

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

AB-8967

File: 21-429987 Reg: 08069033

HARJEET KAUR and PARVINDER SINGH, dba E Z Stop
4439 Rocklin Road, Rocklin, CA 95677,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Nicholas R. Loehr

Appeals Board Hearing: July 14, 2011
San Francisco, CA

ISSUED AUGUST 9, 2011

Harjeet Kaur and Parvinder Singh, doing business as E Z Stop (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale general license for co-licensee Parvinder Singh having knowingly and intentionally submitted false sales figures to the Department for the purpose of reducing the amount of money which would be paid to the Department in return for its acceptance of a petition to make an offer of compromise, a violation of Penal Code sections 664/484(a), in conjunction with Business and Professions Code section 24200, subdivision (a).

Appearances on appeal include appellants Harjeet Kaur and Parvinder Singh, appearing through their counsel, Danny Brace, and the Department of Alcoholic Beverage Control, appearing through its counsel, Sean Klein.

¹The decision of the Department, dated December 2, 2008, is set forth in the appendix.

PROCEDURAL HISTORY

Appellants' off-sale general license was issued on October 13, 2005. On June 19, 2008, the Department instituted an accusation against appellants charging that they submitted grossly and intentionally understated sales figures on an ABC-162 form submitted to the Department in connection with a petition to pay an offer in compromise in lieu of serving a 30-day suspension.

At the administrative hearing held on September 18, 2008, documentary evidence was received and testimony concerning the violation charged was presented by Department investigator Michael Guter. Co-licensee Parvinder Singh testified on behalf of appellants.

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

Appellants have filed an appeal making the following contention: The decision of the Department is not supported by the findings and the findings are not supported by substantial evidence in the light of the whole record.

DISCUSSION

Appellants were charged with having submitted false financial information in support of a petition for an offer of compromise.² The Department found that appellant

² Business and Professions Code section 23095 permits a licensee to petition the Department for permission to make an offer in compromise, consisting of a sum of money in lieu of serving a suspension. Section 23095 sets forth the amount of money to be paid pursuant to such an offer, based on a percentage of the estimated gross sales for each day of the suspension, subject to minimum and maximum amounts. One seeking such a compromise must submit a completed ABC Form 162, setting out estimated alcoholic beverage sales, from which the Department can compute what the compromise payment shall be.

Parmender Singh had knowingly submitted gross sales figures which were grossly and intentionally understated in an attempt to reduce the amount of money which would be due to the Department should it accept their petition in offer of compromise in lieu of serving a 30-day suspension arising from an earlier accusation.

In this appeal, appellants invite the Board to review the administrative hearing testimony of co-licensee Parmender Singh, which, they assert, will show that he did not knowingly and designedly intend to defraud the Department of Alcoholic Beverage Control and the State of California.

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

Appellants' appeal is nothing more than a request that the Board exercise its independent judgment on the effect or weight of the evidence, and reach a result contrary to that reached by the Department. Appellants' argument, in its entirety, is contained in a single paragraph in its opening brief (at p. 3):

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

The Board is requested to review the transcript of the hearing on this matter, heard September 18, 2008. Specifically, Reporters Transcript [pp.] 31-53, the testimony of Mr. Singh, including direct examination and cross examination by both the attorney for the Department, Mr. Lueders, and that of Administrative Law Judge [Nicholas] R. Loehr. Based on this testimony, it is the position of the Respondent Licensee that he did not knowingly and designedly intend to defraud the Department of Alcoholic Beverage Control and/or the State of California. Without fraudulent intent, the cause for suspension or revocation of this license does not exist.

This is nothing more than a request for a trial de novo, which the Board can not provide.

It is well settled that the credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (*Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) In this case, the administrative law judge (ALJ) could not have been clearer in his assessment of Mr. Singh's testimony (Determination of Issues 6 and 7):

DI 6: There is no question that Parvinder Singh filled out and executed the ABC-162 under false pretenses when he misrepresented the annual gross sales of alcohol as being \$85,664.00 instead of the actual sales of over \$200,000.00. (Findings of Fact, ¶¶ 4, 6, 7, 8, & 9). There is no evidence that Respondent Singh honestly and reasonably believed in the truth of the \$85,664.00 figure he placed on the ABC-162. (*Id.*) Therefore, the issue is whether Parvinder Singh "knowingly and designedly" intended to defraud the Department and the State of California. Based on the facts and circumstances of this case, the court concludes that Parvinder Singh knowingly and designedly intended to defraud the Department and the State of California by his actions.

DI 7: It is recognized in California law that intent to defraud may be proven by evidence that a person's statements or actions were made recklessly and without information that would justify belief in their truth. (See *People v. Schmitt* (1957) 155 Cal.App.2d 87; *People v. Davis* (1952) 112 Cal.App.2d 286; CALJIC (6th ed.), No. 1410.) This is exactly what occurred in this case. Respondent Singh did not know what his 2006 annual gross alcoholic beverage sales were because he chose not to find out. When Respondent Singh was initially confronted by Investigator Guter about how the annual sales figure of \$85,664.00 was calculated, Singh's response was he "took the figures off the top of my head." (Finding of Fact, ¶ 6.) Respondent Singh also had the quarterly sales

figures available for consultation and review when he filled out the ABC-162. (Finding of Fact, ¶ 8.) However, he consciously decided not to review the accurate and truthful sales figures because it would have required quite a bit of work. (Finding of Fact, ¶ 8.) There is sufficient evidence to conclude that Respondent Singh filled out and executed the ABC-162, under penalty of perjury, recklessly and without information that would justify a belief in its truth.

Appellants have failed to show that the determination of Mr. Singh's intent by the ALJ is not supported by the findings or that the findings are not supported by substantial evidence. The decision of the Department must be sustained.

ORDER

The decision of the Department is affirmed.⁴

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

⁴This 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.