

ISSUED FEBRUARY 11, 1997

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

BACCHITAR SINGH	)	AB-6627
dba Valley Liquor)	
11723 Saticoy Street	)	File: 21-260288
North Hollywood, CA 91605,	)	Reg: 95033589
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	November 6, 1996
	)	Los Angeles, CA
)	

Bacchitar Singh, doing business as Valley Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 15 days, no portion of which was stayed, for appellant's clerk having sold an alcoholic beverage (malt liquor) 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, subdivision (a).

¹The decision of the Department, dated January 18, 1996, is set forth in the appendix.

Appearances on appeal include appellant Bacchitar Singh, representing himself; and the Department of Alcoholic Beverage Control, appearing through its counsel, David Wainstein.

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA
FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on April 13, 1992. Thereafter, the Department
 BACCHITAR SINGH) AB-6627
 the Valley Liquor)
 instituted an accusation against appellant on August 18, 1995. Appellant requested a
 11723 Saticoy Street) File: 21-260288
 North Hollywood, CA 91605,) Reg: 95033589
 hearing.)
 Appellant/Licensee,)
 An administrative hearing was held on December 21, 1995, at which time oral and
 v.) Administrative Law Judge
 at the Dept. Hearing:
 documentary evidence was received. At that hearing, it was determined that
) Sonny Lo
 DEPARTMENT OF ALCOHOLIC)
 BEVERAGE CONTROL)
 appellant's clerk sold a bottle of malt liquor to an obviously intoxicated customer. The
 Respondent.) Date and Place of the
 Appeals Board Hearing:
 customer was described as walking with an unsteady gait, swaying from side to side,) November 6, 1996
) Los Angeles, CA
 and leaning on the counter for support. Respondent's clerk, in making the sale, saw

the customer's condition, as well as the fact that the customer's face was red. The Bacchitar Singh, doing business as Valley Liquor (appellant), appeals from a customer was determined by the Department to be obviously intoxicated. decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale

Subsequent to the hearing, the Department issued its decision which suspended general license for 15 days, no portion of which was stayed, for appellant's clerk appellant's license for 15 days, no portion of which was stayed. Appellant filed a having sold an alcoholic beverage (malt liquor) to an obviously intoxicated patron, being timely appeal. contrary to the universal and generic public welfare and morals provisions of the

In his appeal, appellant raises the following issue: the suspension would be a California Constitution, article XX, §22, arising from a violation of Business and hardship on appellant and his family. Professions Code §25602, subdivision (a).

DISCUSSION

Appellant does not dispute the accusation, but asks that "instead of suspension ... some favorable decision be given." (Letter from appellant to Appeals Board dated April 20, 1996.). Appellant asserts, but without any supporting evidence in the hearing record or on this appeal, that the 15-day suspension would work a hardship on him and his family.

Appellant's letter of April 20, 1996, asserts that the clerk who made the sale had seen a training video and understood its importance. His earlier notice of appeal, in letter form, stated that the clerk was no longer in his employ. Both comments, it would appear, are intended to support his plea for leniency.

The Department recommended a 20-day suspension. The Administrative Law Judge (ALJ) imposed only a 15-day suspension. There does not appear to be any basis for questioning the ALJ's judgment in so doing.

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].)

Appellant here has not claimed that the penalty is excessive. He seeks, instead, to have this Board substitute its judgment for that of the ALJ. This we cannot do.

The scope of the Appeals Board's review is limited by the California Constitution,

by statute, and by case law. In reviewing a Department decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.² There has been no such claim.

CONCLUSION

The decision of the Department is affirmed.³

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

²The California Constitution, article XX, §22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

³This 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.