

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

CIRCLE K STORES, INC.	)	AB-7229
dba Circle K)	
7287 Archibald Avenue	)	File: 20-295724
Rancho Cucamonga, CA 91701,	)	Reg: 98043106
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.	)	December 2, 1999
	)	Los Angeles, CA

Circle K Stores, Inc., doing business as Circle K (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's clerk, Sonia Lara, having sold an alcoholic beverage (beer and malt beverages) to Nathan Levy, 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 Circle K Stores, Inc., appearing

¹The decision of the Department, dated September 17, 1998, is set forth in the appendix.

through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 15, 1994. Thereafter, the Department instituted an accusation against appellant charging an unlawful sale of an alcoholic beverage to a minor.

An administrative hearing was held on July 16, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and imposed a 15-day suspension. Appellant thereafter filed a timely notice of appeal, and contends that its clerk reasonably relied upon false identification.

DISCUSSION

This case arose in an unusual context. While a San Bernardino County deputy sheriff was conducting a decoy operation in appellant's store, he observed Nathan Levy, whom he believed to be a minor, purchasing a number of different types and sizes of beer and malt beverages. Levy was not asked for his age or for identification. The decoy, next in line, was asked for identification, and when he produced it, the sale was refused. The deputy then accosted Levy in the parking lot, and ascertained that he was only 18 years old. When asked by the deputy if he possessed any false identification, Levy said he did not. At the hearing, Levy repeatedly denied having displayed false identification on any earlier occasion [RT 17, 22-23, 24, 28], and denied

previously having purchased any alcoholic beverages at the store.

After confronting Levy, the deputy brought the clerk to the parking lot. According to the deputy, she admitted selling to Levy, but claimed he had shown her identification on prior occasions. The clerk did not testify, so there is no evidence in the record as to what sort of identification she may have been shown, if any, or how old it purported to show him to be.

Despite the absence of any proof that the identification the clerk claimed she had been shown was of the type provided for in Business and Professions Code §25660,² appellant claims the Department should have accepted the clerk's explanation rather than that of the Levy because Levy had already committed one misdemeanor (purchasing an alcoholic beverage), and, knowing that possession of false identification would be a second misdemeanor, had a motive to deny having any false identification.

Appellant's logic trips over itself. Why would Levy, having already been cited and fined for the unlawful purchase of an alcoholic beverage, risk a more serious perjury charge by falsely denying that he had possessed false identification?

Appellant's suggestion that, had the deputy who wrote the citation searched

² Business and Professions Code §25660 provides:

"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."

Levy's wallet, he would have discovered false identification, is both a red herring and contrary to the proof. The deputy testified that he searched Levy, and that Levy's wallet, which Levy had handed to him, was given to another police officer who searched the wallet and reported to the deputy that he had found no false identification [RT 35-36, 52-53].

In any event, the question as to who is entitled to be believed should not delay this Board in reaching its decision. The Department, the trier of fact, chose to believe the sworn testimony of the minor who made the purchase, rather than the self-serving denial of the clerk, a denial not under oath.

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]; Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

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] (in which 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 cannot say the Department acted unreasonably in choosing to accept the

testimony given under oath by Levy, instead of the reported statement of the clerk, who did not testify.

ORDER

The decision of the Department is affirmed.³

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

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.