

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

AB-9826

File: 21-576652; Reg: 18088258

BAHAR NARGESS MOHAMADI and MEHRAN NABIFAR,
dba Tran's Liquor
10021 Hawthorne Boulevard
Inglewood, CA 90304-5415,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: December 5, 2019
Sacramento, CA

ISSUED DECEMBER 17, 2019

Appearances: *Appellants:* Dean R. Lueders, of ACTlegally, as counsel for Bahar Nargess Mohamadi and Mehran Nabifar,

Respondent: Alanna K. Ormiston, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Bahar Nargess Mohamadi and Mehran Nabifar, doing business as Tran's Liquor, appeal from a decision of the Department of Alcoholic Beverage Control¹ revoking their license because one of the co-licensees purchased distilled spirits, believing them to be stolen, in violation of Penal Code sections 664 and 496, subdivision (a).

¹The decision of the Department, dated June 25, 2019, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on March 7, 2017. There is no record of prior departmental discipline against the license.

On November 15, 2018, the Department instituted a three-count accusation against appellants charging that on three separate occasions, one of the co-licensees purchased distilled spirits believing them to be stolen, in violation of Penal Code section 664 and 496, subdivision (a).

At the administrative hearing held on March 14, 2019, documentary evidence was received and testimony concerning the violation charged was presented by Department Agent Zachary Holland and co-licensee Mehran Nabifar.

Count 1: Testimony established that on May 17, 2018, Department Agents Holland and Bertsch went to the licensed premises with a variety of alcoholic beverages in their car. They placed some of the alcohol in a backpack and entered the premises. They spoke to co-licensee Mehran Nabifar and offered to sell him some alcohol Agent Bertsch's buddy had stolen. They showed him the bottles in the backpack, negotiated the price, and ultimately agreed on \$50 for three bottles — Grey Goose vodka, Remy Martin cognac, and Hennessy cognac. Nabifar obtained \$50 from the register and gave it to Agent Holland. He told the agents that next time he wanted smaller bottles because they were easier to sell. (Findings of Fact, ¶¶ 4-7.)

Count 2: On May 24, 2018, Agent Holland returned to the premises with Agent Hoang and two backpacks with alcoholic beverages. They showed the alcohol to Nabifar, discussed the price, and again agreed on \$50 for three bottles — Grey Goose vodka, Remy Martin cognac, and Hennessy cognac. Agent Holland told him he had

more alcohol in small bottles in the car, and brought in five small bottles of Grey Goose vodka and five small bottles of Hennessy cognac. They agreed on \$30 and Nabifar paid Agent Holland. They also discussed future sales of alcohol. Later, after leaving the premises, Agent Holland realized Nabifar had only given him \$20 in the second transaction and he photographed the money given to him by Nabifar that day (exh. 3). (Findings of Fact, ¶¶ 8-12.)

Count 3: On June 15, 2018, Agents Holland and Hoang returned to the premises, both carrying backpacks containing alcohol. (Exh. 4.) They removed the bottles from the backpacks and set them on the counter. A customer entered and Nabifar pushed the alcohol to one side and asked Agent Holland to come to the other side of the counter. After the customer left, they negotiated back and forth about the price, ultimately agreeing to \$40 for bottles of Grey Goose vodka, Hennessy cognac, and Johnny Walker Black Label whiskey. (Findings of Fact, ¶¶ 13-15.)

Nabifar testified that Agent Holland appeared to be homeless and that he thought he was helping him out. He also testified that he knew it was wrong to purchase the alcohol and that he would not do it again. (Finding of Fact, ¶ 16.)

The administrative law judge (ALJ) submitted his proposed decision on April 5, 2019, sustaining the accusation and recommending that the license be revoked. The Department adopted the proposed decision in its entirety on June 13, 2019 and a Certificate of Decision was issued on June 25, 2019.

Appellants then filed a timely appeal arguing that the penalty is too harsh.

DISCUSSION

Appellants contend the punishment of revocation is too harsh and that it “far

exceeds what is required to protect the public welfare and morals.” (AOB at p. 3.)

They argue “the ABC did not proceed in the manner required by the law because ABC did not consider alternative penalties that would have equally protected the public welfare and morals.” (*Id.* at p. 2.)

The Board 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].) “‘Abuse of discretion’ in the legal sense is defined as discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered. [Citations.]” (*Brown v. Gordon* (1966) 240 Cal.App.2d 659, 666-667 [49 Cal.Rptr. 901].) The California Supreme Court has defined abuse of discretion as an “. . . arbitrary determination, capricious disposition or whimsical thinking.” (*Harris v. Superior Court* (1977) 19 Cal.3d 786, 796 [140 Cal.Rptr. 318].)

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*), and the Administrative Procedures Act (Govt. Code Sections 11400, *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.

(Cal. Code Regs., tit. 4, § 144.)

Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, cooperation by the licensee in the investigation, and documented training of the

licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

The Penalty Policy Guidelines further address the discretion necessarily involved in an ALJ's recognition of aggravating or mitigating evidence:

Penalty Policy Guidelines:

The California Constitution authorizes the Department, in its discretion[,] to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

(*Ibid.*)

In the decision, the ALJ addresses the issue of penalty and explains why he imposed revocation:

PENALTY

The Department requested that the Respondents' license be revoked, which is the standard penalty under rule 144^[fn.] for violations of section 664 and 496(a) by a licensee. The Respondents argued for a lesser penalty which would allow them to keep the license.

The violations in this case were not isolated incidents, but a continuing course of conduct. They took place just over one year after the license issued and involved the licensee directly. The penalty recommended herein complies with rule 144.

(Decision, at pp. 4-5.)

The Board may not disturb a penalty order unless it is so clearly excessive that any reasonable person would find it to be an abuse of discretion in light of all the circumstances. “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 its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Appellants’ disagreement with the penalty imposed does not mean the Department abused its discretion. This Board’s review of a penalty looks only to see whether it can be considered reasonable and, if it is reasonable, the Board’s inquiry ends there. The penalty here is within the bounds of the Department’s discretion. “[T]he propriety of the penalty to be imposed rests solely within the discretion of the Department whose determination may not be disturbed in the absence of a showing of palpable abuse. [Citations.]” (*Rice v. Alcoholic Bev. Control Appeals Bd.* (1979) 89 Cal.App.3d 30, 39 [152 Cal.Rptr. 285].)

Furthermore, beyond making the unsupported assertion that the Department should have considered alternative penalties, appellants have presented no authority for their position, nor any discussion explaining *why* the Department did not proceed in the manner required by the law when it did not consider alternative penalties.

The Board is not required to search the record to find support for an appellant’s contentions or to develop an appellant’s legal arguments. (See *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 [35 Cal.Rptr.2d 574].) Moreover, “[a]n appellate court is not required to examine undeveloped claims, nor to make

arguments for parties. [Citation.]” (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 104,106 [87 Cal.Rptr.2d 754].)

With no developed argument in support of their position, appellants have given the Board no reason to disagree with the Department’s decision.

ORDER

The decision of the Department is affirmed.²

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, 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.

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

**BAHAR NARGESS MOHAMADI & MEHRAN
NABIFAR
TRAN'S LIQUOR
10021 HAWTHORNE BLVD.
INGLEWOOD, CA 90304-5415**

OFF-SALE GENERAL - LICENSE

**Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act**

CERRITOS ENFORCEMENT OFFICE

File: 21-576652

Reg: 18088258

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on June 13, 2019. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 300 Capitol Mall, Suite 1245, Sacramento, CA 95814.

On or after August 5, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: June 25, 2019

RECEIVED
JUN 26 2019

**Alcoholic Beverage Control
Office of Legal Services**



**Matthew D. Botting
General Counsel**

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

Bahar Nargess Mohamadi & Mehran Nabifar	}	File: 21-576652
dba Tran's Liquor	}	
10021 Hawthorne Blvd.	}	Reg.: 18088258
Inglewood, California 90304-5415	}	
	}	License Type: 21
Respondents	}	
	}	Word Count: 7,500
	}	
	}	Reporter:
	}	Shelby Maaske
	}	Kennedy Court Reporters
	}	
<u>Off-Sale General License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Cerritos, California, on March 14, 2019.

Alanna K. Ormiston, Attorney, represented the Department of Alcoholic Beverage Control.

Co-licensee Mehran Nabifar appeared on behalf of himself and respondent Bahar Nargess Mohamadi.

The Department seeks to discipline the Respondents' license on the grounds that, on three separate dates, Mehran Nabifar, at the Licensed Premises, bought, received, withheld, or concealed distilled spirits which he believed to have been stolen in violation of Penal Code sections 664/496(a). (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on March 14, 2019.

FINDINGS OF FACT

1. The Department filed the accusation on November 15, 2018.

2. The Department issued a type 21, off-sale general license to the Respondents for the above-described location on March 7, 2017 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. On May 17, 2018, Agent Z. Holland and Agent Bertsch went to the Licensed Premises. They had a variety of alcoholic beverages in the trunk of their vehicle (exhibit 2), some of which they placed in a backpack. They entered the Licensed Premises with the backpack.
5. Agent Bertsch contacted Mehran Nabifar and said that she had a business transaction for him. She offered to sell him alcohol which her buddy had stolen. Nabifar said, "OK. I don't usually do it. It has to be a hell of a deal."
6. Agent Holland showed Nabifar the bottles of alcohol in the backpack. These included bottles of Grey Goose vodka, Remy Martin cognac, Hennessy cognac, and Patron tequila. They discussed the price which the agents would be willing to sell each of the bottles. They ultimately agreed upon \$50 for the Grey Goose, Remy Martin, and Hennessy. Nabifar obtained \$50 from the register and gave it to Agent Holland.
7. Nabifar told the agents that he wanted smaller bottles of other types of alcohol because they were easier to sell. He said to come back and, if he was not there, ask for him. The agents exited the Licensed Premises.
8. On May 24, 2018, Agent Holland returned to the Licensed Premises with Agent Hoang. He carried a backpack with alcoholic beverages in it. Agent Hoang had a similar backpack. They entered and contacted Nabifar, who was working behind the counter.
9. The agents pulled various bottles of alcohol from the backpacks and offered to sell them to Nabifar. Nabifar was concerned that the seals on some of the bottles were damaged. Nabifar offered to pay \$50 for bottles of Grey Goose vodka, Remy Martin cognac, and Hennessy cognac. Agent Holland agreed. Nabifar obtained \$50 from the register and handed it to Agent Holland.
10. Agent Holland indicated that they had more alcohol in their car. Agent Holland obtained five small bottles of Grey Goose vodka and five small bottles of Hennessy cognac from the car. Nabifar offered to pay \$30 for them. Agent Holland agreed. Nabifar handed some money to Agent Holland. Agent Holland and Nabifar had a brief discussion about future sales of alcohol.
11. At some point during their discussions, a customer entered the Licensed Premises. Nabifar pushed the alcohol to one side and left to attend to the other patron.

12. The agents left the Licensed Premises. Agent Holland later realized that Nabifar had only given him \$20 instead of the \$30 they had agreed upon. Agent Holland took a photograph of all of the money Nabifar gave him on May 24, 2018 (\$50 from the first transaction and \$20 from the second). (Exhibit 3.)

13. On June 15, 2018, Agent Holland and Agent Hoang returned to the Licensed Premises. Both carried backpacks containing alcoholic beverages. (Exhibit 4.) They contacted Nabifar, who was behind the counter. Agent Holland removed the alcoholic beverages from their backpacks and set them on the counter. While he was doing so, a customer entered the Licensed Premises. Nabifar pushed the alcohol to one side and asked Agent Holland to come around to the other side of the counter.

14. After the patron left, Nabifar and Agent Holland began negotiating prices. Nabifar offered to pay \$40 for bottles of Grey Goose vodka, Hennessy cognac, and Johnny Walker Black Label whiskey. Agent Holland counter-offered with \$45. Nabifar insisted on paying \$40 because some of the alcohol he previously purchased from Agent Holland had not sold. Nabifar also offered to buy a 1.75 liter bottle of Hennessy cognac for \$10. Agent Holland rejected this offer.

15. Nabifar ultimately paid \$40 for the Grey Goose vodka, Hennessy cognac, and Johnny Walker Black Label whiskey. Before leaving the Licensed Premises, Agent Holland purchased a 200 ml bottle of Jack Daniels whiskey. (Exhibit 5.)

16. Nabifar testified that Agent Holland appeared to be homeless and that he thought he was helping him out. He now realizes that it was wrong to purchase the alcohol. He also indicated that he would not do it again.

17. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.

3. Penal Code section 496(a) provides, in part, that it illegal for anyone to buy or receive any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or conceal, sell, withhold, or aid in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained.

4. Penal Code section 664 provides, in part, that it is illegal for anyone to attempt to commit any crime, even if he or she fails, or is prevented or intercepted in its perpetration.

5. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on May 17, 2018, May 24, 2018, and June 15, 2018, co-licensee Mehran Nabifar, at the Licensed Premises, bought, received, withheld, or concealed distilled spirits which he believed to have been stolen in violation of Penal Code sections 664/496(a). (Findings of Fact ¶¶ 4-15.)

6. The evidence established that, on May 17, 2018, Agent Z. Holland and Agent Bertsch offered to sell alcohol which had been stolen to Nabifar. Nabifar agreed and paid \$50. Nabifar and the agents discussed future such purchases. On May 24, 2018, Nabifar agreed to purchase additional bottles of alcohol from Agent Holland for \$30, but ended up only paying \$20. Once again, they discussed future purchases. On June 15, 2018, Nabifar purchased more bottles of alcohol from Agent Holland for \$40. Although the agents did not explicitly state that the alcohol they were selling on May 24, 2018 and June 15, 2018 was stolen, their conversation on May 17, 2018 made clear that it was. At no point did Nabifar dispute being aware that the alcohol had purportedly been stolen.

7. Nabifar's explanation for purchasing alcohol which he believed to be stolen is not a defense. It is irrelevant that he thought that Agent Holland was homeless. There are many ways to help someone out (e.g., give them money) that do not involve a violating the law.

PENALTY

The Department requested that the Respondents' license be revoked, which is the standard penalty under rule 144¹ for violations of section 664 and 496(a) by a licensee. The Respondents argued for a lesser penalty which would allow them to keep the license.

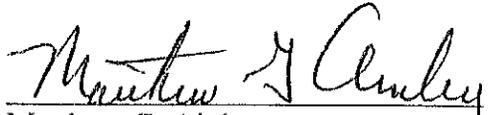
¹ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

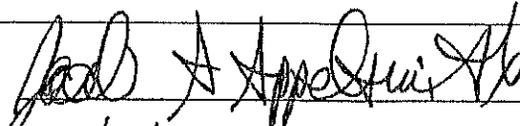
The violations in this case were not isolated incidents, but a continuing course of conduct. They took place just over one year after the license issued and involved the licensee directly. The penalty recommended herein complies with rule 144.

ORDER

The Respondents' off-sale general license is hereby revoked.

Dated: April 5, 2019


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>6/13/19</u>