

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

SALEH AHMED ALI and FAHED	)	AB-7334
MOHAMED ABDULRAB SAEED)	
dba Cruz Country Store	)	File: 20-314830
373 West North	)	Reg: 98043866
Fresno, CA 93706,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Jeevan S. Ahuja
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	November 18, 1999
Respondent.	)	San Francisco, CA
_____)

Saleh Ahmed Ali ("Ali") and Fahed Mohamed Abdulrab Saeed ("Saeed"), doing business as Cruz Country Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale beer and wine license for Saeed having, on three occasions, purchased cigarettes, believing them to be stolen, 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, subdivisions (a) and (b), and

¹The decision of the Department, dated December 24, 1998, is set forth in the appendix.

Penal Code §§664 and 496.

Appearances on appeal include appellants Ali and Saeed, appearing through their representative, Sarkis Vartanian, and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas R. Loehr. ²

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on March 18, 1996. Thereafter, the Department instituted an accusation against them charging that Saeed, on three occasions, purchased cigarettes which he believed to have been stolen.

An administrative hearing was held on November 4, 1998, at which time oral and documentary evidence was received. At that hearing, Department investigator Chris Espinoza testified about three transactions in which Saeed purchased cigarettes from Espinoza which Espinoza told him had been stolen. Saeed's first purchase on February 27, 1998, was four cartons of Marlboro cigarettes for \$10 each, a total of \$40. His second purchase, on March 4, 1998, was 60 cartons of cigarettes for \$495. The third, and final transaction, on March 12, 1998, involved 600 cartons for which Saeed paid Espinoza \$5,000. Following the third transaction, Espinoza and other Department investigators returned to the premises and seized the cigarettes. At that time, Saeed made a spontaneous statement, "Okay, you guys got me." Saeed later signed a statement admitting the purchase

² Saeed did not appear at the administrative hearing, and is a party to this appeal only by virtue of his partnership interest in the license.

of stolen cigarettes, and that he did so in order to make money. Ali's representative at the hearing did not contest Espinoza's testimony, but, in cross-examination, established that Espinoza was unable to implicate Ali in any of the transactions.

John Hall, another Department investigator, testified that, in the course of an inspection of a premises in Biola licensed to Ali and three others, eight full cartons and approximately 168 individual packages of cigarettes bearing the same tax stamp number as the cigarettes sold to Saeed were discovered. Hall acknowledged that he did not know how the cigarettes got there.

In response to questioning by the Administrative Law Judge, Hall explained that the tax stamp number was specially assigned to the cigarettes used in the sting operation, and would not be found on other cigarettes.

Ali, called as a witness by the Department, testified that he and Saeed had initially purchased the business and the license jointly, but, because of their inability to get along, they had reached an agreement pursuant to which each would run the business for a year at a time, and be entitled to all the profits during that year. On cross-examination, Ali said that he and Saeed took turns buying cigarettes, and it was Saeed's turn to buy in 1998, when the purchases in issue occurred.

Subsequent to the hearing, the Department issued its decision which determined that the charges of the accusation had been established, and ordered the license revoked.

Appellants thereafter filed a timely notice of appeal. In the appeal, appellant

Ali contends that he had no involvement in the purchases of the cigarettes, so, as to him, the license should not be revoked.

DISCUSSION

Appellant Ali contends that, because he had no involvement in the illegal transactions, he should be permitted to continue as a sole licensee.

Appellant's argument fails for several reasons, the most significant being the evidence that shows that he benefitted from Saeed's actions.

The ALJ rejected as lacking in credibility Ali's testimony about the supposed business arrangement pursuant to which Saeed was solely responsible for the operation of the business during the period the illegal purchases were made. Ali executed tax returns which showed he and Saeed shared profits and losses for the period in question. In addition, cigarettes with the same tell-tale tax stamp showed up at another licensed premises in which Ali, but not Saeed, owned an interest. Not surprisingly, Ali disclaimed any knowledge as to how they got there.

The ALJ properly rejected appellant Ali's contention that Laube v. Stroh (1992) 2 Cal.App.4th 364 [3 Cal.Rptr.2d 779], controlled. Laube v. Stroh did not involve a partnership, which, despite Ali's testimony, is what existed here.

We are satisfied the ALJ correctly applied the holdings of Coletti v. Board of Equalization (1949) 94 Cal.App.2d 61 [209 P.2d 984] and Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30 [152 Cal.Rptr. 285], to the effect that a license held by partners may be revoked because of wrongdoing by only one of the partners. The license is indivisible, and when it is revoked as to one, it is revoked as to all.

Of course, as the Board has recognized on other occasions, principally in cases involving a franchise relationship, the Department has the power and the discretion to stay an order of revocation, subject to conditions it may impose, leaving open the possibility that an innocent licensee may retain an ownership interest in a license to sell alcoholic beverages. This does not appear to be a case where the Department would have a serious interest in considering such an approach.

ORDER

The decision of the Department is affirmed.³

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

³ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.