

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

AB-8122

File: 21-303078 Reg: 02054078

TEMOOR OMARI and ABDUL RAHMANI dba Ernie's Wines & Liquors
1894 Antioch Street, Antioch, CA 94509,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stewart A. Judson

Appeals Board Hearing: November 13, 2003
San Francisco, CA

ISSUED DECEMBER 23, 2003

Temoor Omari and Abdul Rahmani, doing business as Ernie's Wines & Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 days for appellant Omari having sold a 40-ounce bottle of Miller Genuine Draft beer to Jon Circo, a 19-year old minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Temoor Omari appearing on behalf of appellants, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on December 29, 1994. On November 25, 2002, the Department instituted an accusation against appellants

¹The decision of the Department, dated March 27, 2003, is set forth in the appendix.

charging that appellant Omari made an unlawful sale of an alcoholic beverage to Jon Circo, a minor. Circo was acting as a police decoy for the Antioch Police Department

An administrative hearing was held on February 11, 2003, at which time oral and documentary evidence was received. At that hearing, the Department presented the testimony of the decoy and that of Diane Jones, a detective employed by the Antioch Police Department. Appellant Omari testified on appellants' behalf.

Subsequent to the hearing, the Department issued its decision which sustained the charge of the accusation, found that appellants' license had been suspended for 15 days for a sale by appellant Rahmani to the same minor on November 14, 2001, and ordered a 25-day suspension.

Appellants have filed a timely appeal, and contend that there was no completed sale. Appellants have not filed a brief, but asserted in their notice of appeal and at the hearing that appellant Omari was still engaged in the process of checking the decoy's age, using a calculator to do so, and had not rung up the sale. They assert that detective Jones instructed Omari to complete the transaction.

DISCUSSION

Appellants contend that Findings of Fact III and V are incorrect. Those findings summarize the testimony concerning the transaction as follows:

Circo waited while another customer was finishing the transaction. He then placed the bottle on the counter top. There were no other customers waiting in line behind him. Omari asked Circo for his identification. Circo presented his California Driver License showing his photograph and true date of birth. In addition to an accurate physical description, the card clearly stated that it was "provisional until 18 in 2000" and that Circo would reach the age of 21 in 2003. Omari took the card and began working a calculator to determine Circo's age. After 15 seconds, Omari entered the sale on the register. Circo gave Omari a \$10 bill police had given him. Omari returned change and bagged the beer.

As Circo left the premises, Jones approached Omari, identified herself and asked why he had sold beer to a minor. Omari did not respond. Jones then asked for the receipt, which was still in the register. When asked if he were calculating Circo's age on his calculator, Omari replied affirmatively. Jones then told Omari there was no need to do that because the printing on the red stripe on the license would indicate that Circo was not yet 21 years old. Outside, Circo contacted Sgt. Willerford, who brought him back into the store. Jones then asked Circo to identify the seller of the beer. Circo pointed to Omari. Circo was about 10' from Omari, who was standing behind the counter. There were no other patrons in the premises. Omari was in a position to know, or should have known, that Circo was identifying him as the seller.

Our review of the hearing transcript satisfies us that the two findings quoted above accurately summarize the testimony of the minor and the police detective.

Appellant Omari claimed he completed the transaction only because detective Jones told him to do so:

I was handing his money and she came and showed me her badge and introduced herself as a police officer. And I have not completed the transaction and I did not enter anything in the cash register. She asked me to do and ring up and give her receipt. I have not finalized checking his age, as I did not give him a paper bag for the beer. I was still calculating his age and she was – interrupted me.

It is readily apparent that the administrative law judge (ALJ) chose not to believe Omar's self-serving description of what had occurred, an unlikely version of events in direct conflict with the testimony of both the decoy and the police detective that the transaction had been concluded and the minor had left the store. Given the general rule that the credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact (*Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.2d 315 [314 P.2d 807, 812]; *Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644]), there is every reason to accept the Department's findings and affirm its decision.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
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.