

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

PREM S. & USHA ARORA	)	AB-6679
dba Bottoms Up Liquors)	
1024 Fitzuren Road	)	File: 21-247974
Antioch, California 94509,	)	Reg: 95033532
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	March 5, 1997
	)	San Francisco, CA
)	

Prem S. & Usha Arora, doing business as Bottoms Up Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which ordered appellants' off-sale general license suspended for ten days, with five days thereof stayed for a probationary period of one year for appellants' clerk having sold a six-pack of Miller's Genuine Draft beer to a 17-year-old police decoy, 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

¹ The decision of the Department dated May 30, 1996, is set forth in the appendix.

Professions Code §25658, subdivision (a).

Appearances on appeal include appellants Prem S. Arora and Usha Arora; 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 on July 13, 1990.

Thereafter, on August 9, 1995, the Department instituted an accusation alleging that on March 10, 1995, appellants' clerk sold a six-pack of Miller's Genuine Draft beer to a 17-year-old police decoy. An administrative hearing was held on April 23, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the transaction.

Subsequent to the hearing, the Department issued its decision which determined that, when asked for proof of age by the clerk, the decoy displayed a California driver's license which showed that he would not be 21 until 1998. After examining the license, the clerk said "you are 18," accepted the \$20.00 bill which was tendered, gave change, and asked if the purchaser wished a bag. Appellants' license was ordered suspended for 10 days, with five days of the suspension stayed for one year on the condition there be no further violations. Appellants thereafter filed a timely notice of appeal.

Appellants have not filed a brief. However, in correspondence with the Department and with the Appeals Board, and at the oral hearing before this Board,

appellant Arora stressed the impact upon his business and his family which he claims would flow even from the short suspension ordered by the Department; he cited instances in which he was commended by the Chief of Police of the City of Antioch on three occasions for having refused to sell to police decoys; and he asserted that he is more vigilant in preventing sales to minors than any other licensee in Antioch, at times even to his personal detriment when he has refused to sell to customers who were old enough to purchase alcoholic beverages but who did not have identification. Appellants' position is, in essence, that even though the violation is admitted, no penalty should be imposed.²

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].)

Appellants' plea of hardship apparently persuaded the Administrative Law Judge to impose a penalty more lenient than the penalty recommended by the

² Appellant's explanation for the violation is that he had only a short time to train the newly-hired clerk because he had to journey to India for his mother's funeral, and the clerk confused the age requirement for the purchase of cigarettes with that for buying liquor. Nonetheless, his explanation does not excuse what this Board considers to be an egregious violation, one that apparently resulted from either inadequate training or mere indifference to the law.

Department (a 15-day suspension), and may have been a factor influencing the Department to accede to the much more lenient penalty, a net five-day suspension. There is little this Board can do, given that it is virtually impossible to say that the minimal penalty imposed is an abuse of discretion; the violation was admitted, and it was serious in nature.

CONCLUSION

The decision of the Department is affirmed.³

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

³ This final order is filed as provided in 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.