

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

AB-8941

File: 47-302319 Reg: 07067614

SANGRIA EQUITY PARTNERS, LIMITED PARTNERSHIP, dba
Sangria 66-68 Pier Avenue, Hermosa Beach, CA 90254,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: June 2,
2011 Los Angeles, CA

ISSUED JULY 19, 2011

Sangria Equity Partners, Limited Partnership, doing business as Sangria (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days, all of which were stayed on the condition that appellant complete one year of discipline-free operation, for its clerk selling or furnishing an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Sangria Equity Partners, Limited Partnership, appearing through its counsel, Richard D. Warren, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated September 5, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general eating place license was issued on February 1, 1995. On December 22, 2007, the Department issued an accusation charging that appellant's bartender sold or furnished an alcoholic beverage to 17-year-old Michael Slawson on October 19, 2007. Although not noted in the accusation, Slawson and another 17-year-old were working as a minor decoys for both the Manhattan Beach and Hermosa Beach Police Departments at the time.

At the administrative hearing held on June 3, 2008, documentary evidence was received, and testimony concerning the sale was presented by Bryan Rushing, a Department Investigator; Michael Slawson and Lauren Brennan, the police decoys; and by Jason Page, the bartender.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proven and no defense was established.

Appellant filed an appeal contending: The decoy operation failed to comply with the "sale" requirement of Business and Professions Code section 25658, subdivision (f) and Department rule 141².

DISCUSSION

The administrative law judge (ALJ) summarized the facts of this case in his Findings of Fact (FF-II-A):

On the night of October 19, 2007 at approximately 9:00 p.m., a seventeen year old decoy, Michael Slawson, went to the Respondent's premises with another minor decoy, Lauren Brennan, and they both walked to the fixed bar. Because all the stools at the fixed bar were occupied, Brennan went and sat at a nearby table and Slawson

²References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations and to the various subdivisions of that section.

approached the fixed bar. Slawson was able to get the bartender's attention and he told the bartender that there were no seats at the bar so could he get a Corona beer and sit at one of the tables. The bartender who was later identified as Jason Page retrieved a bottle of Corona beer, uncapped it, placed it on the bar counter in front of Slawson and then walked away. Page did not state the price and he did not ask Slawson for his age or for identification. Assuming that the bartender was going to run a tab, Slawson took the beer, walked to the table where Brennan was seated and took a seat. A minute or two later, Investigator Rushing and Officer Vargas contacted Page. Slawson never paid for the beer that was served to him by Page.

Appellant maintains that this decoy operation was not conducted in compliance with the "sale" requirement of Business and Professions Code section 25658, subdivision (f), and Department rule 141.

The accusation in this matter charges a violation of Business and Professions Code section 25658, subdivision (a), (hereinafter 25658(a)) which states that "every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor."

Appellant maintains that since the decoy did not pay the bartender for the beer, no "sale" took place as contemplated by rule 141, which outlines guidelines for minor decoy operations; and Business and Professions Code section 25658, subdivision (f), (hereinafter, 25658(f)) which authorizes decoy operations, both of which use the word "sale", rather than "furnishing" of alcohol to a minor.

Appellant argues that since the word furnishing was not added to section 25658(f) until the year following the accusation, and since no money changed hands in this case, this decoy operation was conducted improperly. It is appellant's position that prior to the amendment of section 25658(f) that only *sales* to minor decoys were authorized, thereby making this decoy operation unlawful. The accusation in this case, however, does not allege a violation of section 25658(f) nor of rule 141. Rather, the

violation charged is only that of section 25658(a). Therefore we need not reach the question of whether or not purchase money must always pass from the decoy to the clerk or bartender in order to constitute a “sale” because the application of section 25658(f) is not at issue.

As set forth in the ALJ’s Findings of Fact II-F:

The Respondent’s attorney argued that in his opinion Business and Professions Code section 25658 requires an actual “sale” when a minor decoy is involved because subsection (f) that relates to minor decoy programs only refers to persons who “sell” alcoholic beverages to minors and not to persons who furnish or give alcoholic beverages to minors. The Respondent’s attorney also points out that the Department’s Rule 141 which sets out guidelines for minor decoy operations only discusses “a sale” and not a “furnishing” of an alcoholic beverage. This argument is rejected because the Respondent was charged with a violation of section 25658(a) which clearly states that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away any alcoholic beverage to “any” person under the age of 21 years is guilty of a misdemeanor. Section 25658(f) merely codifies the legal use of minor decoys by peace officers [*sic*] as authorized by the California Supreme Court. [Fn. omitted.]

Unless there is a clear abuse of discretion shown, the Board is bound by the factual findings of the Department:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department’s findings of fact. (*CMPB Friends, [Inc. v. Alcoholic Bev. Control Appeals Bd. (2002)]* 100 Cal.App.4th [1250,]1254 [122 Cal.Rptr.2d 914]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779]; [Bus. & Prof. Code §§ 23090.2, 23090.3.]) We must indulge in all legitimate inferences in support of the Department’s determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department’s factual findings to reach a contrary, although perhaps equally reasonable, result. (See *Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734] (*Lacabanne*)).) The function of an appellate Board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Masani) (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

We do not believe it was an abuse of discretion to reject appellant's argument that there was no "sale" (supposedly in violation of 25658(f) and rule 141), when in fact the accusation alleges a violation of section 25658(a) which encompasses both the sale and furnishing of alcohol to minors.

Appellant's argument that subdivision (f) of section 25658, at least before it was amended in 2008, somehow negates the "furnishing" portion of subdivision (a), is contrary to the California Supreme Court's customary policy:

Where more than one statutory construction is arguably possible, our "policy has long been to favor the construction that leads to the more reasonable result." [Citation.] This policy derives largely from the presumption that the Legislature intends reasonable results consistent with the apparent purpose of the legislation. [Citation.] Thus, our task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results. [Citations.]

(Imperial Merchant Services, Inc. v. Hunt (2009) 47 Cal.4th 381, 387-388 [212 P.3d 736].)

A portion of Article XX, Section 22 of the California Constitution provides:

The sale, furnishing, giving, or causing to be sold, furnished, or giving away of any alcoholic beverage to any person under the age of 21 years is hereby prohibited, and no person shall sell, furnish, give, or cause to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years, and no person under the age of 21 years shall purchase any alcoholic beverage.

The constitutional mandate of the Department of Alcoholic Beverage Control is the protection of public welfare and morals, in part by keeping alcohol out of the hands of minors. To that end, the court has said:

"It is well settled that the revocation or suspension of a license is not penal in nature The legislation was not intended to provide for punishment but to *afford protection of the public*. [Citations.]" [Citations.] [Emphasis added.]

(*Lacabanne, supra*, 261 Cal.App.2d at pp. 190-191.)

There is substantial evidence to support the accusation in this matter, and nothing in the history of section 25658(f) to suggest that the legislature intended to negate the word "furnish" in section 25658(a), by adding that word to subdivision (f), or to make all decoy operations subject to only to subdivision (f) and not (a).

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.