

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

BARBARA ELAINE CONKLIN and	)	AB-7279
JOHN F. CONKLIN)	
dba Landmark Liquor	)	File: 21-319747
8491 Atlanta Ave.	)	Reg: 98043631
Huntington Beach, CA 92646,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Rodolfo Echeverria
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	November 5, 1999
	)	Los Angeles, CA

Barbara Elaine Conklin and John F. Conklin, doing business as Landmark Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale general license for 20 days, for their clerk selling an alcoholic beverage to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200,

¹The decision of the Department, dated October 22, 1999, is set forth in the appendix.

subdivision (a), arising from violations of Business and Professions Code §§24200, subdivision (b), and 25658, subdivision (a).

Appearances on appeal include appellants Barbara Elaine Conklin and John F. Conklin, appearing through their counsel, Rick Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on September 4, 1996. Thereafter, the Department instituted an accusation against appellants charging the above referenced violation. An administrative hearing was held on August 17, 1998, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the issue that there is no substantial evidence which supports the findings and the decision, arguing that the identification was properly issued by an agency of the State of California, and is therefore, a valid form of identification, and the penalty is excessive.

DISCUSSION

I

Appellants contend there is no substantial evidence which supports the findings, and the decision, arguing that the identification was issued by an agency of the State of California, and is therefore, a valid form of identification.

The minor was 19 years of age at the time of the violation, having been born on April 8, 1990. He went to the premises on February 27, 1998, where upon presenting an alcoholic beverage to the clerk, was asked for identification. The minor presented a purported student identification which showed the picture of his brother who had similar features, and showed a date of birth of October 8, 1975, which was altered. The clerk questioned the identification, but later made the sale [RT 9-12, 21, 26].

William Raymond Johnson, an investigator for the Department, after stopping the minor, viewed the identification and felt that the identification was not valid. He testified that the minor's facial appearance was similar to the picture on the identification. The investigator could not observe the alterations made on the identification, that of date of birth and nationality [RT 29-30].

A defense to the sale of an alcoholic beverage is found in Business and Professions Code §25660 which states in pertinent part as follows:

“Bona fide evidence of majority and identity of a 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 ... shall be a defense to ... any proceedings for the suspension or revocation of any license based thereon.”

Appellants argue that: (1) the identification was so well altered the investigator could not tell of the changes, (2) the minor looked the same as in the picture of the identification, and (3) the clerk was reasonable in accepting the identification, should act as a defense to the accusation against appellants. The contention of appellants that the identification comes within the defense of §25660, is incorrect.

There is not evidence that the student identification was issued by U.C.L.A., admittedly an agency of the state. All the identification says is that it is an International Student Identity Card, and that the person depicted on the card “studies at UCLA.” The Administrative Law Judge asked the minor: “And it was issued by U.C.L.A., it looks like?” and receiving an affirmative assent, which is hearsay as to the minor [RT 16].

The identification does not set forth the description of the person depicted on the identification as called for by the statute. Description is important for it’s the major way a seller can determine if the person before him or her is the person depicted on the identification. The dictionary states that the term “description” allows for the observation that one is the same as the description. While a picture is a description, the statute calls for both description and a picture of the person to whom the identification was issued.

II

Appellants contend that the penalty is excessive. 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].)

The penalty appears to be based on a prior sale to a minor in 1997. Since the usual penalty for a second violation within a reasonable time is usually 25 days, the

suspension in the present appeal, being 20 days, appears well within the bounds of reasonable discretion. The discretion exercised by the Department was not abusive.

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.