

ISSUED NOVEMBER 27, 2000

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

DOS AMIGO'S MARKET, INC.	)	AB-7470
dba Dos Amigo's Supermarket)	
3086 Alum Rock Avenue	)	File: 21-291727
San Jose, CA 95127,	)	Reg: 98045237
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Lee Tyler
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 5, 2000
	)	Los Angeles, CA

Dos Amigo's Market, Inc., doing business as Dos Amigo's Supermarket (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license, the order based upon findings that each of appellant's corporate officers, each a director and major shareholder, had pleaded guilty to a crime involving moral turpitude, in one case the possession of cocaine for distribution, and in the other, bank fraud.

Appearances on appeal include appellant Dos Amigo's Market, Inc., appearing through its counsel, Vincent Shang, and the Department of Alcoholic

¹The decision of the Department, dated July 22, 1999, is set forth in the appendix.

Beverage Control, appearing through its counsel, John Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general license was issued on March 7, 1994.

Thereafter, the Department instituted an accusation against appellant charging the entry of guilty pleas by two officers and directors to the commission of crimes involving moral turpitude.

An administrative hearing was held on May 13, 1999. Documentary evidence introduced at the hearing established that, on December 16, 1997, Jose Cuevas Pulido (hereinafter "Jose Cuevas"), president of appellant, entered a plea of guilty in the United States District Court for the Northern District of California to a charge of possession of cocaine for distribution. In addition, documentary evidence established that Javier Cuevas Pulido (hereinafter "Javier Cuevas"), vice-president and treasurer of appellant, entered a plea of guilty to a charge of bank fraud. Jose Cuevas and Javier Cuevas are brothers, and are the major shareholders of appellant.

Subsequent to the hearing, the Department issued its decision which determined that the crimes to which the pleas were entered were crimes involving moral turpitude, and ordered the license revoked.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) Appellant corporation should not be charged with the conduct of Jose Cuervas whether or not any of his drug offense took place on the premises; (2) Javier Cuevas did not commit the crime which was the subject of his guilty plea; in any event, his conduct should also not be charged against appellant corporation; (3) appellant was denied the right to legal representation by

virtue of the denial of its request for a continuance; and (4) appellant was discriminated against by virtue of the Department's refusal to provide it a Spanish-English translator at the hearing. Issues 1 and 2 will be discussed together.

DISCUSSION

I

Appellant corporation contends that the Department improperly charged it with the criminal acts of its officers even though neither of the crimes to which the guilty pleas were entered had anything to do with the licensed business.

As the principal officers, directors and shareholders of appellant, the Cuevas brothers are, as the decision observed, the real parties in interest and the alter ego of the corporation.

The Department is clearly empowered, by the California Constitution, in article XX, §22, and by the California Legislature, in Business and Professions Code §24200, subdivision (d), to revoke a license where the person holding the license has committed a crime involving moral turpitude.

Although the license is nominally held by appellant corporation, the corporation is governed by its officers and directors, both of whom, in this case, have pleaded guilty to crimes involving moral turpitude.²

It is clearly not in the interest of the people of the State of California that the special privilege of selling alcoholic beverages be held by an entity whose principals have demonstrated a lack of personal honesty and trustworthiness. As observed

² To the extent appellant invites the Board to speculate as to specific aspects of the crimes involved, or to go behind the official records of the federal court, the Board respectfully declines.

by the Administrative Law Judge (ALJ) in his proposed decision:

“The notion of a legal entity, the corporation, cannot be used to defeat public convenience, justify wrong or protect fraud and in such a case the law will not permit the officers, directors or shareholders of a corporation to avoid the penalty of their acts by attempting to hide behind the corporation.”

The Department cannot be said to have abused its discretion in ordering revocation.

II

Appellant contends it was denied the right to legal representation by virtue of the denial of its request for a continuance.

Appellant was represented at the hearing by Javier Cuevas, who was accompanied by the corporation's tax accountants, Andrew T. Cook and Barry Clark. Mr. Cook argued that Javier Cuevas's lack of fluency in the English language prevented him from presenting a defense, and requested that the hearing be continued. In appellant's brief to the Board, appellant states that Javier Cuevas did not advise its accountants of the hearing date until only two days before the hearing was to proceed.

The Department presented testimony [RT 32-33] that Javier Cuevas, accompanied by the corporation's bookkeeper, Al Sanchez, attended a meeting in November 1998 with Department representatives, including a Spanish-speaking investigator, and represented at that time that he was going to obtain legal representation. He was also told at that meeting that the Department would seek to revoke the license.

A notice of hearing was mailed to appellant on March 29, 1999, informing

appellant that the hearing was to take place on May 13, 1999. The notice advised appellant that a postponement could be obtained upon a showing of good cause, if requested within 10 days from the discovery of the good cause for postponement, and that the failure to notify the Department within 10 days would deprive it of any postponement.

Any failure to have counsel at the hearing can only be blamed upon appellant and its officers.

It is well-settled that the grant or denial of a request for a continuance rests in the discretion of the ALJ. Where, as here, the request is untimely, and where circumstances suggest that it is sought solely for delay, a denial of the continuance is not an abuse of discretion.

Appellant knew for many months that the Department was seeking to revoke its license, and that, if it intended to oppose such action, it was in its interest to employ an attorney. Appellant did not do so. Instead, appellant waited until the eleventh hour, then asked its tax accountant to help it postpone what it should have come to realize was the inevitable.

III

Appellant claims it is the victim of discrimination, "perhaps racially," alleging that there are other existing licensees in the State of California whose corporate officers or proprietors have prior offenses, that the crime committed by Javier was "not particularly serious in nature," and had nothing to do with the business of the supermarket. It denies that its request for a translator, not made until at the hearing, was a delaying tactic, and asserts that if the Department has ever supplied

a translator for a non-English speaking licensee, its failure to provide one for appellant constituted racial discrimination.

The Department is not obligated to provide a translator. However, the Department routinely offers to provide information to assist a licensee in obtaining one. Indeed, the offer is part of the same notice setting the hearing date. Thus, appellant was on notice early on that it must engage its own interpreter or translator.

The charge that the Department engaged in racial discrimination if it ever provided a translator to anyone else is utterly without basis. The simple fact is that there is absolutely no evidence that the Department's unwillingness to provide a translator in response to appellant's untimely request for one was racially motivated. What the Department might have done on other occasions is too speculative to consider.

ORDER

The decision of the Department is affirmed.³

RAY T. BLAIR, JR., ACTING CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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

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