

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

AB-9232

File: 21-408959 Reg: 11074870

NIDAL DURGHALLI DURGHALLI and WASIM HAMAD, dba Rancho Liquor
75 South Rancho Road, Suite A, Thousand Oaks, CA 91362,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: August 16, 2012
Los Angeles, CA

ISSUED OCTOBER 2, 2012

Nidal Durghalli Durghalli and Wasim Hamad, doing business as Rancho Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for having sold alcoholic beverages to a minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Nidal Durghalli Durghalli and Wasim Hamad, appearing through their counsel, Leonard Chaitin, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on March 4, 2004. On April 7, 2011, the Department instituted an accusation against appellants charging that

¹The decision of the Department, dated December 15, 2011, is set forth in the appendix.

appellants' agent or employee, Hernando Gomez, sold alcoholic beverages (beer and a distilled spirit) to Mackenzie Davis, a 19-year-old non-decoy minor.

At the administrative hearing held on August 31, 2011, documentary evidence was received and testimony concerning the violation charged was presented by Department investigator Steven Geertman, and by Mackenzie Davis, the minor who purchased the alcoholic beverages. George Hamad, appellants' store manager, and Antonio Gomez, their clerk, testified on behalf of appellants.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and rejected appellants' claim of an affirmative defense under Business and Profession Code section 25660.

Appellants have filed an appeal making the following contentions: (1) Appellants established a defense under Business and Professions Code section 25660; (2) the minor's uncorroborated testimony cannot be the basis of a disciplinary action; and (3) appellants established a reasonable mistake of fact defense. Each of these contentions is essentially premised upon appellants' claim that its clerk reasonably relied upon the minor's previous display of a California driver's license issued to a person other than the minor.

DISCUSSION

Mackenzie Davis purchased a 30-pack of Keystone Light beer, a 24-ounce bottle of Corona Extra beer, and a bottle of Popov vodka from appellants' clerk. She was not asked for nor did she display any identification. The transaction was observed by Department investigator Steven Geertman. Appellants claim in this appeal that the clerk reasonably relied on a California driver's license issued to Courtney Odney and displayed by Davis to appellant's store manager Hamad and clerk Gomez as her own

six months earlier.

Business and Professions Code section 25660 provides a defense to the charge of selling alcohol to minors if the licensee demanded and relied upon bona fide documentary evidence of majority and identity issued by a governmental agency. (*Dept. of Alcohol Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1438 [13 Cal.Rptr.3d 826] (hereinafter "*Masani*").) Even a fake or spurious identification can support a defense under this section if the apparent authenticity of the identification is such that reliance upon it can be said to be reasonable. (*Id.* at p.1445.)

The licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity *and compared with the person depicted*. A brilliant forgery should not ipso facto lead to licensee sanctions. In other words, fake Government ID's cannot be categorically excluded from the purview of section 25660. *The real issue when a seemingly bona fide ID is presented is the same as when actual governmental ID's are presented: reasonable reliance that includes careful scrutiny by the licensee.* (*Masani, supra*, at p.1445, italics added.)

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* (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820].)

It is undisputed that, at the time of the transaction, the clerk did not request identification, and none was displayed. Appellants claim their clerk relied on a driver's license displayed by Davis six months earlier. Davis denied ever having used the license at appellant's premises, stating it had come into her possession only two months prior to the transaction. The dispute as to when and/or whether the license was shown, as appellants claim and Davis denies, was resolved in Davis' favor by the

administrative law judge (ALJ).²

Finding of Fact 7 is the determinative finding in this case:

Outside, Davis was approached by Department investigators, who asked her how old she was. At first she stated that she was 21 years old; eventually, she admitted that she was only 19. Davis also handed over a false identification in the name of Courtney Odney, which had expired six months earlier. *The photo on the identification did not resemble, much less match, Davis. The fake identification listed a height of 5' 5" and a weight of 150 pounds. At the time of the sale, Davis was 5'6" tall and weighed between 100 and 125 pounds. Davis' hair is a reddish-blonde, whereas the fake identification indicated that the bearer's hair was blonde (and the photo shows a person with blonde hair without any red in it. (Italics added.)*

The importance of this finding is seen in the decision's conclusions of law

(CL 6-8):

CL 6: The testimony of Davis, on the one hand, and Hamad and Gomez, on the other, are in direct conflict with each other. Either Davis did not show any identification in connection with the sale (Finding of Fact ¶ 10) or she showed a fake identification (Finding of Fact ¶ 9). Relying upon the factors set forth in Evidence Code section 780, Davis is hereby found to be more credible.

CL 7: Since no identification was shown in connection with the sale or on a prior date, no section 25660 defense was established. (Findings of Fact ¶ 10).

CL 8: Assuming, *arguendo*, that Hamad and Gomez were more credible, the Respondents still did not establish a defense under section 25660. Although Odney's driver license was a bona fide, government-issued ID, the photo on Odney's identification did not resemble Davis. (Finding of Fact ¶ 7.) Moreover, Hamad testified that the ID was expired when he saw it. Given this testimony, his failure to ask to see identification on a

² We find no merit in appellants' contention that the Department was not entitled to rely on the minor's uncorroborated testimony. Davis was not an accomplice. Penal Code section 1111 defines an accomplice as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given. Davis is exposed to prosecution as a minor purchasing alcohol, an offense different, albeit related, to a charge against the seller. In any event, the finding that the 25660 defense was not established renders this issue moot.

subsequent date is inexplicable. (Odney would have had a new license by then, but Davis would still have had to use the expired ID. (Finding of Fact, ¶9.) The ID was insufficient to meet the section 25660 criteria in the first place and, in light of the fact that it was expired, should not have been relied upon in the second without some kind of follow-up.

Simply stated, appellants were shown an identification which did not resemble or match Davis' appearance, or were shown no identification at all.

Appellants have asserted, without elaboration or discussion, a "reasonable mistake of fact defense as a matter of law." This appears to be nothing more than another way of claiming reasonable reliance on a false identification, which we reject.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
BAXTER RICE, 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.