

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

AB-7618

RONALD T. STANMAN dba Valley Beverage Company
14901 Ventura Boulevard, Sherman Oaks, CA 91403,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 21-162656 Reg: 99047606

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: March 1, 2001
Los Angeles, CA

ISSUED APRIL 26, 2001

Ronald T. Stanman, doing business as Valley Beverage Company (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 35 days, with 10 days stayed for a period of one year on condition that no cause for disciplinary action occurs within the stay period, for appellant's agent refusing to permit a Department investigator to conduct an inspection of the licensed premises, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code² §§25753; 25755, subdivision (b); and 25616.

Appearances on appeal include appellant Ronald T. Stanman, appearing

¹The decision of the Department, dated April 6, 2000, is set forth in the appendix.

²Unless otherwise specified, all statutory references herein are to the Business and Professions Code.

through his counsel, Andreas Birgel, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on May 30, 1980. Thereafter, the Department instituted an accusation against appellant charging that, on August 27, 1999, appellant's employee sold or furnished alcoholic beverages to three minors (counts 1, 2, and 3) and, on the same date, appellant's agent, Arthur Stanman, refused to permit two Department investigators to enter the storage area of the store to determine the existence of surveillance videotapes as evidence with regard to the alleged sales to minors (counts 4 and 5).

An administrative hearing was held on February 10, 2000, at which time documentary evidence was received and testimony was presented by three Department investigators – Armando Gonzalez, Caroline Montgomery, and Stuart Thompson; one of the minors involved in the alleged sale, Michael McGee; and by Arthur Stanman ("Stanman"), who, as the son of the deceased licensee, was running the store at the time of the alleged violation. At the hearing, upon motion of the Department, counts 2 and 3 were stricken from the accusation.

Subsequent to the hearing, the Department issued its decision which determined that counts 2 and 3 should be dismissed, that counts 1 and 5 had not been established, but that count 4 (refusal to permit investigators to inspect) had been established.

Appellant thereafter filed an appeal in which he raises the following issues: (1) substantial evidence does not exist to support the Findings and Determination with respect to count 4, and (2) the penalty is excessive.

DISCUSSION

I

Appellant contends that §§25753 and 25755, subdivision (b),³ apply only to the licensee's *books and records*. The investigator's desire to examine and confiscate videotapes "is beyond the scope of permissible inspection," appellant argues, and therefore Stanman was justified in refusing the request to enter the storage area. Section 25616 prohibits anyone from refusing to permit a Department investigator "to make any inspection or examination for which provision is made in this division," Appellant argues that this statute was not violated because "[t]he examination and confiscation in this matter was beyond the scope of permissible inspection," (App.Br. at 7) and, therefore, was not an "inspection or examination for which provision is made in [the ABC Act]."

Appellant's basic premise, that §§25753 and 25755, subdivision (b), apply only to a licensee's books and records, is faulty. Section 25753 says the Department "may make any examination of the books and records" but it also says the Department "may

³ Section 25753 provides:

"The department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division."

Section 25755, subdivision (b), provides:

"The director, the persons employed by the department for the administration and enforcement of this division, peace officers listed in Section 830.1 of the Penal Code, and those officers listed in Section 830.6 of the Penal Code while acting in the course and scope of their employment as peace officers may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises."

visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division." "This division" refers to the entire ABC Act.

The investigator had cause to believe that a videotape of the alleged sale to a minor might exist because he had seen the surveillance cameras, which are often connected to recording devices. He requested entry into appellant's storage room to see if such evidence did exist. Clearly the inspection the investigator wanted to conduct fell well within acts "necessary to perform [the Department's] duties under this division," one of which is to enforce the prohibition against sales to minors.

With regard to §25755, subdivision (b), appellant makes only the bald statement that "examination and confiscation [of videotapes] is beyond the scope of permissible inspection as permitted in Business and Professions Code §25755(b)." (App.Br. at 6.) He provides no explanation, argument, nor authority for his statement. (It should be noted that there was no "examination and confiscation" or even any inspection, of any videotapes, because Stanman refused to allow the investigator to enter the room containing the VCR.)

Appellant's argument regarding §25616 depends upon the Board finding that what the investigator wanted to look for was beyond the scope of the inspections permitted by §§25753 and 25755, subdivision (b).

Appellant uses the word "confiscation" to refer to what the investigator desired to do if allowed into the storage area. He seems to imply, although he does not state this clearly as an argument, that if the investigator wanted physically to take the videotape with him, his actions would not fall within the scope of an "inspection" under §§25753 and 25755, subdivision (b). The Board need not address this question, however,

because there is no evidence that the investigator told Stanman that he wanted to "confiscate" any videotape he might find. According to his testimony, the investigator merely said that he wanted to check to see if a videotape of the alleged sale existed. The investigator's expressed intention did not, according to the testimony, go beyond a request to inspect the storage area.

We find no error in the Department's determination that §§25616, 25753, and 25755, subdivision (b), were violated.

II

Appellant contends the penalty – 35 days' suspension with 10 days stayed for a probationary period of one year – is excessive because Stanman was justified in refusing to allow an inspection. The justification appellant refers to consists of the contentions discussed above, that the "examination and confiscation" the investigator intended to do exceeded the scope of a permissible inspection under the statutes involved, a contention we have already rejected above.

In addition, appellant relies on the ALJ's statement in Finding 16:

"It is arguable that a colorable defense may exist when one asserts a constitutional right in [a] good faith, but mistaken[,] belief that a search warrant is required before a government agent may perform a search. In the subject case, Stanman was in the unusual circumstances of having the responsibilities of a licensee without first having been qualified by the Department. Thus, he may be excused of the standard of knowledge which is generally expected of licensees."

Appellant concludes that "In light of this finding of fact, . . . [a]ny penalty imposed would constitute an abuse of discretion" (App.Br. at 9.)

Appellant omits the second paragraph of Finding 16, which states:

"However, whereas by the evidence, Stanman is given to understand the investigator's authority to search without warrant, and is warned of

possible consequences for interfering with the investigator, his continued refusal is not in good faith and is done at his peril.

He also omits all of Finding 17: "No defense or mitigation to the violation in Count 4 was established."

It appears that the ALJ had some sympathy for the situation in which Stanman found himself, where he was responsible for the operation of the premises, but only involuntarily. It does not seem unreasonable for a layman to believe that a warrant was required for a peace officer to search. However, the ALJ's sympathy could not condone Stanman's continued recalcitrance after the investigator informed Stanman of his authority to inspect. This also does not seem unreasonable in light of Stanman's knowledge that the investigator was a peace officer.

We conclude that appellant has not shown the penalty imposed was excessive.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This 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.