

Appearances on appeal include appellant Aladdins Mediterranean Cafe & Gourmet Market, Inc., appearing through its counsel, George R. Najjar, and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public eating place license was issued on July 5, 1995. Thereafter, the Department instituted an accusation against appellant charging the above referenced violations. An administrative hearing was held on December 9, 1997, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the license should be revoked.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) appellant, a corporation, is not responsible for the illegal acts of Amjed Mujahed who was not an officer or employee of the corporation at the time of the illegal acts, and (2) the corporation though its agent, its attorney, properly notified the Department of the transfer of the stock from Mujahed prior to the illegal acts. The contentions will be considered together.

DISCUSSION

The Department 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 scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the 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

I

Appellant contends that appellant, a corporation, is not responsible for the illegal acts of Amjed Mujahed who was not an officer or employee of the corporation at the time of the illegal acts, and the corporation though its agent, its attorney, properly notified the Department of the transfer of corporate stock from Mujahed prior to the illegal acts.

Appellant cites the case of Laube v. Stroh (1992) 2 Cal.App.4th 364 [3 Cal.Rptr.2d 779], for the proposition that, without knowledge of the illegal conduct, appellant should not be held responsible for the illegal conduct. The Laube case was actually two cases--Laube and Delena, both of which involved restaurants/bars--consolidated for decision by the Court of Appeal.

The Laube portion dealt with surreptitious contraband transactions between patrons and an undercover agent--a type of patron activity concerning which the licensee had no indication and therefore no actual or constructive knowledge--and the court ruled the licensee should not have been required to take preventive steps to suppress that type of unknown patron activity. Laube does not apply.

The DeLena portion of the Laube case concerned employee misconduct, wherein an off-duty employee on four occasions sold contraband on the licensed

²The California Constitution, article XX, §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].

premises. The court held that the absence of preventative steps was not dispositive, but the licensee's penalty should be based solely on the imputation to the employer of the off-duty employee's illegal acts. The imputation to the licensee/employer of an employee's on-premises knowledge and misconduct is well settled in Alcoholic Beverage Control Act case law. (See Harris v. Alcoholic Beverage Control Appeals Board (1962) 197 Cal.App.2d 172 [17 Cal.Rptr. 315, 320]; Morell v. Department of Alcoholic Beverage Control (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405, 411]; Mack v. Department of Alcoholic Beverage Control (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633]; and Endo v. State Board of Equalization (1956) 143 Cal.App.2d 395 [300 P.2d 366, 370-371].)

Louis Antonio Tamagni, a police officer for the City of San Diego, testified at the administrative hearing, and his reports were placed into evidence pursuant to a stipulation of the parties through their attorneys [RT 9-10].

On October 16, 1996, the officer met Amjed Mujahed³ at the premises and negotiated the sale of 200 pounds of marijuana for the sum of \$230 per pound (Amjed Mujahed was referred to as Mohammed Mujahed by his uncle who testified at the administrative hearing --RT 39-68). Pager numbers were exchanged and the code "200" was to be used in paging. Thereafter, there were 16 phone calls between the parties negotiating the quantity and price. The final agreed price was to be \$46,000 [Exhibit 2].

On October 23, 1996, the officer at the behest of Mujahed, went to the premises and, while in the office of the premises, saw the sum of \$45,000 in a briefcase, which, upon the officer leaving the office, was placed on a shelf in the office by Mujahed. Mujahed showed the officer the remaining \$1,000 of the purchase price which Mujahed

³*A Department's Corporate Questionnaire (Exhibit O), lists Mujahed as president, secretary, and director as of June 29, 1995. He is also listed as a one-third owner of the corporate stock, as of May 8, 1995.*

had in his pocket [Exhibit 2].

On the same day, the parties met at a business parking lot, the money and marijuana changed hands, and Mujahed was arrested as he attempted to leave the parking lot [Exhibit 2]. Officers, thereafter, searched the residence where Mujahed lived (the residence is the home of his uncle, Hamdi Abu Khalaf, as well as the residence address listed for Mujahed on the Department's Corporate Questionnaire [Exhibits 2 and 6]).

On May 21, 1997, investigators from the Department checked the phone in the office of the premises and found it was a separate line (from other phones or phone in the premises). When the investigators called the number which Mujahed had given to the officer and the officer had used to contact Mujahed, the corporation office phone would ring [Exhibit 3]. While searching the premises, 15 canceled checks were found signed by Mujahed for varying amounts and payees. The checks were dated from August 26, 1996 through October 31, 1996, a period prior to and following the illegal acts of Mujahed [Exhibit 4].

Hamdi Abu Khalaf, presently the secretary of appellant, and son of the present sole stockholder, his mother, testified that Mujahed was his nephew who lived with him [RT 39]. Khalaf had gone overseas in October 1996, and left his nephew Mujahed to "see" to the premises. Apparently, Mujahed had authority to sign checks which the bank honored [Exhibit 4, and RT 47-48]. Exhibit 4 shows that Mujahed on December 4, 1996, about one and one-half months following his arrest, cashed a bank draft drawn on appellant for the sum of \$16,650.

Civil Code §2298 states: "An agency is either actual or ostensible." Civil Code §2300 defines "ostensible agency" as: "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (See also 2 Summary

of California Law, Witkin, pages 52-53 for a full discussion of ostensible agency.) In the matter of Shin (1994) AB-6320, the Appeals Board found an ostensible agency where a licensee's daughter, while visiting the premises, was told by the father/licensee not to sell anything, but to watch out for thieves while the father was busy with another patron. While at the counter near her father, the daughter sold an alcoholic beverage to a minor and accepted payment for the beverage, having access to the cash register.

Returning to the review in the present appeal, the following colloquy occurred during the administrative hearing between counsel for the Department and Khalaf:

“Q. [Wainstein, counsel for the Department] Being that you knew about your nephew [apparently concerning the uncle’s screaming at Mujahed’s staying out late and his “unusual” friends -- RT 54-55], why in the world did you put him at the restaurant to look over the manager of -- if you were that concerned about his activities and knew then, perhaps, how irresponsible he was -- [?].

“A. [Hamdi Abu Khalaf] Well, he was irresponsible. I believe that was a very nice kid that would listen. He didn’t yell back at me or anything. He’s -- if you would know him, he’s very obedient, nice gentleman....”

[RT 55-56].

* * *

“Q. During the month of October while you were gone, you basically put him in charge of the restaurant?

“A. I did not put him in charge. It’s like if you have a son and you leave your law firm and you tell him to watch my employees. It’s -- like, you do not hire him, but your expectations of your son or family member to take care of your property or take care of your business is only normal.

We have a close family, like family in Madrid, similar to what you see with Mexican family over here. We’re very close, and not everything is money in the world. We just take care of each other.”

[RT 58].

Exhibit A shows that on July 15, 1996, approximately three months before the illegal acts of Mujahed, Reyad Mousa was appointed as president, vice-president,

treasurer, and secretary of the corporation.

Exhibit B, a Department's Corporate Questionnaire dated February 4, 1997, shows the shares of ownership in Mujahed were transferred as of February 15, 1996.

Exhibit C, a record of corporate stock transfer, shows the stock holdings of Mujahed were transferred on February 15, 1996, a period of approximate eight months prior to the illegal acts of Mujahed.

Notwithstanding, the record shows that on April 22, 1997, the attorney for appellant faxed a copy of Exhibit B to the Department, essentially filing the same over nine months late, and in violation of the Department's Rule 68.5. There is no record that Exhibit A was ever filed with the Department.

Apparently, the Department was not informed of the change of officers and stockholders of the corporation, thus eliminating Mujahed as an officer and stockholder, until approximately six months following the illegal acts of Mujahed. Together with Exhibit 4, being a draft for \$16,650 for cash and signed by Mujahed, and 14 checks written on the corporation account by Mujahed, for various apparent corporate expenditures in the approximate total sum of \$5,454, all such drafts were written some appreciable time after the alleged removal of Mujahed from corporate office and ownership. Such records cast doubt on the veracity of the actions of the corporation through its new owners, as attested to in Exhibits A, B, and C.

ORDER

The decision of the Department is affirmed.⁴

⁴*This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §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

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

JOHN B. TSU, MEMBER, did not participate in the oral argument or decision in this matter.