

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

AB-8993

File: 20-408398 Reg: 08068870

ABDO MOHAMED ALKOBADI, dba Omar's Food Mart
208 West Minarets Avenue, Fresno, CA 93650,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John R. Peirce

Appeals Board Hearing: April 1, 2010
San Francisco, CA

ISSUED AUGUST 11, 2010

Abdo Mohamed Alkobadi, doing business as Omar's Food Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license for having pleaded nolo contendere to the charge of issuing a check with insufficient funds with the intent to defraud, a public offense involving moral turpitude, in violation of Penal Code section 476a and Business and Professions Code section 24200, subdivision (d).

Appearances on appeal include appellant Abdo Mohamed Alkobadi, in propria persona,² and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

¹The decision of the Department, dated December 29, 2008, is set forth in the appendix.

²Sarkis V. Vartanian, a court-certified interpreter of Arabic languages, interpreted for appellant during the oral argument.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on March 1, 2004. On May 29, 2008, the Department filed an accusation charging that appellant had entered a plea of nolo contendere to violating Penal Code section 476a, a public offense involving moral turpitude.

At the administrative hearing held on November 5, 2008, documentary evidence was received and the parties stipulated to the truth of the facts in the Accusation, to the license having been issued to appellant on March 1, 2004, and to no prior disciplinary history against the license.

In November 2006 appellant wrote a check in the amount of \$1985.66 to Costco. When the check was presented to the bank for payment, appellant's checking account had insufficient funds to cover the amount. Appellant was charged with one felony count of violating Penal Code section 476a, issuing a check with insufficient funds with the intent to defraud. Appellant entered a plea of nolo contendere in the Fresno County Superior Court and agreed to pay restitution in the amount of \$2881. The felony count was later reduced to a misdemeanor, and appellant was ordered to pay a fine, to serve one day in the county jail, and to be on probation for two years, until March 2010. At the time of the administrative hearing, appellant had paid all amounts due.

Appellant testified that the business at the licensed premises is the sole support of his family and if the license is revoked, he will have to give up the business. Beer makes up approximately 60 percent of the sales at the store. He asked that the penalty be something less than outright revocation.

Subsequent to the hearing, the Department issued its decision which determined that the license should be revoked. Appellant filed a timely appeal, again asking for a more lenient penalty.

DISCUSSION

Written notice of the opportunity to file briefs in support of appellant's position was given on December 28, 2009, but appellant did not file a brief. The notice of appeal lacked sufficient information for this Board to ascertain the basis for appellant's appeal. However, appellant appeared before the Appeals Board and asked for a penalty less than outright revocation, pointing out that he had paid all restitution, fines, and court costs, and, by the time of his appearance before the Appeals Board, he had successfully completed his probation.

The Appeals Board may examine the issue of excessive penalty if it is raised by an appellant (*Joseph's of California. v. Alcoholic Beverage Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183]), but will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Beverage Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1965) 62 Cal. 2d 589, 594 [43 Cal.Rptr. 633].)

"[M]oral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain or other corrupt purpose." (*Rice v. Alcoholic*

Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 37 [152 Cal.Rptr. 285].)

Appellant was convicted of violation of Penal Code section 476a, which includes, as an essential element, the intent to defraud. Therefore, he has been convicted of a crime involving moral turpitude. (*Copeland v. Department of Alcoholic Beverage Control* (1966) 241 Cal.App.2d 186, 188 [50 Cal.Rptr. 452])

Revocation is the "standard" penalty listed in the Department's Penalty Guidelines (4 Cal. Code Regs., § 144) for "Conviction of a crime involving moral turpitude–24200(d) B&P." While outright revocation may seem a harsh penalty, we cannot say that imposition of the standard penalty in this case is an abuse of discretion.

ORDER

The decision of the Department is affirmed.³

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

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.