

ISSUED JANUARY 12, 1998

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

KOYNE L. MILES	)	AB-6767
dba Food Plaza)	
6601 South Prairie Avenue	)	File: 20-205574
Inglewood, California 90301,	)	Reg: 95034341
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:
	)	October 1, 1997
	)	Los Angeles, CA
)	

Koyne L. Miles, doing business as Food Plaza (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his off-sale beer and wine license suspended for 15 days, with 5 days of the suspension stayed for a probationary period of two years, for his clerk having sold a 16-ounce can of Budweiser beer to a 19-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 Professions Code §25658, subdivision (a).

¹ The decision of the Department, dated October 24, 1996, is set forth in the appendix.

Appearances on appeal include appellant Koyne L. Miles, representing himself, and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on August 11, 1987. Thereafter, on November 8, 1995, the Department instituted an accusation alleging that, on August 11, 1995, appellant's clerk sold a 16-ounce can of Budweiser beer to a 19-year-old minor, in violation of Business and Professions Code §25658, subdivision (a).²

An administrative hearing was held on June 3, 1996, at which time oral and documentary evidence was received. At that hearing, the minor decoy testified that he was not asked his age or for identification by the mini-mart clerk.

Subsequent to the hearing, the Department issued its decision which sustained the charges of the accusation with respect to the sale-to-minor violation and ordered the suspension.

Appellant has filed a timely notice of appeal, asserting three grounds: (1) the Department violated discovery rules by not providing the names of all of the police

² The accusation also alleged a violation of a condition on the license requiring that all sales be made within the licensed premises. The sale was made through a sliding panel in the store window, used for security purposes. The Administrative Law Judge (ALJ) found against the Department on the ground the language of the condition was ambiguous, and could have reasonably been understood by the licensee to permit the sale in the manner in which it occurred.

officers and investigators present when the transaction in question took place; (2) the decoy was accompanied by another person, was wearing sun glasses, and both appeared to be over 21; and (3) the minor decoy's testimony at the hearing was not corroborated. Appellant has belatedly filed a brief in support of these points, and in which he seeks to raise a new issue involving the post-hearing conduct of the minor decoy.

DISCUSSION

I

Appellant has not explained how he was prejudiced by the alleged failure of the Department to disclose the identity of all of the investigators and police officers who were present when the sale took place.

In the course of the administrative hearing, appellant indicated that he had subpoenaed certain police officers and that an agreement had been reached with Department counsel regarding the need for one of them to appear, but that there was no explanation for the non-appearance of the other. The Administrative Law Judge (ALJ) offered appellant the opportunity to file a motion directed at securing that officer's testimony if he later concluded he wanted or needed it [RT 33], but appellant never made such a motion.

II

Appellant's contention that there were two purchasers is little more than an

attempt to have the Appeals Board substitute its assessment of the evidence for that of the ALJ.

The ALJ clearly chose to accept the testimony of the minor that he was the purchaser of the beer, rather than the testimony of the clerk that there were two men at the window, both appeared to be over 21, and he was not sure which of the two was the purchaser.

The issue is essentially one of credibility. The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (substantial evidence supported both the Department's and the license-applicant's position); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; Gore v. Harris (1964) 229 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Appellant contends the testimony of the minor was not corroborated. The contention lacks merit. It is well settled that the testimony of a single witness can constitute substantial evidence sufficient to support a finding. (See Menning v. Sourisseau (1933) 128 Cal.App. 635 [18 P.2d 77].)

Further, the testimony of the minor was, in fact, corroborated. Department investigator Steven Rose testified that he was seated in a car approximately 50 feet from the window where the decoy made the purchase [RT 29], and saw the decoy surrender the money and accept the beer [RT 30].

IV

Appellant argues, without any evidentiary support in or outside the record, that the minor decoy was arrested in 1997 on drug and firearm charges, and that the decoy had previously threatened appellant's clerk for his refusal to go along with a proposed drug deal. Needless to say, this is not a persuasive reason to reject a decision we believe to be warranted by the evidence of record.

V

Appellant alleges that the city of Inglewood is attempting to eliminate his license in order to bring itself within some sort of quota of licenses. Once again, there is no evidence of such a plan or objective other than appellant's bare assertion that such exists.

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 decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this decision as provided by §23090.7 of said Code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.