

ISSUED FEBRUARY 26, 1996

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

ADNAM ALQUDSI	)	AB-6542
dba BP Gas)	
430 East California Avenue	)	File: 20-253749
Bakersfield, CA 93307	)	Reg: 95031534
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ralph B. Dash
THE DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	January 11, 1996
	)	Los Angeles, CA

Adnam Alqudsi, doing business as BP Gas (appellant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which unconditionally revoked his off-sale beer and wine license for appellant pleading guilty to an information charging him with the crime of receiving stolen property in violation of Penal Code §496(a), a crime involving moral turpitude, contrary to the public welfare and morals provisions of the California Constitution, Article XX, Section 22, and in violation of Business and Professions Code §24200(a) and (d).

Appearances on appeal included Frederick C. Kumpel, counsel for appellant;

¹The decision of the department dated June 8, 1995 is set forth in the appendix.

and Jonathon E. Logan, counsel for the department.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on November 26, 1990. Thereafter, the department instituted an accusation on September 26, 1994, alleging appellant's convictions as pled to by appellant.

An administrative hearing was held on April 28, 1995, at which time oral and documentary evidence were received. Subsequent to the hearing, the department issued its decision which found that on December 8, 1993, in Kern County Superior Court, appellant pled guilty to an information charging him with the crime of receiving stolen property in violation of Penal Code §496(a), a crime involving moral turpitude, in violation of Business and Professions Code §24200(d).

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raised the following issues: (1) the crucial findings were not supported by substantial evidence, (2) the crime was not a crime involving moral turpitude, and (3) the penalty was excessive.

DISCUSSION

I

Appellant contended that the crucial findings were not supported by substantial evidence. We note some confusion concerning the powers of the department and the extent of appellate review by the appeals board.

It is the department and not the appeals board that is authorized by the California Constitution to exercise its discretion whether to suspend or revoke an

alcoholic beverage license, if the department shall reasonably determine for "good cause," that the continuance of such license would be contrary to public welfare or morals.

The appeals board's review is limited by the California Constitution, by statute, and by case law. In reviewing a department's decision, the appeals board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the department are supported by substantial evidence in light of the whole record, and whether the department's 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.²

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477, 95 L.Ed. 456, 71 S.Ct. 456, and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871, 269 Cal.Rptr. 647).

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the appeals board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to

²The California Constitution, Article XX, Section 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage control (1970) 2 Cal.3d 85, 84 Cal.Rptr. 113.

reasonably support the findings in dispute (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874, 197 Cal.Rptr. 925). Appellate review does not "...resolve conflict[s] in the evidence, or between inferences reasonably deducible from the evidence..." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678, 13 Cal.Rptr. 658).

The department's decision, finding 2, found that appellant had pled guilty to a violation of Penal Code §496(a), which was alleged by the department to be a crime of moral turpitude. Exhibit 1, admitted into evidence at the administrative hearing, is a certified copy of a plea of "nolo contendere to count 1, violation of PC 496(A), a misdemeanor pursuant to PC 17. Defendant found guilty by court."

The record shows substantial evidence supportive of the crucial findings.

II

Appellant contended that the crime was not a crime involving moral turpitude. The department proceeded against appellant under the authority of Business and Professions Code §24200(d) which states in pertinent part: "The following are the grounds that constitute a basis for the suspension or revocation of licenses: ...(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude...."

No definition of what constitutes "moral turpitude" has been given by the Legislature. However, the courts have found certain acts involve moral turpitude, such as crimes involving theft, receiving stolen property, extortion, and fraud (see In re Rothrock (1944) 25 Cal.2d 588, 154 P.2d 392, 393; Re Application of McKelvey

(1927) 82 Cal.App. 426, 255 P. 834; Re Application of Stevens (1922) 59 Cal.App.

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251, 210 P. 422; and Re Application of Thompson (1918) 37 Cal.App. 344,
174 P. 86.

The court in Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 37, 152 Cal.Rptr. 285, stated that "moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain...." See also Ullah (1994) AB-6414, where the crimes of insurance fraud, grand theft, and perjury were held to be crimes of "moral turpitude" and were substantially related to the duties, functions, and qualifications of a licensee.

We determine that the crime pled to by appellant comes within case law as to dishonest conduct. While appellant argued he only loaned the two unknown persons money and took the property as security, appellant did plead to the crime.

III

Appellant contended that the penalty was excessive.

The appeals board will not disturb the department's penalty orders in the absence of an abuse of the department's discretion (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287, 341 P.2d 296).

However, where an appellant raises the issue of an excessive penalty, the appeals board will examine that issue (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785, 97 Cal.Rptr. 183).

The department had the following factors to consider: (1) appellant pled guilty

to the crime of receiving stolen property, (2) the crime of receiving stolen property is a crime involving moral turpitude, (3) the crime of receiving stolen property involves circumstances concerning the honesty of the offender, and (4) dishonesty is a factor which directly relates to the holding of a state license and the duty of a licensee to follow the laws and regulations of the department.

We determine the penalty imposed was reasonable and within the department's discretion.

CONCLUSION

The decision of the department is affirmed.³

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.