

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

AB-8475

File: 47-291821 Reg: 05058962

MAIN STREET CALIFORNIA, INC. dba TGI Fridays
8801 Villa La Jolla Drive, La Jolla, CA 92037,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

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

ISSUED JUNE 7, 2006

Main Street California, Inc., doing business as TGI Fridays (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its on-sale general public eating place license for 10 days for its waiter, Sean Warth (the waiter), having served a glass of Pinot Gregio white wine to Anastasia Browning (Browning), a 20-year-old non-decoy minor, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Main Street California, Inc., appearing through its counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on April 20,

¹The decision of the Department, dated August 15, 2005, is set forth in the appendix.

1994. Thereafter, the Department instituted an accusation against appellant charging the sale of wine to Browning on January 14, 2005.

An administrative hearing was held on June 29, 2005, at which time oral and documentary evidence was received. At that hearing, the evidence established that when asked by Warth for identification, Browning handed him an identification card purporting to have been issued by the State of Connecticut. Warth examined the card for approximately 10 seconds, according to Browning, and 30 to 40 seconds by his own estimate, looking at both the front and back of the card, returned it to Browning and served her a glass of wine. Warth testified that he believed the card to be authentic, that his employer's policy called for him to summon a manager if an identification appeared not to be authentic, and that if a suspicious identification card was an out-of-state card, a booklet was to be checked for authentication purposes. Because he did not notice any defects in the card, it appeared authentic, and he was very busy, he did not pursue the matter further.

The attention of a Department investigator was drawn to Browning by what he perceived as her youthful appearance. He asked Browning her age, and she told him she was 21. He then asked her for identification. She produced the same identification card. After examining it for approximately 30 to 40 seconds, the investigator concluded it was not authentic.

Subsequent to the hearing, the Department issued its decision which determined that there had been a furnishing of an alcoholic beverage to Browning, and that appellant had failed to establish a defense under section 25660 because the waiter's reliance on the identification card without checking it against an out-of-state identification booklet was unreasonable.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that a defense was established under section 25660.

DISCUSSION

Section 25660 provides a defense to a sale-to-minor charge in cases where a seller has "demanded, was shown and acted in reliance upon" "bona fide evidence of majority and identity of the person," which is defined as a governmentally issued document, such as a driver's license or a military ID, "which contains the name, date of birth, description, and picture of the person."

Appellant contends that the clerk reasonably relied on the Connecticut identification card Browning presented to him, thereby establishing a defense to the sale-to-minor charge as provided by Business and Professions Code section 25660. Appellant stresses the fact that the card contained Browning's photograph and physical description, had the thickness and lamination of other genuine cards, contained a bar code and holograms purporting to represent the seal of the State of Connecticut, as well as an expiration date. Appellant asserts that Warth made a careful examination of the card and, after doing so, reasonably determined it to be an authentic identification card issued by the State of Connecticut, and argues that the facts in the case are virtually identical to those in *Carver* (2004) AB-8075, where the Appeals Board reversed a decision of the Department which had rejected a section 25660 defense.

The Department argues in its brief that appellant's clerk did not act reasonably or diligently, pointing to his unfamiliarity with a genuine Connecticut identification card, and to his access to a booklet which displayed out-of-state identifications, which he chose not to utilize, as well as his failure to ask for additional identification, consult a more experienced employee before going ahead with the sale, or simply denying the sale. It

argues that appellant's reliance on *Carver* is overstated.

The card in question is the size and shape of a typical identification card or driver's license, professionally printed and laminated. The single word "Connecticut" appears at the top front, along with two photos of Browning, her name, address and physical description, a false date of birth (purporting to show that Browning was a little more than one month short of 24 years of age), an issue date and an expiration date, all the sort of things that might appear on a genuine identification card.

But this card was not genuine, and a number of its features, viewed objectively, suggest that. It does not state on its face whether it is an identification card or a driver's license. The holograms which Warth said were important merely state "Genuine Seal of Authenticity," and make no reference to the State of Connecticut.² On the reverse side, which Warth said he "scanned ... over very quickly" (RT 83), the following language appears:

NOTICE
THIS IS NOT TRANSFERABLE
IDENTIFICATION CARD

This card may be lawfully used and accepted for identification according to it's [sic] class status. It might be accepted everywhere where the reason to accept seems to be the most satisfactory. The contents of this card in many cases mirror the information about the card holder, such as his first and last name, birth date, country of birth, etc. It helps to prove the person's identity without consideration of his/her birth certificate or national passport. *This ID card does not substitute any government identification document of the bearer. It is an international identification document confirming the choice of its bearer to use it in the countries all around the world.* [Emphasis supplied.]

The administrative law judge (ALJ) found as follows (Finding of Fact V) with respect to the defense asserted by appellant:

² By way of comparison, the hologram on a California driver's license and identification card states "The Great Seal of the State of California."

The preponderance of the evidence established that the reliance by Respondent's waiter on an identification card from Connecticut was not reasonable under the circumstances presented herein.

A. The fact that Browning presented a fake identification card from Connecticut to the Respondent's waiter after he asked her for identification, the fact that Browning had purchased the fake identification at a tattoo parlor in New York City, the fact that Browning's photograph appeared on the front of the identification card, the fact that a physical description appeared on the front of the identification card which matched Browning's physical description, the fact that the date of birth on the identification card reflected a date of birth which made the owner of the card over the age of twenty-one and the fact that Browning was only twenty years old when she visited the premises on the night of January 14, 2005 are not disputed.

B. Although the Respondent's waiter appears to have made a reasonable inspection of the identification card produced by Browning, the waiter admitted that he had no specific familiarity with identifications from Connecticut and that he is supposed to check the out-of-state identification booklet that was located in the back of the premises. However, he was busy and the identification looked authentic to him.

C. ...

2. In the 2004 Carver decision (AB-8075), the Appeals Board stated that the determining question in that case was whether the seller's reliance on a governmentally issued, or "purportedly governmentally issued," document was in good faith and reasonable. Said case dealt with a California driver license and the Administrative Law Judge found that the differences in appearance between the identification presented and a California driver license were so slight as to be imperceptible to the untrained eye. The Appeals Board went on to say that absent some more specific direction from a court, it was not willing to reject, categorically, spurious documents that purport to be governmentally issued.

3. The instant case differs from the Carver case in that the waiter had no familiarity with Connecticut identifications and yet he chose not to refer to the out-of state identifications booklet which was available to him. Additionally, we have no idea whether the identification card presented by Browning looks anything like the identification cards issued by the State of Connecticut since no evidence was presented at the hearing as to what a genuine Connecticut identification card looks like. Furthermore, while the identifications issued by the State of California contain a large Seal of the State of California as well as several smaller holograms of the Seal, the identification card presented by Browning does not contain the Seal of Connecticut. It simply contains several small holograms stating, "Genuine Seal of Authenticity."

D. Under the facts of this case, a finding can not be made that the Respondent's waiter acted in good faith and reasonably in concluding that the identification card presented to him was authentic. As stated above, he had no familiarity with Connecticut identifications and he chose not to refer to the out-of-state identification booklet that was available to him.

The Department is authorized by the California Constitution to exercise its discretion to deny, suspend, or revoke an alcoholic beverage license if the Department reasonably determines, for "good cause," that the granting or the continuance of the license would be contrary to public welfare or morals. In reviewing a decision of the Department, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but must determine, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the 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. (Cal. Const., art. XX, § 22; Bus. & Prof. Code, §§ 23084, 23085; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94-95 [84 Cal.Rptr. 113].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826] (*Masani*); *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 51 [248 Cal.Rptr. 271]; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197

Cal.Rptr. 925]; *Lacabanne, supra*, 261 Cal.App.2d at p. 185; *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Section 25660, as an exception to the general prohibition against sales to minors, must be narrowly construed. (*Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737].) The statute provides an affirmative defense, and "[t]he licensee has the burden of proving . . . that evidence of majority and identity was demanded, shown and acted on as prescribed by . . . section 25660." (*Ibid.*)

The case law regarding section 25660 makes clear that to provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. (See, e.g., *Lacabanne Properties, Inc.*, *supra*, 261 Cal.App.2d at p. 185; *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753 [318 P.2d 820].) A licensee, or a licensee's agent or employee, must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances. (*Lacabanne, supra*; *Farah v. Alcoholic Bev. Control Appeals Bd* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control, supra*, 155 Cal.App.2d at p. 753.) Whether or not a licensee has made a reasonable inspection of an ID to determine that it is bona fide is a question of fact. (*Masani, supra*, 118 Cal.App.4th at 1445; *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control, supra*, at pp. 753-754.) Reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (*5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control, supra*,

155 Cal.App.2d at pp. 753-754.)

Although section 25660 was designed "to relieve vendors of alcoholic beverages from having in all events to determine at their peril the age of the purchaser" by allowing them to rely on certain documentary evidence of majority and identity, "*the bona fides of such documents must be ascertained if the lack of it would be disclosed by reasonable inspection, the circumstances considered.*" (*Dethlefsen v. State Bd. of Equalization* (1956) 145 Cal.App.2d 561, 567 [303 P.2d 7] (italics added).) The licensee or his agent must act in good faith and with due diligence in relying on an apparently valid but actually fraudulent ID:

[T]he defense must be asserted in good faith, that is, the licensee or the agent of the licensee must act as a reasonable and prudent [person] would have acted under the circumstances. Obviously, the appearance of one producing the card, or the description on the card, *or its nature*, may well indicate that the person in possession of it is not the person described on such card.

(*Keane v. Reilly* (1955) 130 Cal.App.2d 407, 409-410 [279 P.2d 152] (italics added).)

Appellant is asking this Board to reweigh the evidence and reach a conclusion different from that of the ALJ and the Department. That is not the role of the Appeals Board. The Board may not ignore or reject a factual finding of the Department simply because it considers a contrary finding equally, or even more, reasonable than that of the Department. (*Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control, supra*, 2 Cal.3d at p. 94-95; *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106, 112-114 [28 Cal.Rptr. 74].)

There is little doubt that anyone taking the time to examine the card in question would have become suspicious of its genuineness. Indeed, the back of the card, which Warth scanned quickly, because he was busy, contains a disclaimer reasonably

calculated to put the seller on notice that further inquiry was needed: “This ID card does not substitute any government identification of the bearer. It is an international identification document confirming the choice of its bearer to use it in the countries all around the world.” The card appears to be an attempt to create a document that appeared to be official, or authentic, yet make no claim that it was, thereby immunizing its maker against criminal prosecution for forging an official document.

The ALJ’s factual findings are supported by substantial evidence and the findings support the determination. Under the circumstances, we have no reason to disturb the ALJ’s conclusion that appellant failed to establish a section 25660 defense.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ 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.