

ISSUED AUGUST 7, 1996

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

BLUE SHAW, INC.	)	AB-6557
dba The Blue Saloon)	
4657 Lankershim Blvd.	)	File: 48-217483
North Hollywood, CA 91602,	)	Reg: 95031866
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Robert A. Neher
THE DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 1, 1996
	)	Irvine, CA

Blue Shaw, Inc., doing business as The Blue Saloon (appellant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellant's on-sale general public premises license for a total of 15 days, for appellant's bartender having served an alcoholic beverage (beer) to a person under age 21, and for allowing that person to enter and remain in the premises, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, Article XX, §22, arising from a violation of Business and Professions Code §24200, subdivision (a) and (b), 25658, subdivision (a), and 25665.

¹The decision of the department dated July 6, 1995, is set forth in the appendix.

Appearances on appeal included appellant Blue Shaw, Inc., appearing through its counsel, Joshua Kaplan; and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on May 23, 1988. Thereafter, the department instituted an accusation against appellant on January 10, 1995.

An administrative hearing was held on July 6, 1995, at which time oral and documentary evidence was received. At that hearing, testimony showed that appellant's bartender served an alcoholic beverage (beer) to a patron under age 21 after misreading her California driver's license which showed her correct age at the time of the sale as 19 years. The minor was what is commonly called a "police decoy" who entered the premises under the authority and control of a peace officer of the Los Angeles Police Department.

Subsequent to the hearing, the department issued its decision which suspended appellant's license for 15 days as to Determination of Issues I,² and 10 days as to Determination of Issues II,³ both suspensions running concurrently for a total suspension of 15 days. Appellant thereafter filed a timely notice of appeal.

²The determination that an alcoholic beverage was served to the minor.

³The determination that the minor was allowed to remain in the premises and allowed to consume an alcoholic beverage.

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In its appeal, appellant raised the contention that the crucial findings were not supported by substantial evidence.

DISCUSSION

Appellant contended that the crucial findings were not supported by substantial evidence, arguing that the minor showed a false identification to the bartender before the service of the beer (good faith reliance on a false identification can present a complete defense to an accusation).

Amy Rich, a 19-year-old reserve officer with the Los Angeles Police Department, testified that she entered the premises (persons under the age of 21 years are prohibited from entering or remaining in such a premises, as provided by Business and Professions Code §25665). She went to the bar and ordered a Budweiser beer and was served such. The bartender requested proof of age and she showed the bartender her California Driver's license which showed her age as under 21 years. The bartender examined the identification and then served the beer [R.T. 13-16].

Todd Hankel, a police officer for the Los Angeles Police Department, observed Rich enter the premises, request a beverage, present her identification to the waiter, and the service of the beverage [R.T. 6, 8]. The minor left the beer bottle on the fixed bar, which bottle was seized by Hankel [R.T. 8].

There were conflicts in the evidence in that Susan Dwier Cantalupo, a bartender for another premises near appellant's location, testified that she also served Rich a

beer, examined Rich's driver's license which showed Rich to be over the age of 21 years. Cantalupo had been cited for serving the minor [R.T. 51-54].

Michael Steven Kritzer, the bartender for appellant, testified that the identification shown by Rich showed her to be over the age of 21 years [R.T. 35-36].

Where there are conflicts in the evidence, the appeals board is bound to resolve conflicts of evidence in favor of the department's decision, and must accept all reasonable inferences which support the department's findings. (Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]--a case where there was substantial evidence supporting the department's as well as the license-applicant's position; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].) Often when there are conflicts in the evidence, the question of credibility of particular witnesses is at issue.

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644] and Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812].)

Appellant also argued that the police officer did not follow the department's guidelines. A reading of the record appears to indicate that, while the police officer did not follow the guidelines in minute detail, the inference can reasonably be made from

the evidence that it was the bartender who erred and failed to do his duty to carefully check the minor's identification. Technical failure to follow what were then mere guidelines is no defense for the misconduct of appellant. The credibility issue (the // witnesses produced by appellant or the witnesses produced by the department) presented the major stumbling block for appellant.

CONCLUSION

The decision of the department is affirmed.⁴

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

⁴This 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.