

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

AB-9366

File: 20-400696 Reg: 13078022

SANCINO OIL CORPORATION, dba Chevron
6895 Hollister Avenue, Goleta, CA 93117,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 1, 2014
Los Angeles, CA

ISSUED JUNE 11, 2014

Sancino Oil Corporation, doing business as Chevron (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for its clerk having sold or furnished an alcoholic beverage to an individual under the age of 21, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Sancino Oil Corporation, appearing through its counsel, R. Bruce Evans and Jennifer L. Carr, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated July 31, 2013, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 30, 2003. On February 13, 2013, the Department filed an accusation charging that appellant's clerk, Edgar² Juarez Cerecedo (the clerk), sold or furnished an alcoholic beverage to 20-year-old Eoin McCarthy on October 27, 2012.

At the administrative hearing held on June 12, 2013, documentary evidence was received, and testimony concerning the sale was presented by McCarthy (the minor); by the clerk; and by Josh Porter and Robert Olshaskie, Department of Alcoholic Beverage Control (ABC) agents.

Testimony established that on October 27, 2012, ABC agents observed two youthful individuals in the licensed premises — McCarthy and his friend, Seamus Roddy.³ McCarthy was wearing a sombrero and a serape because it was Halloween weekend. They obtained an 18-pack of Budweiser beer, an 18-pack of Bud Light beer, a 30-pack of Bud Light, and a 30-pack of Budweiser, and then waited in line. When it was their turn, they placed the four packages of beer on the counter, spoke briefly to each other, then McCarthy left the counter and returned with an 18-pack of Coors Light beer. Agent Porter observed from inside the store that Roddy said something like “I will pay. I have my ID.” [RT at p. 11.] Roddy then showed the clerk an ID, which was later revealed to belong to someone else, and the clerk rang up the beer. The two picked up the beer and exited the license premises. Outside, they were contacted by ABC agents who confirmed that both individuals were minors. Upon re-entering the store and

²The clerk is referred to as Edgar in the accusation and in the Department's decision, but as Edward in the reporter's transcript. [RT at p. 39.]

³Roddy was also 20, but neither the sale to him nor the identification he showed the clerk are at issue in this case.

advising the clerk of the violation, the clerk stated that he had been shown an ID by Roddy. The clerk and both minors were issued citations.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven and that no defense had been established.

Appellant then filed a timely appeal contending the Department's decision is not supported by substantial evidence because McCarthy's involvement in the transaction was too minimal to support the charge that the clerk sold or furnished alcohol to him.

DISCUSSION

Appellant contends that the administrative law judge (ALJ) improperly imputed the sale of an alcoholic beverage from the licensee to McCarthy simply because he was present when his friend purchased the alcoholic beverages using a fake ID.

Business and Professions Code section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

Appellant maintains that in order for there to be a "furnishing" of alcohol, there must be some affirmative action in furnishing the alcohol to the minor — that the minor's mere presence during the transaction is not enough. Appellant maintains that the minor in this case was merely present during the transaction, and substantial evidence is lacking to support a charge of "furnishing."

When an appellant contends that a Department decision is not supported by substantial evidence, the Appeals Board's review of the decision is limited to determining, 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. (Bus. & Prof. Code § 23084; *Boreta Enterprises*,

Inc. v. Dept. of Alcoholic Bev. Control (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113].) In making this determination, the Board may not exercise its independent judgment on the effect or weight of the evidence, but must resolve any evidentiary conflicts in favor of the Department's decision and accept all reasonable inferences that support the Department's findings. (*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734].) "Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456]; *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

The ALJ summarized the evidence establishing that McCarthy was more than a passive observer of the transaction in Conclusions of Law ¶¶ 4-5:

¶ 4. The accusation in this case alleges that the Respondent's employee furnished alcoholic beverages to McCarthy. In the Department's view, McCarthy's actions indicated that he was involved in the sale and, accordingly, Cerecedo should have known that some of the alcohol was intended for him. The Respondent, on the other hand, argued that McCarthy's involvement was minimal and, therefore, insufficient to put Cerecedo on notice that McCarthy was involved.

¶ 5. Viewing all of the facts together, the Department is correct. Although there is no evidence that Cerecedo observed McCarthy before he reached the counter, that changed when McCarthy reached the counter. With Cerecedo directly across the counter from him, McCarthy (1) put some of the alcohol on the counter, (2) had a conversation with Roddy about purchasing additional alcohol, (3) obtained an 18-pack of Coors Light and brought it back to the counter, and (4) picked up some of the beer to carry it out of the Licensed Premises. (Findings of Fact ¶¶ 6-7.)

The Board's position on transactions of this type was well stated in *Circle K Stores, Inc.* (2004) AB-8209:

The clerk is the person in control of the sale. He or she must be alert to the substance of the transaction, and cannot ignore circumstances that ought to raise questions in the mind of a reasonably prudent person. When the transaction is in the nature of a group purchase, as the one in this case appeared to be, a clerk must establish that each of those who are involved in the transaction are 21 or over. It is not enough that the person who assembles the various selections and pays for them is 21. A clerk may not close his or her eyes to the reality of what is taking place. The critical fact in this case is not the mere presence of minors, it is their participation in the transaction, all of which took place in front of the clerk.

Substantial evidence supports a charge that the clerk in this matter furnished alcohol to McCarthy despite the fact that he did not pay for the beer. As the Board said in *Circle K, supra*, "When the transaction is in the nature of a group purchase, as the one in this case appeared to be, a clerk must establish that each of those who are involved in the transaction are 21 or over."

ORDER

The decision of the Department is affirmed.⁴

FRED HIESTAND, ACTING CHAIRMAN
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This 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.