

ISSUED SEPTEMBER 11, 1998

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

FLORA RAHMAN	)	AB-6909
dba Neighborhood Market	)	
1911 North Glenoaks Blvd.	)	File: 20-304957
Burbank, California 91504,	)	Reg: 96037997
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John A. Willd
DEPARTMENT OF ALCOHOLIC	)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 8, 1998
	)	Los Angeles, CA

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Flora Rahman, doing business as Neighborhood Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended her license for five days, for her clerk, Bobby Rahman, having sold an alcoholic beverage (three quarts of beer) to Artin Massihams, who was then not 21 years of age, 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).

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<sup>1</sup>The decision of the Department, dated June 12, 1997, is set forth in the appendix.

Appearances on appeal include appellant Flora Rahman, appearing through her counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

#### FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 5, 1995. Thereafter, the Department instituted an accusation against appellant charging that on August 2, 1996, appellant's clerk, Bobby Rahman, sold three quarts of beer to Artin Massihams, who at the time of purchase was not yet 21 years of age.

An administrative hearing was held on April 18, 1997, at which time oral and documentary evidence was received. At that hearing, Massihams testified that he went to the store with his friend, Babak Meshkat, to purchase beer, took three quarts from the cooler, and placed them on the counter. He was asked once or twice for identification, which he did not have, but told the clerk he was 21. Rahman rang up the sale, gave Massihams his change, and Massihams left the store. While he and his companion were waiting to cross the street, they were cut off by Edward Penaranda, a Burbank police officer, who pulled in front of them. Penaranda asked what was in the bag. When he was told "beer," he asked if they were 21. When told they were not, Penaranda asked where they got the beer. Massihams indicated appellant's store. Massihams was asked by Penaranda if he had any identification, and said no.

On cross-examination, Massihams admitted that Rahman called his attention

to a sign stating that an identification was required from anyone 35 or younger, and conceded he may have told Rahman he had been in the store before, although he had not. Massihams denied bagging the beer himself, leaving money on the counter and walking out of the store, insisting that he had been given change.

Babak Meshkat also testified. Meshkat was also 20 years old at the time of the incident. His testimony was consistent with that of Massihams.

Officer Penaranda testified that he saw the two minors leave the store with two brown bags. As he approached them, one of the two threw one of the bags to the ground. Penaranda found a bottle of beer in the bag, questioned the two, searched them, found no identification, and, once another officer arrived, went inside the store. He brought the minors into the store to identify the person who sold them the beer, and they identified Bobby Rahman.

Penaranda further testified that Rahman admitted selling the beer, but initially claimed he had been shown identification. Rahman then admitted he had not been shown any identification, but was only told by the two that they were 21. Rahman also told him he had recognized Massihams and Meshkat from the past. Rahman did not claim Massihams or Meshkat had bagged the beer themselves.

Aim Iqbal, who was in the store at the time of the incident, testified that a debate arose between Rahman and the two minors concerning their age, and that while Rahman was refusing to sell them the beer, the two placed money on the counter, took the beer and left the store.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established. In his proposed decision, which the Department adopted, Administrative Law Judge (ALJ) Willd accepted the testimony of the two minors as persuasive, and rejected Iqbal's version of what happened.<sup>2</sup>

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant raises the following issues: (1) The findings are not supported by substantial evidence; (2) there was no sale; and (3) if there was a sale, it was rescinded. Since these issues are interrelated, they will be discussed together.

#### DISCUSSION

Appellant contends that there is no substantial evidence that an alcoholic beverage was sold, arguing that the minors took the beer in spite of Rahman's efforts to stop them, and, alternatively, even if there was a sale, the actions of the police in returning the beer to the seller and the money to the buyer effectively nullified the transaction.

As to the first of these arguments, the ALJ's finding that the testimony of the minors was more persuasive than that of the bystander forecloses the issue.

The credibility of a witness's testimony is determined within the reasonable

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<sup>2</sup> Judge Willd also commented that:

"the matter was resolved in an unusual way. The three bottles of beer were returned to the cooler, the minor returned the change given him by the clerk, and the clerk returned the bill or bills which the minor had used to pay for the beer." Appellant has seized upon this as an issue on appeal.

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].)

In this case, the ALJ had the opportunity to view the witnesses' demeanor on direct and cross-examination, and was persuaded by the testimony of Massihams and Meshkat. By the same token, the ALJ's finding that the testimony of Iqbat was unpersuasive is also a credibility determination by which the Board is bound.

In addition, although not the subject of a finding by the ALJ, there was, nevertheless, the unrefuted testimony of officer Penaranda regarding Rahman's admission that he had sold the beer to the minors.

Appellant's alternative argument, that the transaction was rescinded, or nullified, needs little discussion. The sale was consummated, and the violation of Business and Professions Code §25658, subdivision (a), was complete at that moment. The mere fact that the police returned the evidence to the parties does not undo the crime.

Appellant's theory of rescission or nullification is contractual. This Board is unaware of any counterpart in the criminal law; the cases appellant has cited are all civil cases, and we find nothing in them applicable to this case.

CONCLUSION

The decision of the Department is affirmed.<sup>3</sup>

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

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<sup>3</sup>This final order 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 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.