

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

AB-8441

File: 20-348067 Reg: 04058298

JASMIN ABOUMAR dba Frontera Market
600 Third Street, Calexico, CA 92231,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: February 2, 2006
Los Angeles, CA

ISSUED MAY 17, 2006

Jasmin Abouomar, doing business as Frontera Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked the off-sale beer and wine license she held jointly with Anwar Abouomar, for Anwar Abouomar having pled no contest to the sale of a controlled substance, a public offense involving moral turpitude, in violation of Health and Safety Code section 11379.

Appearances on appeal include appellant Jasmin Abouomar, appearing through her counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

FACTS AND PROCEDURAL HISTORY

The Department instituted an accusation against appellants charging that co-appellant/co-licensee Anwar Abouomar (Anwar) had pled no contest to a felony charge

¹The decision of the Department, dated April 25, 2005, is set forth in the appendix.

of the sale of a controlled substance.

An administrative hearing was held on March 9, 2005, at which time oral and documentary evidence was received. Exhibit 2, a certified copy of a record of conviction, was admitted into evidence without objection. Both co-licensees testified that Anwar would relinquish all ownership interest in the business and seek other employment if co-licensee Jasmin Abouomar (Jasmin) was permitted to retain the license. The Department argued that the license should be revoked, citing Department Rule 58. Subsequent to the hearing, the Department issued its decision, which sustained the charge of the accusation and ordered the license revoked.

Appellant Jasmin Abouomar thereafter filed a timely appeal in which she raises the following issues: (1) she requests a remand to the Department for reconsideration of the penalty in light of newly discovered evidence; and (2) she was denied due process as a result of an ex parte communication. In light of concessions by Department counsel, we see no need to discuss the issue concerning due process.

DISCUSSION

Appellant asks that the case be remanded to the Department for reconsideration of the penalty in light of newly discovered evidence. According to appellant's declaration under penalty of perjury, Anwar Abouomar has fled the country to avoid jail, and she is in the process of instituting divorce proceedings, as a result of which, as an innocent former spouse, she will be eligible to hold a license in her own right.

Department Rule 58 spells out the various ways in which a license may be held where the business is the community property of husband and wife. Appellant invokes Rule 58(a)(2) and (c) in support of her request for a remand. Rule 58(a)(2), in pertinent part, states that a license may be issued:

In the name of either spouse, if it can be demonstrated by evidence satisfactory to the department that the unlicensed spouse is qualified and cannot participate in the business for reasons including, but not limited to the following:

- (A) Physical disability;
- (B) Absence from the state for a prolonged period.

Rule 58(c) provides: “The unlicensed spouse must have the requirements of a holder of a license unless the husband and wife are not living together and have not lived together for at least six months.”

Ordinarily, the mere fact that only one of the co-licensees has engaged in the conduct that gives rise to an order of revocation is not a bar to the revocation of a license as to both. (See *Rice v. Alcoholic Bev. Control Appeals Bd.* (1989) 89 Cal.App.3d 30, 39 [152 Cal.Rptr. 285]; see also *Coletti v. State Bd. of Equalization* (1949) 94 Cal.App.2d 61 [209 P.2d 894].)

Appellant states in her declaration, however, that now that she is in the process of divorcing Anwar, and, now that he has fled the country, she is a qualified person under Rule 58, and revocation of the license would be punitive.

The Department’s order was entirely appropriate when it was entered. However, in light of what are claimed to be materially changed circumstances, and with the acquiescence of Department counsel, we think it appropriate to remand this matter to the Department so that it may reconsider its order in light of these changed circumstances.

The Board is not in a position to determine whether the divorce and separation of Jasmin and Anwar is bona fide, or simply a ploy to permit them to continue to enjoy the privilege of selling alcoholic beverages under the guise of a sole proprietorship. That question must be answered by the Department after its own consideration of appellant’s

submission.

ORDER

We remand this matter to the Department for it to consider the evidence offered by appellant as grounds for reconsideration of the order of revocation, and take such action as may be appropriate.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, 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.