

ISSUED APRIL 16, 2001

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

QUIK STOP MARKETS, INC., BALDEV	)	AB-7399
SANGHA and PALMINDER SANGHA)	
dba Quik Stop Market #127	)	File: 20-270843
505 A Street	)	Reg: 98044679
Hayward, CA 94541,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Robert R. Coffman
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	February 15, 2001
Respondent.	)	San Francisco, CA

Quik Stop Markets, Inc., Baldev Sangha, and Palminder Sangha, doing business as Quik Stop Market #127 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale beer and wine license for 25 days, for their employee having sold an alcoholic beverage to a minor, 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 April 8, 1999, is set forth in the appendix.

Appearances on appeal include appellants Quik Stop Markets, Inc., Baldev Sangha, and Palminder Sangha, appearing through their counsel, Marvin B. Ellenberg, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 20, 1992. On September 29, 1998, the Department instituted an accusation against appellants charging that appellants' employee, Harjeet Jammu, sold an alcoholic beverage (beer) to Ali Khan Liaquat, a minor.²

An administrative hearing was held on February 9, 1999, at which time oral and documentary evidence was presented, including oral testimony from the minor, Liaquat Ali Khan ("Khan"); Hayward police officer William Jakub ("Jakub"); Harjeet Jammu ("Jammu"), the clerk; and appellant Baldev Sangha ("Sangha").

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged, and ordered a 25-day suspension.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) there was no compliance with Rule 141(b)(5), in that (a) there was no re-entry into the premises by the police officer directing the decoy, and (b) there was no compliance with the face to face

² The correct name of the minor is Liaquat Ali Khan. (See RT 8). Khan was acting as a decoy for the Hayward Police Department.

identification requirement; the testimony of Jakub, the police officer, and Khan, the decoy, regarding such matters was untruthful; (2) Rule 141(b)(3) was violated by Jakub's refusal to permit the clerk to examine Khan's driver's license after he was confronted by Jakub; Rule 141(b)(3) is not limited to requests prior to a sale; and (3) the findings are not supported by the record, and the determinations are not supported by the findings.

DISCUSSION

I

Appellants contend that there was no compliance with Rule 141(b)(5), in that (a) there was no re-entry into the premises by the police officer directing the decoy, and (b) there was no compliance with the face to face identification requirement; the testimony of Jakub, the police officer, and Khan, the decoy, regarding such matters was untruthful.

This is a case where the credibility determinations by the Administrative Law Judge control the resolution of this issue, consistent with basic principles governing appellate review.

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.³

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

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; 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].)

When presented as witnesses on behalf of the Department, the police officer, Jakub, and the decoy, Khan, both gave consistent testimony about what occurred in the course of the transaction, with particular reference to steps taken to comply with the face-to-face identification process required by Rule 141(b)(5) - that Jakub was in the store and witnessed the transaction; that Jakub followed Khan

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

from the store after the sale, examined the paper sack containing the beer, and then reentered the store with Khan; that Jakub advised the clerk he had sold an alcoholic beverage to a minor; and that Khan, from a distance of about three feet, identified Jammu as the seller.

Following their testimony, Jammu, the clerk, testified he had been told by Khan that he was 21, and that he had been shown identification which showed Khan to be 21. Further, Jammu denied that Khan had returned to the store to identify him, as both Jakub and Khan had asserted.⁴

Appellant Sangha then identified a video recording made by a surveillance camera at the store, which, based upon what occurred following its viewing by the ALJ, counsel and all witnesses, appeared to present a somewhat different scenario from that depicted by Jakub and Khan.

Sangha was permitted to testify, over objection, that the tape revealed that Jakub had not exited the store and reentered with Khan, but instead remained standing next to the clerk.

Jakub and Khan were then recalled by Department counsel. Both conceded they had been mistaken in their earlier testimony, and both agreed that it was another officer who entered the premises and conducted the identification process, and that Khan might have been as far as seven to ten feet away from the clerk when he identified him to the police officer.

⁴ Jammu's employment with appellants lasted two months. He was terminated after selling to a minor acting as a decoy under Sangha's direction.

Appellants have focused on the original testimony of Jakub and Khan, claiming it to be false, while the ALJ relied upon their testimony given after viewing the video recording of the transaction, and, we must assume, found it credible. That the ALJ relied upon the corrected testimony is clear from Finding V and Determination I of his proposed decision:

“The facts in this case are that the minor decoy did reenter the premises with a police officer and did identify the clerk as the person who sold him the beer. The minor reentered the premises with a police officer other than the officer who witnessed the sale, the latter having remained in the premises. The minor remained in the premises only briefly, but he made eye contact with Jammu and identified him as the clerk who sold him the beer.”

...

“Under the facts herein, there was compliance with subdivision (5) of Rule 141 in that a reasonable attempt was made to enter the premises and to have the minor make a face to face identification. The Rule does not require the minor to converse with the licensee or the licensee’s employee, to answer questions of the licensee or the employee, or to do anything other than make a face-to-face identification. Here the face-to-face identification was brief but was made in the actual presence of the clerk. The Rule does not require some type of ‘confrontation’ as contended by respondent.”

Appellants also argue that the absence of the words “face-to-face identification” from Finding V somehow renders it inadequate, citing an earlier Board decision in Chun (1999) AB-7287, which reversed a decision of the Department for non-compliance with Rule 141(b)(5). We have reviewed Chun and believe it is too factually dissimilar to be helpful. The fact that the ALJ did not use the magic words “face-to-face identification” is inconsequential in light of his substantively equivalent finding that the decoy “made eye contact with Jammu and identified him as the clerk.”

Appellants also contend that identification process was faulty because it was conducted by an officer other than Jakub. According to appellants, only Jakub could be considered to be the officer directing the decoy. This contention has been raised in several cases presented to the Board, with no acceptance. It does not strain the language of the rule in the slightest to conclude that any of the several officers engaged in the decoy operation could, with respect to each facet of the decoy's conduct, be for that activity the officer directing the decoy.

II

Appellants contend Rule 141(b)(3) was violated by Jakub's refusal to permit the clerk to examine Khan's driver's license after he was confronted by Jakub. They argue that there is nothing in the rule limiting requests for identification to the time before a sale is made, and that if there are reasons for withholding the identification when a request is made after the sale has occurred, the rule must be changed.

When confronted by Jakub about the sale, Jammu claimed the decoy had told him he was 21 (Jakub, who was within hearing distance, testified he heard the decoy say "18"), and further claimed the identification presented to him by Khan showed Khan to be 21 (Exhibit 2, Khan's driver's license, shows him to be 18 years of age).

Although Jakub did not recall whether Jammu had asked to see the decoy's identification after being confronted, the Department does not dispute Jammu's claim that he made such a request.

Rule 141(b)(3) provides, in pertinent part, that “a decoy who carries identification shall present it upon request to any seller of alcoholic beverages.”

It would seem obvious that the purpose of this part of Rule 141(b)(3) is to give to the prospective seller of an alcoholic beverage to a minor the opportunity to avoid making an unlawful sale. Assuming that the police decoy is under the age of 20, as required by Rule 141, the production of the identification affords the seller the protection he or she needs.

We do not see the rule as having a continuing applicability once the sale has concluded. At that point, compliance with the request to see the identification is optional on the part of the officer, and would seem to depend in large part on his assessment of what might be accomplished by honoring the request.

Appellants do not dispute the notion that the police have a duty to protect the minors who are the decoys. One danger which cannot be ignored is that of possible retaliation. For that reason, it is customary to delete the decoy's address from the driver's license or other identification when placing it, or a copy, into the evidentiary record. While the address would have been visible when first presented to the clerk, it is not something he would normally be expected to recall from his initial examination of the document.

We are of the view that the rule is satisfied when the decoy presents his or her identification at the time of the sale. The rule does not require more.

III

Appellants contend the findings do not include a finding of the required face-to-face identification. They contend there was no communication of any kind between the decoy and the clerk, asserting that the identification, if any, occurred while the decoy was at the doorway talking to another police officer, as the clerk was involved with another customer, unaware he was being identified.

Appellants contend that, unless the clerk was aware he was being identified as the seller to the decoy, there was no compliance with Rule 141, and that the findings and determination do not sufficiently show such awareness.

We read the decision as finding that the clerk was aware or, in the circumstances, should have been aware he was being identified as the seller. We also believe there is sufficient evidence in the record to support such a determination.

ORDER

The decision of the Department is affirmed.⁵

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ 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.