

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

AB-8020

File: 20-266402 Reg: 020530098

CHONG WON CHONG and SUNG SIM CHOI dba Altadena Market #528
6826 Kester Avenue, Van Nuys, CA 91405,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Richard J. Lopez

Appeals Board Hearing: July 3, 2003
Los Angeles, CA

ISSUED AUGUST 28, 2003

Chong Won Chong and Sung Sim Choi, doing business as Altadena Market #528 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for having violated Welfare and Institutions Code section 10980, subdivision (g), by purchasing food stamps for cash at discounted values and then redeeming them at full value.

Appearances on appeal include appellants Chong Won Chong and Sung Sim Choi, appearing through their counsel, Harvey Ginns, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 8, 1997. Thereafter, the Department instituted an accusation against appellants charging that

¹The decision of the Department, dated September 26, 2002, is set forth in the appendix.

they had been convicted of engaging in the unauthorized use of food stamps, a felony, and a public offense involving moral turpitude.

An administrative hearing was held on August 13, 2002, at which time oral and documentary evidence was received. At that hearing, the Department presented certified copies of the convictions of each of the appellants. Both appellants had pled guilty to the charges. It was stipulated that appellants had operated under an earlier license since 1991, free of any prior discipline. Appellant Sung Sim Choi testified, admitting one transaction in which she purchased food stamps at less than full value. She further testified, among other things, that she and her husband operated the store without any employees, that neither had before been convicted of any crime, and that as a result of their convictions they could no longer participate in the food stamp program; in addition, both had been fined and both were required to perform community service.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and ordered the license revoked.

Appellants thereafter filed a timely appeal in which they argue, in substance, that the order of revocation was unjustified in light of appellants' prior history as licensees. They contend the administrative law judge (ALJ) failed to give any weight to appellants' prior history free of criminal behavior and that, although the crime was one of moral turpitude, there was no direct threat to the public's health or safety.

DISCUSSION

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].) However, 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].)

Contrary to appellants' assertion, there is damage to public health and safety. The exchange of food stamps for cash results in the value of the stamps being diverted to something other than food, and the objectives of the federal food stamp program frustrated.

Appellants' unhappy plight is of their own doing. Each seized the opportunity for profit by committing food stamp fraud.

The Department took appellant's prior operating history into account as a mitigating factor, but concluded that the gravity of the crime and the absence of a record of clear and convincing rehabilitation warranted the sanction of revocation.

There is adequate basis in the record for the action taken by the Department. Hence, we cannot say that it abused its discretion in its determination of an appropriate penalty.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
KAREN GETMAN, 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.