

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

AMRIK SANDHU and BHAJAN	)	AB-6989
SANDHU)	
dba Johnny Liquor	)	File: 21-306168
3130 North Cedar Avenue	)	Reg: 97039891
Fresno, California 93703,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Sonny Lo
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 2, 1998
Respondent.	)	San Francisco, CA
)	

Amrik Sandhu and Bhajan Sandhu, doing business as Johnny Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale general license for appellant Bhajan Sandhu having sold an alcoholic beverage (beer) to Danny Lee Compos, Jr.,² a minor decoy

¹The decision of the Department, dated November 20, 1997, is set forth in the appendix.

² Throughout this decision we have used the spelling for the decoy's name as shown on his California driver's license, rather than the spelling used in the transcript of the administrative hearing. When Compos testified, he was not asked to spell his name; we have proceeded on the assumption the driver's license was more likely to be accurate than the court reporter's guess or assumption. We

participating in a decoy operation being conducted by the Fresno Police Department, the sale 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 Amrik Sandhu and Bhajan Sandhu, appearing through their counsel, Peter Singh, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Peirce.

FACTS AND PROCEDURAL HISTORY

Following an administrative hearing held on October 2, 1997, the Department entered a decision which sustained the charge of an accusation against appellants alleging the sale of beer to a minor decoy on March 24, 1997. The violation was appellants' third sale-to-minor violation since their license was issued on May 8, 1995. Concluding that appellants were not serious about obeying the law, and that no mitigation of penalty was warranted, the Department ordered their license revoked.

Appellants have filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) the form of identification relied upon by the Fresno Police Department was invalid, since it was an expired license at the time it was presented to the clerk; (2) there was no clear evidence that the witness who testified he was the decoy was in fact the person who presented the license

dismiss appellants' suggestion that the decoy had used another person's license.

to the clerk; (3) the original license was destroyed by the decoy prior to the hearing; and (4) the police officer did not do a complete check to see whether the decoy was carrying other, additional, identification. These issues are interrelated, in that they assert the basic contention that the driver's license identification presented at the hearing was not the identification which was presented to the clerk at the time he made the illegal sale.

DISCUSSION

The record demonstrates that Danny Lee Compos, Jr., was 19 years of age on the day he purchased a 40-ounce bottle of Budweiser beer from appellants' store. Compos was participating in a decoy operation conducted by the Fresno Police Department. Compos testified that the clerk, later identified as Bhajan Sandhu ("Bhajan") asked for identification, and was given Compos' California driver's license, a copy of which, without objection, was placed in evidence as Exhibit 4. The clerk examined the license, then returned it to Compos, and completed the sale. Compos exited the store with the beer, reentered with the police officers, and identified the clerk who had made the sale. Compos testified that, at that time, the clerk said he had looked at the identification and the date of birth was 1978 [RT 12].

In response to a question from the Administrative Law Judge, Compos said he had destroyed the license which he had shown to the clerk. The photocopy of the license shows an expiration date of February 28, 1997, some eight months

prior to the administrative hearing.

Fresno police officer Mark Hudson testified he determined prior to initiating the decoy operation that Compos had his true and correct identification on his person. Hudson also testified that when he confronted the clerk about the sale, the clerk told him he had looked at the identification and it showed Compos was born in 1978.

Bhajan Sandhu admitted making the sale, but contended the identification shown to him showed 1976 as the year of birth. Both Compos and Hudson, on rebuttal, denied that Compos possessed any identification other than his true driver's license.

Appellants suggestion that Compos's destruction of his expired license is evidence he had something to hide, ignores the fact that it would be normal for someone to dispose of the expired license upon receipt of a newly-issued license.

The Administrative Law Judge (ALJ) found Sandhu's testimony not credible. He found no reason for the minor to carry a fraudulent license, or to commit perjury by falsely denying that he did, and ample motive for Sandhu to try to avoid blame - this was appellants' third violation although licensed only 23 months.

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

saw and listened to the witnesses, was able to observe their demeanor while testifying, and could weigh their motives to testify truthfully or otherwise. His findings are entitled to great weight, and there is nothing in the record that indicates they are in error.

In a supplemental brief filed by appellants following the decision of the court of appeal in Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board (1998) 67 Cal.App.4th 575 [79 Cal.Rptr.2d 126], appellants contend that the face to face identification requirement of Rule 141 was not satisfied. We find this contention without merit. A review of the record [at RT 11] discloses that the Rule was satisfied:

“Q. Upon exiting the premises with the beer, what happened?

A. I made contact with the officers -- Officer Hudson outside, and he went back in with me.

Q. And did he take possession of the beer and the change at that time?

A. Yes, along with the receipt.

Q. Upon entering the premises with Officer Hudson, what if anything did you do?

A. Approached the counter. Officer Hudson asked me if the gentleman behind the counter was the one that sold the alcohol to me. And I answered yes.

Q. What did you do then?

A. I -- I stayed there, and he asked the person -- the collector behind the counter --told the collector behind the counter that he just sold alcohol to the minor, pointing to me.”

ORDER

The decision of the Department is affirmed.³

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

³ This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of its filing, as provided by §23090.7 of said code.

Any party, before this final decision becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review, in accordance with Business and Professions Code §23090 et seq.