ISSUED JULY 6, 2001

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

BALBIR S. DHILLON and RANBIR S. DHILLON dba Race Street Liquors 74 Race Street San Jose, CA 95126, Appellants/Licensees, v. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)	AB-7434 File: 21-290374 Reg: 98044248 Administrative Law Judge at the Dept. Hearing: Lee Tyler Date and Place of the Appeals Board Hearing: February 15, 2001 San Francisco, CA

Balbir S. Dhillon and Ranbir S. Dhillon, doing business as Race Street Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which revoked their off-sale general license for their clerk selling an alcoholic beverage to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivisions (a) and (b), arising from a violation of Business and Professions Code

[1]The decision of the Department, dated June 14, 1999 (incorrectly stated as 1998); and the proposed decision dated December 18, 1998; are set forth in the appendix.

§25658, subdivision (a).

Appearances on appeal include appellants Balbir S. Dhillon and Ranbir S. Dhillon, appearing through their counsel, Stephen G. Wright, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on March 30, 1994. Thereafter, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a person under the age of 21 years, together with allegations that there were past sales to persons under the age of 21 years, in the years 1995 and 1996.[2]

An administrative hearing was held on December 3, 1998, at which time oral and documentary evidence was received.

Subsequent to the hearing, the Administrative Law Judge issued his proposed decision which ordered the license revoked but stayed for a six-month period to allow the transfer of the license. However, the Department rejected that proposed decision pursuant to Government Code §11517, subdivision (c), and issued its decision which revoked the license.

Appellants thereafter filed a timely notice of appeal. Appellants raise the issue that the right to revoke the license is not absolute.

---

[2]The Department alleged in its accusation an additional matter (Reg. 97041543) which was pending at the time of the filing of the accusation now under consideration. That matter, while affirmed by the Appeals Board on December 30, 1999, is not to be considered by the Department in determining the applicability of Business and Professions Code §25658.1, subdivision (b).

DISCUSSION

Appellants contend the power of the Department to revoke their license is not absolute, arguing that the Department did not consider the mitigating factors, and ignored the law concerning vicarious liability.

The statute concerned[3], which gives to the Department certain discretionary powers to revoke a license, states:

> "... the department may revoke a license for a third violation of Section 25658 that occurs within any 36-month period. This provision shall not be construed to limit the department's authority and discretion to revoke a license prior to a third violation when the circumstances warrant that penalty."

The record shows that the two prior matters along with the matter presently under review, are the violations which invoke the terms of the statute.

Appellants argue the decision improperly stated that appellants presented no mitigating evidence that would cause the Department to reconsider the penalty of revocation. The mitigating factors alleged by appellants are:

a. The death of the clerk who sold the beverages was a hindrance to the defense of the present matter. While such death is unfortunate, it is not a factor the Department need consider.

b. Ignorance of the law by appellants that a third violation (coming within the terms of the statute) could cause a revocation of the license. This argument, if validated, could cause licensees to feign some ignorance of the law, thereby closing their eyes to the realities of strictly obeying the law.

---

[3]Business and Professions Code §25658.1, subdivision (b).

c. Appellants acted in good faith by sending their employees to the Department's training programs. However, the clerk who sold in the present appeal was not sent to the programs of the Department.

d. Appellants were obstructed by the Department in their earlier attempts to sell the license (prior to the present violation occurring) because the Department filed an accusation on another matter which was not concluded prior to the filing of the present accusation. That prior matter was later dismissed, after the Department filed the present accusation.[4] Appellants are partly correct. Two counts were alleged in that prior matter, one for sales of an alcoholic beverage to a minor, and, as the minor did not appear for the hearing, that count was dismissed. However, the other count was not dismissed as it concerned selling alcoholic beverages while the license was under suspension. The Department was not the obstructionist, but appellants were prohibited from transferring the license, if there was such an intent, due to their own misconduct.

Appellants have misconstrued the statute and their arguments thereto are not valid.

Notwithstanding appellants' arguments, the gist of the decision is that there are no valid mitigating factors to prohibit the Department from the exercise of its discretion.

A fundamental basis of the law is that the responsibility is upon the licensee

---

[4]The policy of the Department is not to allow a transfer of a license until present accusations against the license are resolved to a conclusion.

not to sell alcoholic beverages to a minor. (Munro v. Alcoholic Beverage Control Appeals Board & Moss (1957) 154 Cal.App.2d 326 [316 P.2d 401]; and Mercurio v. Department of Alcoholic Beverage Control (1956) 144 Cal.App.2d 626 [301 P.2d 474].) Before a sale is made of an alcoholic beverage, it is the responsibility of the seller to determine the true age of the customer who is offering to purchase the alcoholic beverage (Business and Professions Code §25658(a)). A licensee is vicariously responsible for the unlawful on-premises acts of its employees. Such vicarious responsibility is well settled by case law. (Morell v. Department of Alcoholic Beverage Control (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405, 411]; Harris v. Alcoholic Beverage Control Appeals Board (1962) 197 Cal.App.2d 172 [17 Cal.Rptr. 315, 320]; and Mack v. Department of Alcoholic Beverage Control (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633].)

ORDER

The decision of the Department is affirmed.[5]

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

---

[5]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.