

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

AB-8093

File: 360771 Reg: 02053749

MANJIT SANDHU and SARBJIT SANDHU, dba Marketplace Liquors
1061 Market Place - B, San Ramon, CA 94583,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stephen J. Smith

Appeals Board Hearing: September 4, 2003
San Francisco, CA

ISSUED OCTOBER 3, 2003

Manjit Sandhu and Sarbjit Sandhu, doing business as Marketplace Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 days for selling or furnishing an alcoholic beverage to a person who was under the age of 21 years, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Manjit Sandhu² and Sarbjit Sandhu, and the Department of Alcoholic Beverage Control, appearing through its counsel Thomas Allen.

¹The decision of the Department, dated January 16, 2003, is set forth in the appendix.

²Co-licensee's name was stricken from the pleadings in this matter, allegedly as Sarbjit Sandhu acquired Marjit Sandhu's interests. All such statements were conjectural by the Department's counsel [RT 8, Ln 2], and statements not made under oath [RT 8, Ln 7]. The record and all Department documents provided to the Appeals Board, as late as May 7, 2003, show both co-licensees. We shall proceed with using the term licensees in the appropriate instances.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on December 6, 1999.

Thereafter, the Department instituted an accusation against appellants charging the selling and furnishing of an alcoholic beverage to an underage person³ as a violation of law.

An administrative hearing was held on November 7, 2002, at which time oral and documentary evidence was received. At that hearing, only Sarbjit Sandhu appeared and stipulated to the facts as set forth in the accusation [RT 10]. Sarbjit testified he always instructed others to check identification, as he always did.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred and no valid defenses had been shown.

Appellants thereafter filed a timely appeal in which they raise the issue that the penalty is excessive, and plead for "justice and mercy."

DISCUSSION

Appellants contend the penalty is excessive. Appellant Sarbjit Sandhu's brief denies he personally sold to "any teenager or underage customer [alcoholic beverages or tobacco products ...];" in April 2002, he suffered a heart attack and had to have others manage the premises; the sales person who sold to the underage decoy had been properly trained; and the license suspension would be a "disaster" (sic) for him and his family.

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*

³While not noted in the accusation, the purchaser of the alcoholic beverage was an underage person of 17 years, acting within a police decoy program.

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].)

This is a matter where a part-time employee, according to co-appellant Sarbjit Sandhu's brief, failed to request identification from the underage decoy-buyer.

The responsibility is upon the licensee not to sell alcoholic beverages to a minor. (*Munro v. Alcoholic Beverage Control Appeals Board & Moss* (1957) 154 Cal.App.2d 326 [316 P.2d 401]; and *Mercurio v. Department of Alcoholic Beverage Control* (1956) 144 Cal.App.2d 626 [301 P.2d 474].) Before a sale is made of an alcoholic beverage, it is the responsibility of the seller to determine the true age of the customer who is offering to purchase the alcoholic beverage (Bus. & Prof. Code, §25658, subd.(a)). A licensee is vicariously responsible for the unlawful on-premises acts of his employees. Such vicarious responsibility is well settled by case law. (*Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405, 411]; *Harris v. Alcoholic Beverage Control Appeals Board* (1962) 197 Cal.App.2d 172 [17 Cal.Rptr. 315, 320]; and *Mack v. Department of Alcoholic Beverage Control* (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633].)

The Appeals Board sits only as an appellate tribunal. It is the Department which is authorized by the California Constitution to exercise its discretion whether to suspend or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the continuance of such license would be contrary to public welfare or morals. The Department's exercise of discretion "is not absolute but must be

exercised in accordance with the law, and the provision that it may revoke a license ‘for good cause’ necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare and morals.” (*Martin v. Alcoholic Beverage Control Appeals Board* (1961) 55 Cal.2d 867, 876 [13 Cal.Rptr. 513] quoting from *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 775.)

Therefore, the Appeals Board sitting as an appellate tribunal, is limited in its scope of review by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's 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.⁴

Appellant Sarbjit's main plea is that the suspension will create a financial problem for his family and the premises. He argues that the employee “got off” with a small fine, and he, the innocent owner, will be “hit” with a substantial loss of revenue.

The record shows that about one and one-half years before the present violation, another clerk failed to ask for ID and sold to an underage police decoy. In that past

⁴The California Constitution, article XX, section 22; Business and Professions Code sections 23084 and 23085; and *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

case, appellants suffered a 10-day suspension which resulted in the payment of a fine in lieu of serving the suspension.

The Board feels great sympathy for the financial burden which will be placed on appellant Sarbjit, the premises' operation, and appellant Sarbjit's family. However, the welfare and morals of the people of the State of California in insuring alcoholic beverages are not sold to persons under the age of 21 years, become more paramount.

The Appeals Board's lawful responsibility is to test the Department's decision for any abuse of its discretion, of which we find none.

ORDER

The decision of the Department is affirmed.⁵

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

⁵This 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.