

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

ATTA HILAL	)	AB-7067
dba Greenfield Plaza Liquor Store)	
1101 Greenfield Drive	)	File: 21-256105
El Cajon, CA 92021,	)	Reg: 97041203
Appellant/Licensee,)	
v.	)	Administrative Law Judge
	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	August 12, 1999
	)	Los Angeles, CA

Atta Hilal, doing business as Greenfield Plaza Liquor Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for his clerk, Safa Tomazee, having sold an alcoholic beverage (a six-pack of Bud Light) to Jeffrey W. Hobson, who at the time was acting as a minor decoy for the San Diego County Sheriff's Department, said sale 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 §25658, subdivision (a).

¹The decision of the Department, dated March 26, 1998, is set forth in the appendix.

Appearances on appeal include appellant Atta Hilal, appearing through his counsel, John J. McCabe, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general license was issued on January 21, 1992. Thereafter, on September 22, 1997, the Department instituted an accusation charging an unlawful sale to a minor decoy by appellant's clerk.

An administrative hearing was held on January 14, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by the minor decoy and San Diego County Deputy Sheriff Andrew E. Dvorak with regard to the transaction in question, and by appellant Atta Hilal in his defense against the charge.

Subsequent to the hearing, the Department issued its decision which determined that the unlawful sale had occurred as alleged, and ordered appellant's license suspended for 25 days.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) there is no competent evidence to support a violation of the Business and Professions Code, and (2) the penalty is excessive.

DISCUSSION

I

Appellant contends there is insufficient evidence to sustain the finding of a violation of Business and Professions Code §25658, subdivision (a). Appellant cites four instances of alleged evidentiary insufficiency: there was no police officer in the store when the transaction occurred; the decoy mistakenly identified appellant Atta Hilal as the clerk who made the sale; there is no evidence the minor was searched for other than the driver's license presented at the hearing; the identification of the clerk,

Tomazee, was based upon uncorroborated hearsay. We find none of these contentions persuasive.

The fact that the police officer was not in the store when the sale occurred is of little significance. He entered the store shortly after the sale occurred, and the decoy identified Tomazee as the seller. Tomazee then admitted making the sale, claiming to the deputy that the decoy looked "old enough" [RT 33], and later explaining to appellant that he "got confused between liquor and cigarettes" [RT 47].

The decoy did not mistakenly identify appellant as the clerk who made the sale. The decoy was clearly describing his interactions with the person who was the clerk [see RT 11-14].

The decoy was asked only if he had seen the person (who was appellant) sitting to the left of defense counsel "at any time" when he was in the store, "either before the purchase or after" [RT 18]. The decoy replied that he (appellant) was "the person behind the counter" [RT 18]. However, since appellant himself was at the store, having been in his office when the sale took place, the decoy may well have later seen him behind the counter when he (appellant) was speaking to the deputy and, at the same time, berating the clerk for making the sale [see RT 47-48].

There was no claim that the decoy presented false identification, so the fact he was not searched for identification other than the driver's license presented at the hearing is irrelevant. Appellant himself testified that the clerk said he was confused as to the different age requirements for the purchase of alcohol and tobacco.

While the police officer's testimony regarding the minor's identification of the clerk is technically hearsay, there is sufficient evidence in the record as a whole as to who made the sale such that any unjustified reliance on that aspect of the deputy's

testimony could hardly be prejudicial.

II

Appellant contends that the penalty, a 25-day suspension, is excessive. He points out that he took steps to be certain employees understood and complied with the law and personally maintained supervision over them. He also states that the sale was the result of a mistake, and the business is the sole source of support for his family. In addition, appellant suggests the Administrative Law Judge may have been subconsciously influenced by references to a pending charge of an additional violation, and may also have improperly relied upon hearsay evidence. Finally, appellant cites the lack of any reference or adherence to departmental policy with regard to second or subsequent violations.

Appellant acknowledges that this was the second violation charged to his license, the first having been resolved by payment of a fine in lieu of a 10-day suspension.

The Department commonly opts for a 25-day suspension on a second sale-to-minor violation. That the decision makes no explicit reference to any Departmental policy regarding the suspension imposed in the case of a second or subsequent violation is unimportant. 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].) We do not believe it can be said that the Department abused its discretion.

Nor do we believe the Board should speculate as to whether the ALJ was improperly influenced by any reference to another pending charge. The ALJ specifically disavowed consideration of that matter and is entitled to be taken at his word in the

absence of any evidence to the contrary. A penalty commonly imposed in similar situations is certainly not such evidence.

ORDER

The decision of the Department is affirmed.²

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

² 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 a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.