

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

AB-7846

File: 20-215059 Reg: 00049951

7-ELEVEN, INC., BAKHSHISH BHALRUH, and KULDIP BHALRUH
dba 7-Eleven #18949
14060 Oxnard, Van Nuys, CA 91401,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: August 15, 2002
Los Angeles, CA

ISSUED OCTOBER 3, 2002

7-Eleven, Inc., Bakhshish Bhalruh and Kuldip Bhalruh, doing business as 7-Eleven #18949 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, all of which was conditionally stayed for one year, for their clerk having sold an alcoholic beverage to a minor, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, section 22, arising from a violation of Business and Professions Code section 25658, subdivision (a) .

Appearances on appeal include appellants 7-Eleven, Inc., Bakhshish Bhalruh, and Kuldip Bhalruh, appearing through their counsel, Ralph Barat Saltsman, Stephen Warren Solomon and James S. Eicher, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated June 21, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 17, 1984.

Thereafter, the Department instituted an accusation against appellants charging that, on May 14, 2000, their clerk, Ressam Singh, sold an alcoholic beverage (beer) to Jesus Maciel, a person then approximately 19 years of age, in violation of law.

An administrative hearing was held on May 16, 2001, following which the Administrative Law Judge (ALJ) issued a proposed decision, which the Department adopted, sustaining the charge of the accusation.

Appellants have filed a timely appeal, and contend, based upon the entire record, that the purchase was made by an adult male who displayed proper identification and simply borrowed money from a friend to pay for the beer.

DISCUSSION

Appellants contend that the record, viewed as a whole, compels the conclusion that the beer was purchased by an adult male, Jose Marin, with money loaned to him by Maciel.

The ALJ found as follows (Findings of Fact 4-6):

“4. Department investigators observed the youthful appearing minor and companions enter the premises a bit after midnight. One such companion, later identified as Jose Marin, a 23 year-old adult, was planning to purchase beer and asked the minor to loan him some money for the purchase. While Marin and the others went to the beer cooler, the minor obtained \$20.00 from a nearby ATM machine. Marin and the minor joined forces as Marin brought the beer to the check-out counter for payment. The clerk spoke to the minor and advised him the price of the purchase.

“Despite a conflict in the evidence, it is found that the minor was the person who handed a \$20.00 bill to the clerk in payment for the beer. The clerk rang up the sale; made change which he returned to the minor. The minor and Marin left the premises after a subsequent purchase, with the minor carrying a six-pack of beer and Marin carrying a case of beer. The clerk never asked the minor for identification or for his age. No defense was established under Business and

Professions Code §25660.

“5. Conflicting evidence was presented on the part of the Respondents that, in fact, Jose Marin (the adult) paid for the beer and displayed identification to the clerk to satisfy him that he was an adult. Such hearsay evidence was received over objection under Government Code Section 11513(d) and is insufficient alone to support a finding.

“6. Although there is evidence in the record that Marin did in fact have his wallet out and open, in his hand during the transaction, the evidence is less than convincing that Marin ever displayed any identification to the clerk during the sale. Quite simply, the minor played a major role in the purchase of the beer even though it is claimed the purchase was intended to be for the benefit of Marin, the adult.

”By all reasonable appearances, the clerk knew or should have known that the minor was materially involved in the purchase and failed to take steps to prevent it.”

Appellants’ arguments seem in the nature of “no harm, no foul.” That is, even if it may have appeared to the clerk that the minor was paying for the beer, and entitled to the change, the violation should be overlooked because, in reality, the minor was only lending money to the adult to buy the beer.

However, there is no evidence that the clerk knew anything about a loan transaction. The evidence is in substantial conflict as to who handed the money to the clerk. Maciel said that he did, while the clerk said that “the other person” did. The ALJ resolved the conflict by concluding that the money was handed to the clerk by Maciel. Maciel’s testimony that the clerk told him the price of the beer, that he handed the \$20 bill to the clerk, and that the clerk gave him the change virtually compels the conclusion that the clerk was dealing with Maciel. Even if Marin did display identification showing that he was older than 21 - the ALJ was not convinced that he did - that does not provide a defense under Business and Professions Code §25660. Marin was not the purchaser.

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (*Brice v. Department of Alcoholic Beverage Control* (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and *Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) The ALJ chose to believe Maciel's hearing testimony. We are not in a position to say his choice was incorrect.

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 Beverage Control Appeals Board* (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 [248 Cal.Rptr. 271]; *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control* (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].),

We are satisfied that the ALJ's finding that the minor was materially involved in the purchase is supported by substantial evidence. An objective observer of the transaction could easily conclude that Marin's display of identification - and, apparently, an otherwise empty billfold - was tantamount to telling the clerk "I am old enough to buy the beer, but have no money, so it's okay for my friend to buy it for me, even if he is a minor."

ORDER

The decision of the Department is affirmed.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.