

ISSUED DECEMBER 30, 1999

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

ABDU AHMED ALMAHEN	)	AB-7278
dba Stop & Shop Market)	
800 Carlson Boulevard	)	File: 20-278026
Richmond, CA 94804,	)	Reg: 98043890
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 18, 1999
	)	San Francisco, CA

Abdu Ahmed Almahen, doing business as Stop & Shop Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for appellant's clerk selling an alcoholic beverage to a person under the age of 21, 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 Abdu Ahmed Almahen and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas R. Loehr.

¹The decision of the Department, dated November 5, 1998, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on December 22, 1992. Thereafter, the Department instituted an accusation against appellant charging that, on April 24, 1998, appellant's employee or agent (erroneously identified in the accusation as "Abdoh Almahen") sold malt liquor, an alcoholic beverage, to Danny Harris, who was then 18 years old. At the time, Danny Harris was working with the Richmond Police Department as a decoy.

An administrative hearing was held on September 1, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the sale by Richmond police officers Darrell Jones and Timothy Gray; by Danny Harris ("the decoy"); by appellant Abdu Almahen; and by the seller of the malt liquor, Abdurahman Al-Shami ("Al-Shami").

Subsequent to the hearing, the Department issued its decision which determined that Al-Shami sold an alcoholic beverage to the decoy and that he was appellant's agent when he sold to the decoy.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends that the decision is not supported by the findings and the findings are not supported by substantial evidence in light of the whole record.

DISCUSSION

Written notice of the opportunity to file briefs in support of the appellant's position was given on August 10, 1999. No brief has been filed by appellant, and the notice of appeal, but have found that document insufficient to aid our review.

The Appeals Board is not required to make an independent search of the record for error. It was the duty of appellant to show that the claimed error existed. Without such assistance by appellant, we may deem appellant's general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710]; Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

We have independently reviewed the record, however, and find no reason to overturn the decision of the Department. Appellant and Al-Shami testified at the hearing that Al-Shami was not an employee, but a guest who should not have been selling anything, was not familiar with alcoholic beverages or age-restricted sales, and believed that he was selling the decoy a soda. The ALJ did not find this testimony credible. (Finding IV.) The determination of a witness's credibility is within the reasonable discretion of 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]), and the Board is not in a position to second-guess the ALJ on his determination.

The ALJ found that Al-Shami was appellant's employee or agent. (Determination II.) Even if Al-Shami had been a guest, he was clothed with ostensible authority by virtue of his standing behind the counter at the premises and selling the malt liquor. Therefore, Al-Shami is considered to be an agent of appellant. Appellant, as licensee, is vicariously liable for the on-premises acts of his agents. (Morell v. Department of Alcoholic Beverage Control (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405, 411]; Harris v. Alcoholic Beverage Control Appeals Board (1962) 197 Cal.App.2d 172

[17 Cal.Rptr. 315, 320]; and Mack v. Department of Alcoholic Beverage Control
(1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633].)

ORDER

The decision of the Department is affirmed.²

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

²This 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.