

ISSUED NOVEMBER 21, 2000

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

|                             |   |                          |
|-----------------------------|---|--------------------------|
| NIRMAL SINGH                | ) | AB-7524                  |
| dba Ace's Liquor            | ) |                          |
| 47 10 East Kings Canyon Rd. | ) | File: 21-343432          |
| Fresno, CA 93702,           | ) | Reg: 99046965            |
| Appellant/Licensee,         | ) |                          |
|                             | ) | Administrative Law Judge |
| v.                          | ) | at the Dept. Hearing:    |
|                             | ) | Sonny Lo                 |
| DEPARTMENT OF ALCOHOLIC     | ) |                          |
| BEVERAGE CONTROL,           | ) | Date and Place of the    |
| Respondent.                 | ) | Appeals Board Hearing:   |
|                             | ) | September 21, 2000       |
|                             | ) | San Francisco, CA        |

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Nirmal Singh, doing business as Ace's Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended appellant's off-sale general license for 25 days, for appellant 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 violation of Business and Professions Code §25658, subdivision (a).

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<sup>1</sup>The decision of the Department, dated November 18, 1999, is set forth in the appendix.

Appearances on appeal include appellant Nirmal Singh, appearing through his counsel, Peter Singh, and the Department of Alcoholic Beverage Control, appearing through its counsel, John R. Peirce.

#### FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on June 23, 1998. Thereafter, the Department instituted an accusation against appellant charging the sale to a person under the age of 21 years. An administrative hearing was held on October 27, 1999, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the sale had occurred and found the violation true.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends he did not sell the alcoholic beverage to the underage person.

#### DISCUSSION

Appellant contends he did not sell to the underage person, who must have obtained the alcoholic beverage from another location.

At the administrative hearing, Gabriel Esparza, the underage purchaser of the beers, testified that he bought two bottles of beer from appellant who he referred to as "Tony." Esparza went to the counter, placed the bottles thereon, went outside to determine if there were police nearby, returned and purchased the beer, with appellant bagging the same [RT 7-10, 13-14]. Fred Fausto, a Department investigator, had parked his vehicle about 40 feet from the premises, saw Esparza enter the premises with nothing in his hands, and later exit with a bag [RT 17, 19,

23]. Appellant denied he had ever seen Esparza, but did state he was called "Tony" [RT 28-30].

The decision of the Department states that appellant's testimony is not credible [Finding V]. The rules of law are clear: 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] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) Where as here, 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] (a case where 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].)

The Department is authorized by the California Constitution to exercise its discretion whether to suspend or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the continuance of such license would be contrary to public welfare or morals. The scope of the Appeals Board's review is different, such review being limited by the California

Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings.<sup>2</sup>

The term "substantial evidence" being the basis of the Appeals Board's review, is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].) Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

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<sup>2</sup>The California Constitution, article XX, §22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

ORDER

The decision of the Department is affirmed.<sup>3</sup>

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

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<sup>3</sup>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.