

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

AB-7813a

File: 48-328632 Reg: 00049850

CMPB FRIENDS, INC., dba Royal Room
9214½ and 9216 E. Alondra Blvd., Bellflower, CA, 90706
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: September 2, 2004
Los Angeles, CA

ISSUED NOVEMBER 18, 2004

CMPB Friends, Inc., doing business as Royal Room (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days, with all 10 days stayed for a one-year probationary period, for appellant's employee allowing a person under the age of 21 to enter and remain in the licensed public premises without lawful business therein, a violation of Business and Professions Code section 25665.²

Appearances on appeal include appellant CMPB Friends, Inc., appearing through its counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated February 11, 2004, is set forth in the appendix.

²Unless otherwise indicated, statutory references are to the Business and Professions Code.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on April 1, 1997. On November 2, 2000, the Department filed an accusation charging appellant with the violation of section 25665. An administrative hearing was held, during which it was established that on June 15, 2000, 20-year-old Celeste Jimenez entered the premises with friends and sat at a table. After about 10 minutes, the waitress asked Jimenez for her identification. Jimenez testified that she showed the waitress her own California identification card indicating that she was 20 years old. The waitress testified that Jimenez showed her the identification card of Melissa Guzman, a person about 8 years older and 30 pounds heavier than Jimenez. Jimenez did not order anything, but drank beer from a pitcher on a nearby table. After about 30 minutes, Department investigators asked Jimenez her age and discovered in her possession both her own identification card and the identification card of Melissa Guzman.

The Department later issued a decision sustaining the charge of the accusation and imposing a 10-day suspension. The Appeals Board affirmed the Department's decision, and appellant petitioned the Court of Appeal for review.

In *CMPB Friends, Inc. v. Alcoholic Beverage Control Appeals Board* (2002) 100 Cal.App.4th 1250 [122 Cal.Rptr.2d 914], the Court of Appeal reversed the decision, finding that violation of section 25665 did not necessarily occur simply because the minor was on the premises for 10 minutes before her identification was checked by the waitress. The court remanded the matter to the Department "for further consideration of the merits of the accusation consistent with this opinion." (*Id.* at p. 1259.)

The Department remanded the matter to the administrative law judge (ALJ) and a hearing was held on December 12, 2003, at which time documentary evidence was

received and testimony concerning the violation charged was presented. The Department adopted ALJ Lo's proposed decision which found that a violation of section 25665 had occurred, although not because of the minor's presence in the premises for 10 minutes before the waitress checked her identification. ALJ Lo accepted the waitress's testimony that Jimenez showed her the identification of Melissa Guzman, but found that it was not reasonable for the waitress to rely on that identification. Therefore, a defense was not established under section 25660.

Appellant filed an appeal contending that it established a complete defense under section 25660.

DISCUSSION

Business and Professions Code section 25660 provides:

Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

In Determination of Issues IV, after setting out the pertinent language of section 25660, the ALJ said:

The Courts have held that to establish a Section 25660 defense, the reliance must be reasonable and in good faith. Hollywood, Inc. v. Department of Alcoholic Beverage Control (1957) 155 Cal.App.2d 748, 753, Keane v. Reilly (1955) 130 Cal.App.2d 407, 410, 279 P.2d 152.

Respondent's waitress testified that she relied on Ms. Guzman's identification as proof of Ms. Jimenez's majority. Even assuming her testimony is true, it does not establish a defense for Respondent, as the reliance was not reasonable. While Ms. Guzman and Ms. Jimenez do

have the same hair color and eye color, and are approximately the same height, there simply is no resemblance between Ms. Jimenez's face and the photograph of Ms. Guzman on Ms. Guzman's identification card. The difference in appearance cannot be explained away by a mere allegation of weight difference. One need only look at the photograph of Ms. Jimenez on her identification card to see that she is not the person in the photograph on Ms. Guzman's identification card. Moreover, Ms. Jimenez was twenty years old on June 15, 2000. Ms. Guzman, as indicated by her identification card, was 28 years old. Respondent has not shown how it was reasonable for its waitress to believe that the 20 year old Jimenez was 28 years old.

Appellant contends that comparing the identification card of Jimenez with the identification card she showed to the waitress "discloses that there was indeed reasonable reliance and that Judge Lo and the Department are mistaken." (App. Br. at p. 6.) It asserts that the Guzman identification shows the correct gender, hair color, eye color and height for Jimenez, the only discrepancy being that Jimenez weighed 30 to 35 pounds less than the weight indicated on the Guzman identification card. Jimenez "very reasonably explained" to the waitress that she had recently lost weight, and therefore, appellant concludes, it was "perfectly appropriate [and] reasonable" for the waitress to rely on the identification card Jimenez showed her.

The Department is authorized by the California Constitution to exercise its discretion to deny, suspend, or revoke an alcoholic beverage license if the Department reasonably determines, for "good cause," that the granting or the continuance of the license would be contrary to public welfare or morals. In reviewing a decision of the Department, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but must determine, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has

proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing. (Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23084, 23085; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94-95 [84 Cal.Rptr. 113].)

Where 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 Bev. Control App. Bd.* (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (in which 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, 51 [248 Cal.Rptr. 271]; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734]; *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

In this case, appellant is really asking this Board to reweigh the evidence and reach a conclusion different from that of the ALJ and the Department. That is not the role of the Appeals Board. The Board may not ignore or reject a factual finding of the Department simply because it considers a contrary finding equally, or even more, reasonable than that of the Department. (*Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control, supra*, 2 Cal.3d at p. 94 [84 Cal.Rptr. 113]; *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106, 112-114 [28 Cal.Rptr. 74].)

We believe the ALJ's factual findings and his analysis of the application of section 25660 to the facts are eminently reasonable. The only reason appellant has

given in urging us to reach a different conclusion is its opinion that the ALJ was wrong. Under the circumstances, we will not disturb the ALJ's conclusion that appellant failed to establish a section 25660 defense.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.