ISSUED SEPTEMBER 29, 2000

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

FLORA RAHMAN dba Neighborhood Market 1911 North Glenoaks Blvd. Burbank, CA 91504, Appellant/Licensee, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)	AB-7412 File: 20-304957 Reg: 98044306 Administrative Law Judge at the Dept. Hearing: Sonny Lo Date and Place of the Appeals Board Hearing: April 6, 2000 Los Angeles, CA Re-deliberation: August 3, 2000

Flora Rahman, doing business as Neighborhood Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which suspended appellant's off-sale beer and wine license for her 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, subdivisions (a) and (b), arising from a

[1]The decision of the Department, dated May 6, 1999, is set forth in the appendix.

violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Flora Rahman, appearing through her counsel, Ahmed M. Abdallah, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on July 5, 1995. Thereafter, the Department instituted an accusation dated July 2, 1998, charging the alleged violation of selling an alcoholic beverage to a person under the age of 21 years. Also, the accusation alleged that in 1996 appellant suffered a decision of selling an alcoholic beverage to a person under the age of 21 years.

An administrative hearing was held on October 20, 1998, and March 25, 1999, at which times oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation alleged had occurred. Appellant thereafter filed a timely notice of appeal.

In her appeal, appellant raises the following issues: (1) the Administrative Law Judge (ALJ) improperly denied her request to continue the matter; (2) the ALJ allowed the decoy to be present during the examination of the police officer, and (3) the clerk made a mistake and thought the beverages were soft drinks.

DISCUSSION

I

Appellant contends the Administrative Law Judge (ALJ) improperly denied her request to continue the matter.

The day before the first hearing on October 20, 1998, her attorney called counsel for the Department and stated he could not appear at the hearing scheduled for the next day. The attorney also called appellant the day before the hearing and advised her he could not appear for the hearing.

The continuance requested by appellant's attorney was for only one day, to the following day, when he would be representing the same appellant in another matter before the Department. The ALJ denied the request to continue the matter for the one day period, but did order the matter bifurcated: hearing testimony from the police officer and the minor decoy, but continuing the matter to a future date so appellant could present any defense she may have, including the calling of the same police officer and the same minor decoy [10/20 RT 6-7]. The matter was scheduled and heard, five months thereafter.

Government Code §11524 states in pertinent part:

> "... A continuance may be granted for good cause after the 10 working days have lapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause."

The missing counsel appeared the following day and represented appellant on the other matter (AB-7359). Counsel presented a skilled defense of appellant in this other matter, and the matter concluded with an appeal to the Appeals Board which has been ruled upon and is now final.

The Board is troubled by the seeming indifference by the ALJ to the plight of appellant under these particular circumstances. The matter would not have been concluded on the first day of the hearing, as it was to be concluded by order of the

ALJ, at a much later date. Yet the next day, appellant was present for a hearing with her counsel. The ALJ in that next-day hearing, in his decision, stated concerning appellant, that she was a: "shy, diminutive lady who has few English language skills, and in 1994, did not have the necessary skills and business experience to run a licensed premises operation ... who is ignorant of her own limitations, [and] stepped into a deep end of a pool without knowing how to swim ..." [apparently referring to her lack of business skills].[2]

We therefore conclude that the denial of a continuance by appellant was an abuse of discretion, and the case must be reversed, and remanded to the Department for such further proceedings which it may deem just and proper under the circumstances.

Owing to the intended ruling of this Board, the other issues raised by appellant need not be considered at this time.

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[2]The Board is troubled by the fact that the record shows a hearing with this simple lady without her counsel, a Department presentation of its own case, and the subsequent decision by the ALJ, which totally ignored the demands of Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board (1998) 67 Cal.App.4th 575 [79 Cal.Rptr.2d 126], and the obligations as set forth in Southland & R.A.N., Inc. (1998) AB-6967, and Kim (1099) AB-7103, where each Board case called for a Department presentation of a prima facia showing that the decoy operation conformed to law. Appellant, essentially alone, before the Department and the ALJ, received not even a token adherence to the law, and thus, a fair hearing.

ORDER

The decision of the Department is reversed.[3]

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

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[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.