

ISSUED OCTOBER 24, 2000

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

SUNSHINE LIQUOR MARKET	)	AB-7473
CORPORATION)	
dba Sunshine Market	)	File: 21-322648
1359 North Fair Oaks Avenue	)	Reg: 99046223
Pasadena, CA 91103,)	
Appellant/Licensee,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Rodolfo Echeverria
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 7, 2000
Respondent.	)	Los Angeles, CA
)	

Sunshine Liquor Market Corporation, doing business as Sunshine Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its on-sale general license for its president, Sung Ok Chae, having pleaded guilty, in the United States District Court for the Central District of California, to one of three counts of an indictment charging her with knowingly acquiring and possessing food stamp coupons in violation of 7 United States Code

¹The decision of the Department, dated July 29, 1999, is set forth in the appendix.

§2024, subdivision (b), a public offense, under the circumstances, involving moral turpitude, in violation of Business and Professions Code §§24200, subdivision (d), and 23405, subdivision (d).²

Appearances on appeal include appellant Sunshine Liquor Market Corporation, appearing through its counsel, Charlie Chi, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on September 10, 1996. Thereafter, the Department instituted an accusation against appellant charging the entry of a guilty plea by its president, Sung Ok Chae ("Chae"), to the unlawful acquisition and possession of food stamp coupons, a crime involving moral turpitude. An amended accusation was filed on or about May 17, 1999, alleging that appellant was not qualified to hold an alcoholic beverage license, and realleging the entry of the guilty plea to the federal violation.³

An administrative hearing was held on June 15, 1999, following which the Department adopted the proposed decision of the Administrative Law Judge and its

² Business and Professions Code §23405, subdivision (d), provides as follows:

"The department may deny any application or suspend or revoke any license of a corporation subject to the provisions of this section where conditions exist in relation to any officer, director or person holding 10 percent or more of the corporate stock of that corporation which would constitute grounds for disciplinary action against that person if that person was a licensee."

³ The indictment, part of Exhibit 2, alleged three purchases of food stamps with a total value of \$1,440, for which Chae paid \$810.

order of revocation.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that the Department breached an agreement between Chae and District Administrator Richard Henry to the effect that, in return for the corporation being permitted to retain the license, Chae would relinquish her ownership interest in the business.

DISCUSSION

Appellant relies upon a letter Chae wrote to District Administrator Henry in which she stated:

“Pursuant to our conversation on Tuesday, April 27, 1999 in exchange for allowing Sunshine Market ...to keep its liquor license, I agree to relinquish all ownership rights to my brother, co-owner and co-partner, Sung Yong Chae.”

Although appellant contends in its oral argument and in its brief that the letter confirmed a mutual agreement between Chae and Henry, the hearing transcript refutes such a contention.

Department counsel explained to the Administrative Law Judge that there had been a settlement proposal submitted to the Department (the Chae letter), and that it had been rejected because of Department concerns, based upon a review of a USDA report, that Chae's brother may have had involvement in the food stamp purchases [RT 17].

Chae then testified, with reference to her letter [RT 18-19]:

“That letter was Mr. Henry when I went to his store – his office and explained my situation. Mr. Henry told me that might be a possibility. So I had my niece draw up the conversation and send it to Mr. Henry for confirmation of our conversation.”

It seems fairly obvious that what appellant contends was a mutual agreement was nothing more than an expression of a willingness to consider an offer of settlement. A statement that something “might be a possibility” is a far cry from a binding commitment or an enforceable contract of settlement.

In the absence of any other evidence to support appellant’s claim of a binding settlement agreement, the claim must be rejected.

The file also contains a submission on appellant’s behalf by the office of the Federal Public Defender of the Central District of California, which protests the revocation order because of the hardships it will impose upon Chae. According to that office, Chae will be unable to support herself and also unable to pay the various fines she incurred as a result of her conduct.

It is not clear in what capacity the document was filed, since appellant is already represented by counsel. Treated as an amicus brief, it does not offer the Board a valid reason to overturn the Department’s order.

As stated in Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 39 [152 Cal.Rptr. 285, 289]:

“Under the relevant constitutional and statutory provisions, the Department is expressly empowered to suspend or revoke an issued license. ... The propriety of the penalty rests solely within the discretion of the Department whose determination may not be disturbed in the absence of a showing of palpable abuse. ... The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or a court to substitute its own judgment therein ... nor does the circumstance of forfeiture of the interest of an otherwise innocent co-licensee sanction a different and less drastic penalty.” (Citations omitted.)

The ALJ was aware at the administrative hearing of the possible economic hardship which might be imposed upon Chae if the corporation’s license was

revoked (see RT 14-15), yet was not persuaded. The Department, by its adoption of the ALJ's proposed decision, implicitly rejected appellant's and Chae's claim of hardship as a justification for a lesser sanction.

The Board has uniformly affirmed Department orders of revocation where the underlying conduct consisted of a crime involving moral turpitude. We believe it should do so in this case as well.

ORDER

The decision of the Department is affirmed.⁴

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

⁴ 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.