

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

AB-9025

File: 21-428359 Reg: 08068125

INDERPAL S. RAJPUT and PRABHJOT SINGH, dba Skyway Liquor & Deli
8247 Skyway, Paradise, CA 95969,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: January 7, 2010
San Francisco, CA

ISSUED MARCH 24, 2010

Inderpal S. Rajput and Prabhjot Singh, doing business as Skyway Liquor & Deli (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which ordered their off-sale general license revoked for co-licensee Singh having offered for sale and sold drug paraphernalia, having sold or furnished alcoholic beverages to a minor, and having kept for sale on the premises a shuriken,² violations of Business and Professions Code section 25658, Health and Safety Code section

¹The decision of the Department, dated March 26, 2009, is set forth in the appendix.

² Penal Code section 12020, subdivision (c)(11) defines a shuriken as follows:

As used in this section, "shuriken" means any instrument without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

11364.7, subdivision (a), and Penal Code section 12020, subdivision (a)(1).

The order of revocation for the sale of drug paraphernalia was conditionally stayed for a 36-month probationary period and subject to a suspension of 20 days.

Appearances on appeal include appellants Inderpal S. Rajput and Prabhjot Singh, appearing through their counsel, Robert L. Marshall, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on August 24, 2005. Thereafter, the Department instituted a four-count accusation against appellants charging the marketing and sale of drug paraphernalia (counts 1 and 2), the sale or furnishing of alcoholic beverages to Ronnie Sylvester, a non-decoy minor (count 3), and the keeping of a shuriken for sale at the premises (count 4).

An administrative hearing was held on February 10, 2009, at which time documentary evidence was received and testimony concerning the violations charged was presented by Ronnie Sylvester, the minor, and Brandon Shotwell, a Department investigator. Co-licensee Prabhjot Singh testified on behalf of appellants.

Subsequent to the hearing, the Department issued its decision which determined that all four counts of the accusation were sustained by the evidence.

Appellants filed a timely notice of appeal in which they raise the following issues: (1) co-licensee Singh had no knowledge that Sylvester and his 21-year-old companion exchanged money in the parking lot, and, therefore, did not sell, furnish, or give any alcoholic beverage to Sylvester; and (2) the finding that Exhibits 9A and 9B are shuriken is not supported by the evidence. Appellants have not appealed the charge alleging the sale of drug paraphernalia, and the Department has not disputed

appellants' contentions regarding the alleged shuriken (count 4).

DISCUSSION

Appellants contend that because it is undisputed that their clerk did not see the exchange of money between Sylvester and his companion "Danny," (identified by Department investigator Brandon Shotwell as "Danny Lutz"), and because Lutz, who was 21, purchased the alcoholic beverages, there was no sale to a minor.

If the facts were as bare-boned as appellants depict them, it could fairly be said that there was no violation. However, there are additional facts which compel the opposite result.

Sylvester and Lutz acted as a team once they entered the store, and a diligent licensee would have been aware of this by their actions. Both went to the beer cooler, each selected alcoholic beverages and took them to the counter. While Lutz and co-licensee Singh waited, Sylvester went back to the cooler to retrieve an additional alcoholic beverage. All of the beverages were placed on the counter directly in front of Singh. Although Lutz tendered the money for the beer to Singh, Singh gave the change to Sylvester, and Sylvester carried one of the bags containing alcoholic beverages from the store.

The fact that only Lutz paid for the beer is immaterial in light of the compelling evidence that it was a partner-like transaction involving two youthful-looking males. Had Singh been diligent, he would have asked both for identification. He asked neither. His failure to do so, in the face of Sylvester's obvious involvement in the transaction, resulted in a furnishing of alcoholic beverages to a minor, in violation of Business and Professions Code section 25658, subdivision (a).

The violation of section 25658, subdivision (a) was appellants' third within 19

months. Under such circumstances, we cannot say the Department's order of revocation was arbitrary or unreasonable. (See Bus. & Prof. Code § 25658.1, subd. (b).)

ORDER

The Department's decision as to counts 1, 2, and 3 of the accusation, and its order of revocation for the violation involving the furnishing of alcoholic beverages to a minor are affirmed. Count 4 is reversed.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.