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

AB-7806
File: 21-333116 Reg: 00049309

HAITHAM H. MIKHA dba Golden State Liquor
935 West Mission Avenue, Suites A & B, Escondido, CA 92025,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

and

AB-7807
File: 20-331614 Reg: 00049308

BILAL M. BADRANI and HAITHAM H. MIKHA dba 5 Star Market #2
1981 East Valley Parkway, Escondido, CA 92025,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: March 7, 2002
Los Angeles, CA

ISSUED MAY 10, 2002

Bilal M. Badrani and Haitham H. Mikha, doing business as 5 Star Market #2, and Haitham H. Mikha, doing business as Golden State Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which revoked their licenses

[1] These cases were consolidated for the purposes of the administrative hearing, and for this appeal. The decision of the Department, dated April 19, 2001, is set forth in the appendix.

following their pleas of guilty to complaints charging them with the crime of conspiracy to distribute a listed chemical, 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 §24200, subdivisions (a) and (b), in conjunction with 21 U.S.C. §§841, subdivision (d)(2), and 846.[2]

Appearances on appeal include appellants Bilal M. Badrani and Haitham H. Mikha, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine and general licenses were issued on October 9, 1997. Thereafter, the Department instituted accusations charging the entry by them of pleas of guilty to charges that they conspired to distribute a listed chemical (pseudoephedrine), in violation of 21 U.S.C. §§841, subdivision (d)(2), and 846, a public offense involving moral turpitude.

An administrative hearing was held on March 7, 2001. At that hearing, Department counsel placed in evidence certified documents establishing the charged offense and appellants' pleas of guilty thereto. Appellants, following the denial by the Administrative Law Judge (ALJ) of their counsel's request for a continuance, presented the testimony of their respective spouses and friends, offered for the purpose of establishing mitigation.

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[2] These cases were consolidated at the Department level, and were the subject of a joint brief to the Appeals Board.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusations had been sustained, and that the licenses should be revoked.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) the offense which was the subject of appellants' guilty pleas does not constitute a crime involving moral turpitude; (2) the ALJ improperly refused to grant appellants' request for a continuance; (3) the penalty of revocation demonstrates an abuse of discretion; and (4) the statute under which they were convicted has been declared unconstitutional.

DISCUSSION

I

Appellants contend that the offense to which their guilty pleas were entered does not constitute a crime involving moral turpitude. They offer a number of reasons why this is supposedly so: the Department lacks the power to decide whether a crime is one involving moral turpitude, and must look to court holdings to such effect; the decision fails to identify any decision or statute declaring the offense in question one involving moral turpitude; the chemical which was the subject of the plea is not on the list of prohibited chemicals in 21 U.S.C. 841; and their guilty pleas cannot support a finding of moral turpitude because 21 U.S.C. §841 has been held unconstitutional.

Appellants cite decisions of the United States Court of Appeals for the Ninth Circuit in Coronado-Durazo v. Immigration and Naturalization Service (9th Cir. 1997) 123 Fed.3d 1322, and of the Supreme Court in Crandon v. United States (1990) 494 U.S. 152 [110A S.Ct. 997, 1011] for the proposition that the determination of whether a

crime is one involving moral turpitude is a question of law.

We have no quarrel with the notion that the determination of whether a crime is one involving moral turpitude is a question of law. However, we do not agree with appellants that an ALJ is not entitled to make such a determination. The language appellants have quoted from Crandon, supra, is incomplete. Justice Scalia was not saying that an administrative agency may not make such a determination. Instead, he was saying only that such a determination is not entitled to special deference if the language of the statute suggested a different reading of its intent. We find neither of these authorities controlling.

We do not agree with appellant that only an appellate court has the power to declare an offense one involving moral turpitude. We know of no rule of law that prevents a trial court or an administrative agency from applying, to the specific facts of a case, the general rule regarding what kind of offense involves moral turpitude and reaching a result one way or the other. While always subject to the oversight of an appellate body, neither the lower court nor the agency are as impotent as appellants would have ithembe.

Appellants' second point is that the decision is defective because it does not cite any case holding that the specific offense in question is one involving moral turpitude.

This contention assumes that appellants' first point is sound, and, as we have said, we do not think it is. The decision does point out elements which, if present, tend to indicate that a crime is one involving moral turpitude; at least one of such elements - intentionally dishonest acts in the pursuit of personal gain - is present in this case. (See Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 38 [152

Cal.Rptr. 285].

The evils associated with methamphetamine are well documented. Numerous social problems have resulted from its unlawful manufacture, sale, and use. Those who break the law by knowingly supplying essential components of the end product are aiding and abetting in the destruction of society.

The 21-month (Mikha) and 33-month (Badrani) sentences imposed on appellants reflect the attitude of the federal judiciary to the methamphetamine problem and the specific offense to which appellants pled guilty. Obviously, the offense was not deemed trivial.

We think the ALJ's assessment of the seriousness of this kind of crime, and its moral overtones, was appropriate.

II

Appellants contend that the ALJ improperly denied their request for a continuance until such time as they could be released from federal custody and be in a position to testify at the hearing. They argue in their brief that their testimony would be relevant on the issue of moral turpitude.

Apparently at least one continuance had earlier been granted in order to permit appellants to seek, by way of motion, appellants' attendance at the hearing. However, the record suggests, appellants sought relief in the wrong court, and, predictably, were unsuccessful.

In any event, it is doubtful that appellants' testimony would have been relevant on the issue whether their conviction was of an offense involving moral turpitude. Such a determination is a question of law, and we are satisfied that the conduct to which they

plead guilty is such an offense.

The ALJ has broad discretion on whether a continuance should be granted. Having once granted a continuance, only to have appellants embark upon a mistaken and fruitless quest to obtain their temporary release from custody, the ALJ was not bound to grant another.

We do not believe it is necessary to discuss appellants' remaining contentions, none of which has merit.

ORDER

The decision of the Department is affirmed.[3]

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

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[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.