

ISSUED MAY 7, 1998

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

ROBERT J. ROBBINS	)	AB-6866
dba Redwood Tavern)	
5404 Redwood Street	)	File: 42-292037
San Diego, California 92105,	)	Reg: 96038500
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John A. Willd
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	February 4, 1998
	)	Los Angeles, CA
)	

Robert J. Robbins, doing business as Redwood Tavern (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which ordered his license revoked because he was not the true owner of the licensed business operated and conducted under the license, and for having misrepresented a material fact in connection with his application for the license, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, in violation of Business and Professions Code §§23330 and 23355.

¹The decision of the Department, dated May 1, 1997, is set forth in the appendix.

Appearances on appeal include appellant Robert J. Robbins, and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on March 22, 1994. Thereafter, the Department instituted an accusation against appellant charging that he was not the true owner of the premises being operated under the license, the true owner being one Shiao-Yue Kenny ("Kenny"), also known as Michelle Jarvis and Michelle Kenny, and that he misrepresented a material fact in his application for the license in question, by stating that no person other than himself had any direct or indirect ownership interest in the business to be conducted under the license, when, in fact, Kenny had a hidden ownership interest.

An administrative hearing was held on March 26, 1997, at which time oral and documentary evidence was received. At that hearing, testimony and documentary evidence was presented concerning the financial arrangements between appellant and Kenny regarding the ownership of the business.

Subsequent to the hearing, the Department issued its decision which determined that Robbins had concealed from the Department the fact that he and Kenny were parties to a profit-sharing agreement pursuant to which Kenny was to receive 80 percent of the profits from the operation of the licensed business and be responsible for the debts of the business, while appellant was to receive 20 percent

of the profits for holding himself out as the licensee.

Appellant thereafter filed a timely notice of appeal. In an untimely filed brief, appellant argues that the evidence does not support the decision. Appellant cites a number of facts, and includes with his brief, several documents, which were not part of the record, and which this Board may not consider.

We have reviewed the hearing transcript and exhibits, and find the evidence overwhelmingly supports the Department's findings and determinations.

Appellant's own testimony, given in response to questions by the Administrative Law Judge (ALJ) about statements appellant had earlier made to a Department investigator, leaves no doubt that he and Kenny conspired to conceal Kenny's ownership interest, and that their scheme collapsed as a result of a falling out between them. Some excerpts of that testimony are illustrative:

"Judge Willd: ... Let's go through this affidavit. Right at the start it says on 12-29-93 I entered into an agreement with Michelle, is it, Jarvis concerning the operation of the Redwood tavern. I would go through on the ABC license. She and I would share any profits from the business. Now let's stop there. Is that part true?

"The witness: Okay. Let's stop at Redwood tavern, right there at the end of that. ... I was the owner of the Redwood Tavern. She was going to run the business for me.

"Judge Willd: Okay. Let's go to this next line after Redwood tavern. It says: I would go on the ABC license. Is that true?

"The witness: Yes. I would take out the license.

"Judge Willd: Okay. Next line: She and I would share any profits from the business; is that true?

"The witness: Well, wouldn't you. Go on and read.

...

"Judge Willd: Were you going to share profits?"

"The witness: To a point.

"Judge Willd: Next line says: She would get 80 percent of the profits and I would get 20 percent. Was that true?"

"The witness: Yes, with a reason. ... she was going to pay all the debts, the bills to run the business. That's the reason.

"Judge Willd: The reason was that she would pay all the debts and run the business and that's why she would get 80 percent and you would get 20; is that right?"

"The witness: That's right.

...

"Judge Willd: She paid the bills, did the hiring and firing, and purchased inventory; is that true?"

"The witness: She did.

"Judge Willd: Okay. She banked the profits into her account and made payments to creditors out of her own account; is that true?"

"The witness: she did."

Appellant's own testimony makes it clear that he was at best the nominal owner of the business, and that Kenny was the real owner, as she had testified, and as his earlier statements to the Department investigator revealed. His failure to disclose Kenny's interest in the business was, as the Department charged, a material misrepresentation.

CONCLUSION

The decision of the Department is affirmed.²

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

²This 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 decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate 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.