

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

AB-7900

File: 21-356112 Reg: 01051037

RELLES OIL & DEVELOPMENT COMPANY, dba Texaco
1300 East Roseville Parkway, Roseville, CA 95678,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: July 11, 2002
San Francisco, CA

ISSUED OCTOBER 3, 2002

Relles Oil & Development Company, doing business as Texaco (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 20 days, with 5 days thereof conditionally stayed for one year, for appellant's clerk selling an alcoholic beverage to a minor decoy, 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 appellant Relles Oil & Development Company, appearing through its president, Ross W. Relles, and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas Loehr.

¹The decision of the Department, dated October 11, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on August 31, 1999. Thereafter, the Department instituted an accusation against appellant charging that, on December 28, 2000, appellant's clerk, Zacariah Coder ("the clerk"), sold an alcoholic beverage to 18-year-old Jason Doolittle. Doolittle was, apparently, acting as a decoy for the Roseville Police Department at the time of the sale.

An administrative hearing was held on August 29, 2001, at which time documentary evidence was received and testimony concerning the transaction was presented by Ross W. Relles, president of appellant. Relles stipulated that the events in the accusation occurred as alleged and presented evidence in mitigation of the penalty.

Subsequent to the hearing, the Department issued its decision which sustained the charge of the accusation and determined that no defense had been established under Business and Professions Code section 25660.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the clerk who made the sale misread the decoy's license because of a reading disorder; and (2) the penalty is excessive.

DISCUSSION

I

Appellant's letter brief states: "It is our belief that the former employee who was responsible for selling the beer to Jason Doolittle did in fact look at the drivers [sic] license given to him as proof of age and because of a reading disorder, simply misread the dates."

The fact that the clerk misread the identification presented does not negate the violation. In any case, that is a factual contention that should have been raised at the administrative hearing for the finder of fact to consider.

II

Appellant contends "the recommended 20-day suspension will unfairly punish Mr. Relles, his employees, and the City of Roseville."

Where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (*Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board* (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].) However, the Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (*Martin v. Alcoholic Beverage Control Appeals Board & Haley* (1959) 52 Cal.2d 287 [341 P.2d 296].)

This was appellant's second sale-to-minor violation in nine months. Business and Professions Code section 25658.1 prevents the Department from accepting payment of a fine in lieu of serving a suspension for a second sale-to-minor violation within 36 months of the a first violation. The Administrative Law Judge took into account several factors in mitigation when imposing the penalty, and reduced the penalty from the Department's recommendation of a 25-day suspension to 20 days with 5 days stayed. This is clearly not an abuse of the Department's discretion.

ORDER

The decision of the Department is affirmed.²

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

²This 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.