

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

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| ISHAK ABUKHDAIR and |) | AB-6619 |
| ISMAIL ABUKHDAIR, |) | |
| dba Rodney's Cigar & Liquor Store |) | File: 21-90610 |
| 1000 J Street |) | Reg: 95032327 |
| Sacramento, CA 95814, |) | |
| Appellants/Licensees, |) | Administrative Law Judge |
| |) | at the Dept. Hearing: |
| v. |) | Jeevan S. Ahuja |
| |) | |
| THE DEPARTMENT OF ALCOHOLIC |) | Date and Place of the |
| BEVERAGE CONTROL, |) | Appeals Board Hearing: |
| Respondent. |) | June 5, 1996 |
| |) | Sacramento, CA |

Ishak Abukhdair and Ismail Abukhdair, doing business as Rodney's Cigar & Liquor Store (appellants), appealed from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale general license for 20 days, 10 days of which was stayed for a probationary period of two years, for appellants' clerk selling an alcoholic beverage to an obviously intoxicated patron, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, Article XX, §22, arising from a violation of Business and Professions Code §25602,

¹The decision of the department dated December 7, 1995, is set forth in the appendix.

subdivision (a).

Appearances on appeal included appellants Ishak Abukhdair and Ismail Abukhdair, appearing through their counsel, Victor Waid; and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas R. Loehr.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued in 1980. Thereafter, the department instituted an accusation against appellants on February 27, 1995.

An administrative hearing was held on November 6, 1995, at which time oral and documentary evidence was received.

Subsequent to the hearing, the department issued its decision which determined that appellants' clerk had sold an alcoholic beverage to an obviously-intoxicated patron. Appellants thereafter filed a timely notice of appeal.

In their appeal, appellants raised the issue that the penalty was excessive.

DISCUSSION

Appellants contended that the penalty was excessive, arguing that since appellants' license had been operating since 1980 without a record of any violations, this first time violation should not have such an onerous penalty affixed.

It is the department which is authorized by the California Constitution to exercise its discretion whether to suspend an alcoholic beverage license, if the department shall

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reasonably determine for "good cause" that the continuance of such license would be

contrary to public welfare or morals.

The appeals board will not disturb the department's penalty orders in the absence of an abuse of the department's discretion (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287, 341 P.2d 296). However, where an appellant raises the issue of an excessive penalty, the appeals board will examine that issue (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785, 97 Cal.Rptr. 183).

The department had the following factors to consider in determining an appropriate penalty for the violation which had occurred: (1) appellants had been licensed since 1980 without a prior record of violations; (2) the usual penalty assessed in a first offense in matters similar to the present matter, is 20 days (the department's Instructions, Interpretations and Procedures manual at page L228--an internal manual interpreting various code sections for all department's district offices throughout California); and (3) the department, however, recommended a lesser penalty of 20 days with 10 days stayed.

Considering such factors, such dilemma as to the appropriateness of the penalty must be left to the discretion of the department. The department having exercised its discretion reasonably, the appeals board will not disturb the penalty.

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CONCLUSION

The decision of the department is affirmed.²

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.