

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

AB-7648

REBHYA Y. ABDELJAWAD dba John's Market
1122 East State Street, Ontario, CA 91761,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 20-313923 Reg: 00048082

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

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

ISSUED MAY 30, 2001

Rebhya Y. Abdeljawad, doing business as John's Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license pursuant to Business and Professions Code §24200, subdivision (d), following her entry of pleas of guilty on May 6 and May 27, 1999, to separate misdemeanor charges that she violated Penal Code §488.

Appearances on appeal include appellant Rebhya Y. Abdeljawad, appearing through her counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on June 21, 1996. On January 14, 2000, the Department instituted an accusation against appellant charging

¹The decision of the Department, dated May 25, 2000, is set forth in the appendix.

that appellant entered pleas of guilty to misdemeanor charges that she violated Penal Code §488, a crime involving moral turpitude

At an administrative hearing held on April 13, 2000, the parties stipulated that the charges of the accusation were true, and the hearing focused on the issues of mitigation and penalty.

The Administrative Law Judge (ALJ) made the following findings (Findings of Fact IV-A and -B) on those issues:

“A. In mitigation of the penalty recommended by the Department, the Respondent testified that she was arrested at Costco on February 19, 1999 for placing six cartons of cigarettes with a value of approximately one hundred sixty-nine dollars in her gym bag and then leaving the store without paying for the cigarettes, that on March 15, 1999 she was arrested again at a market for placing some chicken with a value of about twenty dollars in her purse and then leaving the store without paying for the chicken, that she was arrested once before for shoplifting, that she feels that she has a problem, that she goes to an Islamic Center for prayer and counseling, that she alone supports her four teenage children, that the income she derives from the premises is her only source of income and that she would like an opportunity to sell the premises and transfer her alcoholic beverage license because she is of the opinion that the store is not worth much without an alcoholic beverage license since approximately eighty percent of the premises sales consists of alcoholic beverages.

“B. Although the Respondent testified that she feels she has a problem and that she is receiving some kind of counseling at an Islamic Center, the Respondent did not provide any medical reports to establish that she has an uncontrollable problem or that she is receiving any formal counseling that will be effective in dealing with her problem. After considering the entire evidence presented at the hearing as well as the type of license we are dealing with, a finding is made that Respondent did not establish sufficient mitigating factors so as to justify a lesser penalty than that recommended by the Department.”

Appellant has filed a timely appeal from the ensuing order of revocation. She now contends that the ALJ erred in two respects. First, appellant contends, he should have recognized, without the help of medical reports, that appellant suffered from

kleptomania, a recognized psychological disease. She argues that she had no need for either the cigarettes or chicken, not having planned to sell the cigarettes nor to feed the chicken to her children. Second, she contends the ALJ erred in considering the type of license held by appellant in deciding whether she had established mitigation.

We doubt that the ALJ can be faulted for having been influenced by the lack of any medical report confirming appellant's claim she is a victim of kleptomania. The items which were taken by her could well have been used by her in some fashion, despite her contentions to the contrary. The cigarettes could have been sold or bartered, and the chicken could have been consumed by her family. The ALJ had to choose, with little help, whether appellant was a victim or simply a thief.

The other reason the ALJ felt mitigation was undeserving is much more troublesome. He did not explain why the particular type of license made a difference as to whether mitigation was present, and we are at a loss to understand his thinking.

Appellant testified, without contradiction, that her business was worth close to \$200,000, but without the license would be worthless, since sale of alcoholic beverages accounted for 80 percent of sales.

The Board knows that the Department frequently tempers its orders of revocation by staying them for a period to permit the licensee an opportunity to transfer the license and realize something from his or her investment. The Board knows as well that the Department does so less frequently where the underlying offense has been one which involves moral turpitude, as here.

The offenses to which appellant pled guilty could well have been the result of matters over which appellant lacked control. Perhaps not. But, in either event, they are

not in any way related to the particular type of license she held.

The decision is lacking in a rational explanation as to why the particular type of license held by appellant should have been a consideration. We decline to speculate about what may have been in the mind of the ALJ. Suffice it to say, that without such an explanation, we are unable to assure ourselves that the order of revocation was a proper exercise of discretion by the Department.

ORDER

We reverse the decision of the Department and remand the case to the Department for reconsideration of the penalty. By our so doing, the Department will have the opportunity to explain why one type of license is to be treated differently from another when discipline is involved, as appears to have been the case here.²

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

² 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.