

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

HUNTGO, INC.	)	AB-7191
dba Spirits of St. Germain	)	
1770 South Harbor Blvd., Suite 124	)	File: 21-215477
Anaheim, CA 92802,	)	Reg: 98042624
Appellant/Licensee,	)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 1, 1999
	)	Los Angeles, CA
	)	

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Huntgo, Inc., doing business as Spirits of St. Germain (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended its license for 25 days for its clerk, John Lewis Ohandley, having sold an alcoholic beverage (a six-pack of Bud Light beer) to Michael Hedgepeth, an 18-year-old minor participating in a decoy program being conducted by the Anaheim Police Department, said sale 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 appellant Huntgo, Inc., appearing through its

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

counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

### FACTS AND PROCEDURAL HISTORY

The decision that appellant had violated Business and Professions Code §25658, subdivision (a ), followed an administrative hearing on May 15, 1998, at which evidence of the sale to the minor decoy was presented.

Appellant filed a timely notice of appeal from the decision, and challenges the penalty as excessive.<sup>2</sup> Appellant argues that, since an earlier suspension for a similar violation was only five days, apparently because of the presence of some mitigating factor, the Department should have ordered something less than its norm for a second violation.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

Appellant had two previous violations, one relating to a transaction in 1992, and

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<sup>2</sup> Although appellant's brief hints at a claim that the conduct of the undercover officer who witnessed the transaction may have been such as to distract the clerk, it does not pursue the issue. Since the clerk did not testify, any suggestion that he was distracted by the officer's holding in his hand his wallet which contained his badge is purely conjectural.

another which occurred in 1995.

Appellant takes exception to the imposition of a 25-day suspension when the prior violation resulted in a net suspension of only five days, and that resolved by payment of a fine. He argues that the leap from five to 25 is simply unreasonable.

Appellant suggests the Department simply “pick[ed] a number of days out of thin air.”

The Board is familiar with the practice of the Department to graduate the penalty for successive sale-to-minor violations, with the first violation giving rise to a 15-day suspension in most cases, and, similarly, the second violation usually resulting in a 25-day suspension. Sometimes, dependent upon the circumstances of the case, a portion of that penalty may be stayed.

The Department followed its normal practice, except that it chose not to stay any portion of the penalty. Thus, it cannot reasonably be said that the Department picked some number out of thin air.

We are of the view that the penalty was within the broad discretion the Department has when it comes to administering discipline by way of suspension or revocation.

ORDER

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

TED HUNT, CHAIRMAN  
RAY T. BLAIR, JR., MEMBER  
JOHN B. TSU, 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 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.