

ISSUED NOVEMBER 14, 2000

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

QUANG K. DINH, KOOI C. TRAN, AND	)	AB-7429
TRI D. TRAN)	
dba Fresh & Fine Foods	)	File: 20-302636
4014 East Avenue	)	Reg: 99045628
Livermore, CA 94550,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Arnold Greenberg
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 22, 2000
Respondent.	)	San Francisco, CA
)	

Quang K. Dinh, Kooi C. Tran, and Tri D. Tran, doing business as Fresh & Fine Foods (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license 15 days, with 10 days thereof stayed for a probationary period of one year, for co-licensee Quang K. Dinh 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 Quang K. Dinh, Kooi C. Tran, and Tri

¹The decision of the Department, dated June 24, 1999, is set forth in the appendix.

D. Tran, appearing through Tri D. Tran, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Peirce.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on December 30, 1994. Thereafter, the Department instituted an accusation against appellants charging the unlawful sale of an alcoholic beverage to a minor.

An administrative hearing was held on March 30, 1999, at which time appellants stipulated to the facts contained in the accusation and presented oral and documentary evidence regarding mitigation.

Subsequent to the hearing, the Department issued its decision which determined that mitigation was warranted and imposed a 15-day suspension with 10 days stayed for a probationary period of one year.

Appellants have filed a timely appeal in which they raise additional points regarding mitigation of the penalty and request a stay of the entire suspension period.

DISCUSSION

Appellants contend that the penalty is unjust and imposes a double penalty on their business. They point out their long record of responsible operation without disciplinary action, their full co-operation, and their efforts to ensure that further sales to minors will not occur, and reiterate the arguments made at hearing. They also state that Dinh, the seller of the alcoholic beverage, has paid a fine and has removed himself from selling alcoholic beverages indefinitely.

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 Administrative Law Judge (ALJ) expressly found that mitigation was warranted, based on essentially the same grounds appellants argue on appeal. (Det. of Issues VI.) The ALJ reduced the usual first-offense penalty of 15 days' suspension to only five days of actual suspension and a probationary period.

While some might reasonably believe that the penalty should be reduced further, the Department's penalty, as already mitigated, is well within the bounds of its discretion. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal.App. 2d 589, 594 [43 Cal.Rptr. 633, 636].) The Board may not interfere with the Department's imposition of penalty in such a case.

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.