

ISSUED DECEMBER 20, 1999

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

THE CIRCLE K CORPORATION	)	AB-7187
dba Circle K #7883)	
2060 South Euclid #1	)	File: 21-195878
Anaheim, CA 92802,	)	Reg: 97040865
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 5, 1999
	)	Los Angeles, CA

The Circle K Corporation, doing business as Circle K #7883 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 25 days, with 10 days thereof stayed on condition appellant incurs no further discipline for a period of two years, for having sold an alcoholic beverage (beer) to a minor, 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 appellant The Circle K Corporation, appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the

¹The decision of the Department, dated July 9, 1998, is set forth in the appendix.

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

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on March 11, 1987.

Thereafter, the Department instituted an accusation against appellant charging that appellant's clerk, Troy Allen Ristau, sold beer to Gary Douglas Baty, a minor then approximately 18 years of age.

An administrative hearing was held on January 16, 1998. At that hearing, counsel for the parties stipulated [RT 12-14, 23] that Gary Baty entered the licensed premises and purchased a six-pack of Budweiser, after displaying to Troy Allen Ristau, the clerk, a check cashing card, marked as Exhibit 2. Baty obtained the card from a store in which he cashes checks. The information on the card, including Baty's description and a date of birth other than Baty's true date of birth, was supplied to the check cashing store by Baty. Baty did not testify at the hearing.

Ristau, on behalf of appellant, testified that Exhibit 2, the check cashing card, was presented to him by Baty at the time Baty purchased the beer. Ristau further testified that he examined the card, compared the picture on the card to Baty, and, in the belief the card had been issued by the State of California and showed Baty to be over the age of 21, sold him the beer. On cross-examination, Ristau said he was familiar with California drivers' licenses and California

identification cards, and Exhibit 2 did not look like either of them [RT 19].

Following the close of the hearing, the Administrative Law Judge (ALJ) issued a proposed decision, which the Department adopted, rejecting appellant's contention that Ristau's reliance upon the false identification constituted a defense under Business and Professions Code §25660, and also rejecting appellant's contention that the corporate reorganization which resulted in the transfer of appellant's ownership to Tosco Corporation precluded the consideration of prior disciplinary actions in determining an appropriate penalty.

Appellant has filed a timely appeal, and renews both of those contentions.

DISCUSSION

I

Appellant contends that, even though the identification card displayed to the clerk was not issued by the State of California, the fact that the clerk acted in good faith and believed the card to be such, is sufficient to give rise to a defense under Business and Professions Code §25660.

Business and Professions Code §25660 provides as follows:

"Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license

based thereon.”

Appellant cites, and quotes from, the decision in Keane v. Reilly (1955) 130 Cal.App.2d 407 [279 P.2d 152], and argues that the Department’s decision has the effect of requiring the clerk to act at his peril, contrary to the language in Keane that “the statute does not impose upon the licensee the duty of determining at his peril whether the driver’s license is a bona fide license of the party presenting it.”

The critical fact is that the check cashing card is not a document issued by any of the governmental entities listed in §25660. Even the most cursory examination would show that the card was a privately-issued card, complete with, on the reverse side, a list of business locations of the issuer. Consequently, §25660 is not available as a defense.

The ALJ did take the clerk’s apparent good faith into account in determining an appropriate penalty, and, in that respect, was entirely correct.

II

Appellant contends the Department erred in considering the prior disciplinary proceedings instituted against appellant. It contends that as a result of a corporate reorganization which occurred between the time of the previous disciplinary proceedings and the current violation, there was a change in the ownership of the licensee. Thus, appellant, argues, it is improper to consider the past violations in assessing a penalty for the current violation.

The ALJ rejected appellant’s contention, stating:

"This contention is rejected. The license itself was never transferred to Tosco, as evidenced by the fact that the license and license number remained intact after the ownership transfer. No transfer of the license was required under Business and Professions Code Section 24071.1(a), since the shares of the licensee-corporation itself were not being transferred. The only transfer of shares involved the licensee's corporate parent, which did not hold the license, and was not subject to the provisions of Section 24071.1(a).

"The transfer of a license is required, when the shares of the licensee itself are being transferred, as specified in Section 24071.1(a). However, because there was no such transfer, the license, including its disciplinary history, is unaffected by the transfer of ownership to Tosco in 1996.

"The relevance of the prior disciplinary history to the subject licensee is established by the fact that the transfer of the stock to Tosco did not result in a new license being required or issued. With no change in licensure, the disciplinary history attached to the license remains unaffected. In logic and common sense, the elimination of such prior discipline would occur if a new license issued by reason of a license transfer. Then the disciplinary history would have been cut off. However, this was not the case."

The Department's brief set forth a detailed analysis of the corporate transactions involved, and also concludes that the licensee has remained the same up to the present time. We have reviewed the documentation relied upon by the Department and are satisfied that its conclusions, upon which we draw in the text which follows, are correct.

The first corporate transaction occurred in 1993. At the time, the licensee was known as Circle K Convenience Stores, Inc. (hereinafter the "Licensee"). The licensee was a wholly-owned subsidiary of The Circle K Corporation.

(a) All of the shares of The Circle K Corporation were acquired by CK Acquisitions Corp., a wholly-owned subsidiary of Circle K Holdings. The

license was unchanged by this transaction.

(b) Circle K Acquisitions was then merged into The Circle K Corporation, the surviving entity. This did not alter the ownership of the license by Circle K Convenience Stores, Inc.

(c) The Circle K Corporation then merged with Circle K Convenience Stores, Inc., with Circle K Convenience Stores, Inc. the surviving entity. Again, the ownership of the license did not change.

(d) Circle K Convenience Stores, Inc. then changed its name to The Circle K Corporation (not to be confused with the now non-existent corporation which formerly held that name). The licensee remained the same, but now has a new name.

(e) In 1995, The Circle K Corporation, the licensee, changed its name once again, this time to Circle K Stores, Inc. This simple name change did not involve any transfer of corporate stock. Also in 1995, Circle K Holdings, Inc. changed its name to The Circle K Corporation.

(f) In 1996, The Circle K Corporation, the parent corporation of the licensee, merged with a subsidiary of Tosco Corporation, and was the surviving corporation. Once again, this had no impact on the ownership of the license.

The foregoing demonstrates that, despite the complicated series of transactions, the corporate owner of the license in question remained the same

throughout.

Nevertheless, appellant contends that the absence in 1996 of a stipulation similar to a stipulation created in 1993, is evidence that the prior disciplines were not to be carried forward following the 1996 Tosco transaction. The 1993 stipulation recited that all pending disciplinary matters and stayed disciplinary matters would be carried forward as if there were no license transfers involved in the corporate reorganization then underway. The Department explains this stipulation as having been entered into out of an abundance of caution, in view of the complicated nature of the reorganization then occurring. It may well be that, in light of written assurances and descriptions of the 1996 transactions, the Department felt another stipulation was unnecessary. In any event, in light of the unchanging character of ownership of the license, we do not believe the presence or absence of such a stipulation makes any difference.

Finally, appellant argues that Business and Professions Code §24071.1, which applies to changes in stock ownership, is evidence that there must have been a change in ownership of the license. Appellant erroneously assumes that the 1996 transaction involved a transfer of the stock of the corporation which owned the license. That was not the case.

Consequently, it follows that the Department was entitled to take the prior

disciplinary instances into account.² There clearly was not any transfer of ownership that brought new ownership at the level of the licensee.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² The penalty, a suspension of 25 days, with 10 days thereof stayed, suggests to us that little weight, if any, must have been given to the earliest of the two priors.

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 final 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.