

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

HALLA and MOUNIR ASKAR	)	AB-7189
dba Desert View Liquor)	
16727 Bear Valley Road, Suites 100	)	File: 21-327883
and 110	)	Reg: 98042207
Hesperia, CA 92345,)	
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,	)	June 3, 1999
Respondent.	)	Los Angeles, CA
)	

Halla and Mounir Askar, doing business as Desert View Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control,¹ entered following an administrative hearing, which ordered their off-sale general license revoked, with revocation stayed for a period of 180 days to permit the transfer of the license to persons acceptable to the Department, for appellant Halla Askar having misrepresented a material fact (failing to disclose a criminal conviction for petty theft) in connection with her application for an alcoholic beverage license, in violation of Business and Professions Code §23950; 23951; and 24200, subdivision ©).

¹The decision of the Department, dated August 6, 1998, is set forth in the appendix.

Appellants filed a timely notice of appeal, and now raise the following issue: the decision is not supported by the findings, and the findings are not supported by substantial evidence, in that there is no competent evidence in the record which contradicts appellants' version of the events in question.

Appearances on appeal include appellants Halla and Mounir Askar, appearing through their counsel, Philip J. Karlan, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Jorge Lopez, currently an employee of the Corrections Department, and formerly a Department investigator, testified that he met with Mr. and Mrs. Askar shortly after it was discovered, through a routine finger print check, that Mrs. Askar had been convicted, upon her plea of guilty, of the crime of petty theft, and at that time discussed the conviction with her. Lopez testified that he interviewed Mrs. Askar outside her husband's presence, that both spoke English during that interview, that she did not indicate any difficulty understanding anything he said, and that she never told him she could not read English. He acknowledged that Mrs. Askar spoke with an accent, as did he. He narrated what she told him about the incident in question, and quoted her as describing it as not being a "big deal." Mrs. Askar's statements were reduced to writing by Lopez, and signed by her. The affidavit was introduced into evidence without objection. Lopez testified that he read the affidavit to Mrs. Askar, and then had her read it herself, which she did. Lopez also obtained certified copies of the Arraignment - Minute Order (Exhibit 5) and Order re: Conditional and Revocable Release (Exhibit 6) from the San Bernardino Superior and Municipal Court where Mrs. Askar entered her guilty plea.

Mrs. Askar testified that she spoke little English. She said she went to school in her native Syria for about six years, that she was married when she was 14, and that she has lived in the United States nine years [RT 42]. She has three children, and she uses Arabic when speaking to them, as she also did when she took her California driving test. She has never worked at her husband's store. She said that Carmen Bustamante, a Department investigator, filled out the document marked as Exhibit 2, the Individual Personal Affidavit that she signed. She claimed she did not know what the form was for, and simply initialed and signed it because she was told to do so. She testified, with respect to the petty theft conviction, that she appeared in court without an attorney, and was not offered a continuance to hire an attorney or have one appointed. According to Mrs. Askar, the court proceedings were conducted without an interpreter. She testified that when she signed the affidavit (Exhibit 2), she did not know she had been convicted of a crime [RT 47-48]. She denied telling Lopez that the conviction was not a "big deal," claiming that was not an expression she would have used.

On cross-examination, Mrs. Askar acknowledged signing papers indicating she was also an owner of the premises, but that she had not been told by her husband that she would be expected to sign any documents when she went with him to the Department. She was told by her husband only that she was to be fingerprinted.

Appellant Mounir Askar testified that he did not learn his wife had been convicted of shoplifting until his receipt of a letter from the Department. He said there was never any intention for Mrs. Askar to be a partner in the business, and that she filled out the application form only because Carmen Bustamante directed her to.

DISCUSSION

Appellants contend that the decision and findings of the Department are

unsupported by the record, in that there is no competent evidence which contradicts appellants' version of events.

The issue confronting the Administrative Law Judge (ALJ) was whether Mrs. Askar knowingly failed to disclose the criminal conviction on the Department's Individual Personal Affidavit form (Exhibit 2). That she was convicted is not in dispute.

Although Mrs. Askar admitted signing and initialing the affidavit, she denied knowledge of its contents, and claimed she did so only because she was told to do so.

Lopez, on the other hand, claimed that she told him she did not disclose the conviction because it was not a big deal to her.

The ALJ concluded that Mrs. Askar was not a credible witness. Appellants challenge his finding, arguing that it is entirely lacking in evidentiary support. Appellants assert that it is "highly unlikely" that she is as familiar with the English language as the ALJ believed.

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].)

The ALJ's conclusion that Mrs. Askar's testimony lacked credibility was influenced in large part by her claims that she was not afforded the procedural and constitutional safeguards that the minute order in the criminal proceeding recited she had, in fact, been given, and the court's finding in that case that she understood the charge, the consequence of the plea, including penalties, and "freely, voluntarily, knowingly, expressly and intelligently" gave up those rights with the entry of her plea of guilty.

In addition, the ALJ referred to the testimony of investigator Lopez to the effect that Mrs. Askar did not display to him any inability to understand the English language.

In addition to his being in a position to observe her demeanor and mannerisms as she testified, the ALJ was also aware, from her testimony as well as that of her husband, that she had previously hidden from her husband the fact that she had pleaded guilty and been convicted of the crime of petty theft.² Given this awareness, it would not have been unreasonable for the ALJ to infer that she continued to hide that conviction from her husband, and, to do so, she had to hide it from the Department as well.

There was sufficient evidence in the record upon which the ALJ could find that Mrs. Askar knowingly concealed her conviction from the Department.

ORDER

The decision of the Department is affirmed.³

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

² She told her husband she had been cited for speeding [RT 55, 59].

³ 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 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.