

ISSUED MARCH 5, 1997

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

| | | |
|-------------------------------------|---|--------------------------|
| AMIR NOUROLLAHI, |) | AB-6649 |
| HAMID NOUROLLAHI, and |) | |
| MOHAMMAD R. NOUROLLAHI, |) | File: 21-285877 |
| dba La Mesa Market |) | Reg: 95034145 |
| 6062 La Murray Boulevard, Suite 205 |) | |
| La Mesa, CA 91942, |) | Administrative Law Judge |
| Appellants/Licensees, |) | at the Dept. Hearing: |
| |) | Marguerite C. Geftakys |
| v. |) | |
| |) | Date and Place of the |
| DEPARTMENT OF ALCOHOLIC |) | Appeals Board Hearing: |
| BEVERAGE CONTROL, |) | January 8, 1997 |
| Respondent. |) | Los Angeles, CA |
| |) | |

Amir Nourollahi, Hamid Nourollahi, and Mohammad R. Nourollahi, doing business as La Mesa Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale general license for 30 days, with 15 days stayed for a one-year probationary period, for appellants having sold an alcoholic beverage to a person under age 21, 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 §25658, subdivision (a).

Appearances on appeal include appellants Amir Nourollahi, Hamid Nourollahi,

¹The decision of the Department dated March 7, 1996, is set forth in the appendix.

and Mohammad R. Nourollahi, appearing through their counsel, John B. Sidell; and the Department of Alcoholic Beverage Control, appearing through its counsel, David Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued October 1, 1993. Thereafter, the Department instituted an accusation against appellants on November 1, 1995, and appellants requested a hearing.

An administrative hearing was held on January 16, 1996, at which time oral and documentary evidence was received. At that hearing, it was determined that co-appellant Hamid Nourollahl sold alcoholic beverages (beer and wine) to Bradley Nelson, a person who was 18 years of age at the time of the sale. When co-appellant Hamid Nourollahl asked the minor for identification, Nelson produced a California Driver's License issued in the name of Eric Black, showing a birth date of 2-15-74; however, the license had expired on 2-15-93, some two and one-half years prior to the date of sale. Nourollahi claimed that the minor had also produced a valid license extension, but no such extension was found when the minor was searched upon his exit from the premises.

Subsequent to the hearing, the Department issued its decision which suspended appellants' license for 30 days, with 15 days stayed for a one-year probationary period. Appellants filed a timely notice of appeal.

In their appeal, appellants raise the following issue: reliance upon a California driver's license presented by a person bearing facial resemblance to the photograph on the license entitles appellants to the defense provided by Business and Professions

Code §25660.²

DISCUSSION

Appellants contend that they reasonably relied upon a California driver's license as proof of age when they made a sale to a person whose physical description corresponded to that of the photograph on the license. They contend that such reliance entitles them to the absolute defense provided by Business and Professions Code §25660 to a charge of selling an alcoholic beverage to a minor.

The Department contends that since the license which was presented to appellants indicated on its face that it had expired two and one-half years earlier, it was not the kind of document required by §25660. Therefore, appellants were not entitled to the defense provided by §25660.

Appellants rely on Conti v. State Board of Equalization (1952) 113 Cal.App.2d 465 [248 P.2d 31], which held that unless the personal appearance of the holder of the drivers license demonstrates above mere suspicion that he is not the legal owner of the license, a licensee is justified in assuming the validity of the license and that its holder is the legal owner [248 P.2d at 32]. Appellants also cite Raab v. Department of Alcoholic Beverage Control (1960) 177 Cal.App.2d 333 [2 Cal.Rptr. 26], which cites the Conti

² Business and Professions Code §25660 provides:

"Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon."

decision, but upheld findings that the documents there presented did not meet the requirements of §25660.

Appellants argue that an expired driver's license, no less than an expired passport, is sufficient for the purpose of identification of the owner. Since the person presenting the license resembled the person whose photo was on the license (a resemblance appellants contend was "clear and obvious [App.Br., p. 4] and which the Administrative Law Judge (ALJ) found was "striking" [Finding of Fact IV]), appellants argue that their reliance was reasonable and therefore sufficient under the statute.

This Board can speculate that the ALJ held as she did primarily for the purpose of focusing the issue on the legal sufficiency of the document presented as proof of age. This conclusion could account for the fact that despite differences in eye color (brown versus blue), height (5"5" versus 5'10"), weight (135 pounds versus 165 pounds) and, at least to this Board, upon comparing the photo on the license (Exhibit 2) to a photo of the 18-year old minor (Exhibit A), only a slight facial resemblance, the ALJ found the resemblance "striking."

Appellants argue that the ALJ erred in giving great weight to the fact that the license had expired two and one-half years earlier. The Department, on the other hand, contends that appellants' reasonable suspicions should have been aroused by a driver's license which had lapsed more than two years earlier.

Neither appellants nor the Department have cited any cases where the issue has been focused as it is here. The Department has the better of the argument, however.

Appellants' analogy to an expired passport as valid identification is unpersuasive. When a California drivers license expires, a new license may issue, in which case the old license is usually destroyed or discarded. In this case, it apparently was given to

the minor by one of his friends [RT 10]. While it is also true that an expired passport can also be offered as purported identification and proof of age, its acceptance, without more, would not be considered an exercise of the due diligence the statute requires.³

The Department thus concedes that there may be circumstances where an expired license may qualify under §25660 - its example is a license that expired two days earlier. Appellants would recognize no degree of staleness, arguing a literal reading of the statute. This Board believes, in keeping with the direction in Business and Professions Code §23001 that the provisions of the Alcoholic Beverage Control Act be liberally construed so as to protect the economic, social and moral well-being and the safety of the State and of all its people, that there can be no per se rule, but the longer a license has been expired, the higher the level of diligence which should be required for a successful defense under §25660.⁴

Thus, the Department argues here, and the ALJ found (Finding 5), that the time which had passed since the license in question expired is a factor to be weighed in determining whether appellants' reliance was reasonable and in good faith. It is one thing for a person to offer their expired license as identification a few days after its

³ Documents which do not on their face state an expiration date, such as military identification cards, may require greater vigilance on the part of the licensee or the licensee's clerks. However, this Board does not see it as unreasonably burdensome to require the seller to look for some indication of current validity of the identification tendered by the purchaser, which, in this case, was conspicuously absent.

⁴ The responsibility is upon the licensee 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, subdivision (a)).

expiration, when they may not have yet received its replacement. It is another for someone to carry a license outdated for more than two years. When the document's expiration is added to the fact that the person presenting the identification is youthful enough to put the seller on notice of inquiry in the first instance, it seems fair to say that the seller was derelict in not seeking further proof of age and identity. A driver's license which expired as long ago as the license in this case should be a "red flag" to any potential seller.

The ALJ specifically rejected testimony from the appellant who made the sale that he had asked for and been shown additional identification, *i.e.*, the renewal extension of the drivers license. (Finding of Fact IV). The Department investigator testified that he searched the minor, and found no such extension.

Where there are conflicts in the evidence, the Appeals Board is bound to resolve those conflicts in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (See Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (substantial evidence supported the license-applicant's position and the Department's position); 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]; (Gore v. Harris (1964) 229 Cal.App.2d 821 [40 Cal. Rptr. 666]).

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (See 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].) In this case the ALJ

declined to accept co-appellant's testimony that he had asked for additional identification. The Appeals Board may not substitute its view of the evidence in place of that of the ALJ, who heard the witnesses testify and observed their demeanor.

We are satisfied that, on this record, appellants have not sustained their burden under Business and Professions Code §25660.

CONCLUSION

The decision of the Department is affirmed.⁵

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ This final order is filed as provided in Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.