend appellant (or similarly situated licensees) locate a licensed attorney — or, at minimum, a qualified layperson familiar with alcoholic beverage law — before negotiating with the Department.

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.