

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

MOKHLES ATHANASIOUS and	)	AB-7052
NAGIBA ATHANASIOUS)	
dba Paul's Liquor Mart	)	File: 21-222866
4172 Norse Way	)	Reg: 97040181
Long Beach, CA 90808,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	John P. McCarthy
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	October 7, 1998
Respondent.	)	Los Angeles, CA

Mokhles Athanasious and Nagiba Athanasious, doing business as Paul's Liquor Mart (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale general license for 25 days, for their clerk selling an alcoholic beverage to a person under the age of 21 years, 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).

Appearances on appeal include appellants Mokhles Athanasious and Nagiba Athanasious, appearing through their counsel, Lawrence M. Adelman, and the

¹The decision of the Department dated February 18, 1998, made pursuant to Business and Professions Code §11517, subdivision (c), and the proposed decision dated September 30, 1997, are set forth in the appendix.

Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on September 23, 1988. Thereafter, the Department instituted an accusation against appellants charging that appellants' clerk had sold an alcoholic beverage to a person under the age of 21 years.

An administrative hearing was held on September 4, 1997, at which time oral and documentary evidence was received. Subsequent to that hearing, the Administrative Law Judge (ALJ) dismissed the accusation, on the grounds that the clerk reasonably determined that a Texas identification card was a government document.

The Department rejected the ALJ's proposed decision and issued its own decision. The decision suspended appellants' license for 25 days upon the basis that Business and Professions Code §25660, which concerns bona fide identification, did not apply, as the Texas I.D. card was not of government issue.

The record of the administrative hearing shows that the underage person purchased alcoholic beverages from appellants' clerk. No identification was asked for or shown. Apparently, the purchaser was a regular customer and was known by the clerk. The purchaser had shown a "Texas" I.D. card to the clerk on previous occasions [RT 8-10, 22,33].

The purchaser was found to have in his possession at the time of the sale, a

false Texas identification card along with a valid driver's license, which valid license is not pertinent to the present review. The false I.D. was a card with the word "TEXAS" across the top and the words "I. D. CARD" under the word "Texas," all in bold type. Then followed the personal statistics, followed by a typed name, and by a signature [Exhibits 3 and A]. The two copies of the purportedly same card differ, in the main, on exposure, with Exhibit 3 being dark, and Exhibit A being lighter.² Exhibit 3 had the words printed on the document: "Not A Government Issue."

The clerk testified that he accepted the false identification as a Texas I.D. card [RT 43]. The reason given by the clerk as to his acceptance of the I.D. was based on identification (unfortunately, neither party pursued the meaning of "identification" to any final resolution [RT 39-40]).

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the issue that the findings do not support the decision as the Department improperly failed to apply the defense of a bona fide showing of identification as set forth in Business and Professions Code §25660.

DISCUSSION

Appellants contend that the findings do not support the decision as the Department improperly failed to sustain the defense of a bona fide showing of identification as set forth in Business and Professions Code §25660.

Public policy is heavily weighted against the selling of alcoholic beverages to

²While both copies were placed into evidence and the issue of authenticity of Exhibit 3 is somewhat raised in the present review, we decline to make any determination, as it is not necessary in the resolution of the present appeal.

persons under the age of 21 years (minors). (Cal. Const. art. XX, §22.) Also, case law holds that it is the responsibility of a licensee not to sell alcoholic beverages to a minor. (Munro v. Alcoholic Beverage Control Appeals Board & Moss (1957) 154 Cal.App.2d 326 [316 P.2d 401]; Mercurio v. Department of Alcoholic Beverage Control (1956) 144 Cal.App.2d 626 [301 P.2d 474].) Before a sale is made of an alcoholic beverage, it is the responsibility of the seller to determine the true age of the customer who is offering to purchase the alcoholic beverage (Bus. and Prof. Code §25658(a)).

However, the law provides a defense to a seller who acts reasonably upon the showing of bona fide identification, as set forth in Business and Professions Code §25660, which statute, in pertinent part, states:

“Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government”³

Appellants rely on two cases which do not support appellant’s position.

The case of Dethlefsen v. State Board of Equalization (1956) 145 Cal.App.2d 561 [303 P.2d 7, 11, 12], is cited by appellants for the proposition that a seller does not act at his “peril if the document later turns out to be a forgery or fake.” Appellants have expanded the law of this case a bit too far. The court was faced with an underage purchaser who altered a valid draft card. The court held that

³The term “bona fide” is defined in Webster’s Third New International Dictionary, 1986, page 250, as: “made in good faith.” The term “good faith” is defined in Webster’s Dictionary, page 978 as: “A state of mind indicating honesty and lawfulness of purpose; belief that one’s conduct is not unconscionable or that known circumstances do not require further investigation....”

while §25660 was enacted to relieve licensees of the peril (at their own risk) in making value judgments as to age, where the licensee cannot determine age from looking at the purchaser, the licensee can ask for I.D., which under reasonable inspection is found valid, then the defense is applicable.⁴ The court determined that the alteration was not so apparent as to put the seller on notice of the alteration.

The case of Kirby v. Alcoholic Beverage Control Appeals Board (1968) 267 Cal.App.2d 895, 897-899 [73 Cal.Rptr. 352], essentially a landmark case, was cited by appellants for the proposition that a good faith acceptance is valid within the categories listed in the statute. A person sought employment in the licensed premises, and produced a birth certificate (her sister's). The licensee wanted more proof of age. The minor later that day, produced an I.D. card with the minor's photograph on it, which card was properly notarized. The licensee then called the minor's mother and boyfriend to attest to the minor's majority. This case concerned a document other than enumerated in the statute. The issue was "good faith" reliance. The court held that the Appeals Board's decision based on "good faith" reliance on a non-statutory defense was not valid.

The good faith reliance of the clerk is questionable. The following colloquy occurred at the administrative hearing between the ALJ and the selling clerk:

⁴The Dethlefsen licensee's employee sold to a minor. The employee asked for I.D. The purchaser provided a valid, though altered, government form of I.D. The employee turned the card over and checked the description on the back with the purchaser's appearance to make sure the I.D. information as to the physical description fit the appearance of the purchaser.

“Q. (By the ALJ) -- what about it [the I.D.] led you to believe it was issued by a government agency?

A. I believe this is Texas ID.

Q. Based on what?

A. Identification.

Q. What led you to conclude that?

A. Because I’ve never been to Texas” [RT 40].

The ALJ continued his examination concerning available means of ascertaining the authenticity of the identification:

“Q. Do you have available to you, when you work at Paul’s Liquor Mart – do you have available to you, when you work at Paul’s Liquor Mart, a booklet called an Identification Checking Guide?

A. Yes, sir, I do.

Q. You have that?

A. Yeah.

Q. Did you look in that booklet to see if Mr. Curtis showed you what is a government document issued from Texas?

A. No, I never.

Q. You did not look?

A. No” [RT 40-41].

Then directly following, appellants’ counsel asked:

“Q. Mr. Hassan, just so I understand, when you worked at Paul’s Liquor, did they have a book that showed pictures of different ID’s from different states that you could pick up and look at?

A. No.

Q. So you had no reference book like that at Paul’s Liquor when you worked there?

Q. No” [RT 41].

We cannot determine from the contradictory statements by the clerk, whether appellants possessed the book concerned. 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] (a case where the positions of both the Department and the license-applicant were supported by substantial evidence); 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]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].) We conclude that appellants’ clerk had available to him sufficient documentation, upon which he could, if he had taken the initiative to inquire, determine the falsity of the identification used.

But even without a conclusion on this issue, the record shows an absence of good faith on the part of the clerk.

Appellant’s counsel had a photocopy of the ID card marked as appellants’ Exhibit A, and examined the minor as follows:

“O. Mr. Curtis, I’m going to show you Respondent’s A and I’m going to ask you to take a look at it.

Does that appear to be the photocopy of the Texas ID card that you purchased at the check cashing store?

A. Well, it’s a lighter copy. That’s more -- it had the ‘No Government Issue.’ It was lighter. That’s why you can’t see it here.

Q. Okay. Is it your testimony that, when you purchased this ID card, that you purchased it with a stamp across the front of it that said 'Not a Government Document.?'

A. Yes" [RT 17-18].

Mr. Adelman, appellants' counsel, continued the inquiry of the minor:

"O. I believe you testified earlier that on this particular occasion you were not asked for ID [the sale of December 10, 1996]; is that correct?

A. Yes.

Q. But you had been asked for ID at this location previously?

A. Yes.

Q. And you had used this particular card in response to the request for ID?

A. Yes.

Q. And was it Mr. Hassan [the clerk on December 10, 1996] who asked you for ID on previous occasions?

A. Yes" [RT 20-21].

We conclude that the Department acted reasonably in concluding the ID card had a disclaimer statement across it as to its lack of government issuance showing that the card used was not issued by a governmental entity, and the defense accorded by Business and Professions Code §25660 was not available to appellants.

ORDER

The decision of the Department is affirmed.⁵

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

JOHN B. TSU, MEMBER, did not participate in the oral argument or decision in this matter.

⁵This 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 order as provided by §23090.7 of said code.

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