

ISSUED NOVEMBER 27, 2000

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

MARY BYUN	)	AB-7531
dba Ardmore Liquor)	
4056 W. Third Street	)	File: 21-292084
Los Angeles, CA 90020	)	Reg: 99047180
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 5, 2000
	)	Los Angeles, CA

Mary Byun, doing business as Ardmore Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended her license for 15 days for her clerk, Il Hwan Jae (“Jae”) having sold an alcoholic beverage (four bottles of Jack Daniels Downhome Punch) to Deja Gonzales (“Gonzales”), an 18-year-old minor, 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).

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

Appearances on appeal include appellant Mary Byun, appearing through her counsel, James S. Hong, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued in 1994. Thereafter, the Department instituted an accusation against appellant charging the sale by Jae of an alcoholic beverage to Gonzales on July 24, 1999.

An administrative hearing was held on November 3, 1999. The hearing proceeded as a default hearing, with neither appellant nor counsel on her behalf present. Department investigator Wil Salao ("Salao") testified on behalf of the Department, and described the circumstances which culminated in the charge of the accusation. Deija Gonzales also testified.

While Salao and his partner, Scott Seo, were seated in their vehicle outside appellant's premises, they observed Gonzales at the counter, four bottles of Jack Daniels punch on the counter, and one clerk behind the counter. After Gonzales handed the clerk money, and the clerk bagged the four bottles, Gonzales left the premises, and was stopped by Salao because of her youthful appearance. When asked her age by Salao, Gonzales said she was 18. When asked for identification, Gonzales produced her Arizona driver's license, showing a date of birth of November 17, 1980. Salao searched Gonzales's purse for false identification, and found none. He also conducted a "slight pat down" search of her person. After initially questioning Jae, the clerk, Salao again spoke to Gonzales. She told Salao she had not been asked her age or for identification, and denied having presented

any false identification. Jae, and a second clerk, Moon, insisted to Salao that Gonzales had presented identification showing her to have been born in 1977.

Gonzales testified that there was only one clerk behind the counter when she made her purchase, that she was not asked how old she was, or for identification, and denied possessing any false identification.

Subsequent to the hearing, the Department issued its decision sustaining the charge of the accusation.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant renews the claim that Gonzales presented false identification, contending that the investigators saw only the tail end of the transaction, after Gonzales had shown the clerks false identification. Appellant's brief (at unnumbered page 3) asserts this was captured on the store's surveillance video. Appellant further claims that the notice of the hearing was improper, because the time for her to respond expired before she "could comprehend the contents and nature of the notice to appear" (App.Br., unnumbered page 4), and because the record does not show that the person who signed for the certified mail had authority to do so on appellant's behalf.

Appellant is now represented by counsel. It appears she was not represented at the time the accusation was filed and mailed to her.²

Appellant's brief is unaccompanied by any declaration stating, under penalty

² The notice of hearing was sent via regular mail. (See Exhibit 1.) The accusation package was sent via certified mail. (Ibid.) An executed notice of defense, over the purported signature of appellant herself, was received by the Department on September 14, 1999.

of perjury, that the statements in it are true. Nor does the brief offer any explanation why appellant was unable to comprehend the notice of hearing. No claim is made that she lacked facility in the English language.

Thus, the Board is confronted with a situation where what appears to have been a clear-cut violation was proven by reliable evidence, but where the licensee, having received notice of the hearing, but not appearing, now claims to have evidence supporting the claim of her employees that false identification was presented.

The Department argues that appellant has failed to exhaust her administrative remedies. It cites Government Code §1520, subdivision (c), pursuant to which a party may, upon a showing of good cause, seek relief at the Department level from a decision entered by default. Appellant failed to do so.

We think the absence of any kind of sworn support for the claims in appellant's brief, coupled with her failure to seek relief from the default at the Department level, compels us to reject her claims. The notice of hearing conveyed in clear terms the time, place, and date of the hearing. Appellant's ability to respond to the accusation package by completing and returning the executed notice of defense tells us she also had the ability to respond to the notice of hearing.

ORDER

The decision of the Department is affirmed.³

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

³ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.