

ISSUED NOVEMBER 14, 2000

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

A & A PETROLEUM, INC. and	)	AB-7493
REDWOOD OIL, INC.)	
dba Redwood Oil	)	File: 20-209829
1099 South State Street	)	Reg: 99045796
Ukiah, CA 95482,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Jeevan S. Ahuja
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 21, 2000
Respondent.	)	San Francisco, CA
_____)	

A & A Petroleum, Inc. and Redwood Oil, Inc., doing business as Redwood Oil (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for their clerk having sold an alcoholic beverage (a six-pack of Budw eiser Light beer) to a minor, 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

¹The decision of the Department, dated August 26, 1999, is set forth in the appendix.

Code §25658, subdivision (a).

Appearances on appeal include appellant A & A Petroleum, Inc. and Redwood Oil, Inc., appearing through their counsel, Stephen M. Gallenson, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 22, 1989. Thereafter, the Department instituted an accusation charging that on November 12, 1998, appellants' clerk sold an alcoholic beverage to Kelly Stewart, who was then approximately 19 years of age. Although not stated in the accusation, Stewart was acting as a decoy for the Ukiah Police Department, under the direction of Gregory Heitkamp, a Ukiah police sergeant.

An administrative hearing was held on May 27, 1999. At that hearing, testimony was presented by Stewart and Heitkamp, both of whom testified regarding the transaction; by Bridget Summers, a retail supervisor for appellant, Redwood Oil, Inc., who described the training programs provided to the retail clerks, and prophylactic steps taken following the sale in question to prevent such future occurrences; and by Robert I. Barbieri, a vice-president and 50-percent owner of Redwood Oil, Inc., called by Department counsel as a rebuttal witness.

Subsequent to the hearing, the Department issued its decision which determined that the violation had been proven as alleged, that it was the third such violation within the preceding 36 months, and ordered the license revoked.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants contend that there was insufficient proof of the two previous violations, which, combined with the immediate violation, resulted in the order of revocation. Specifically, appellants claim that the two stipulations and waivers do not meet the requirements of Evidence Code §1280 in that they lack trustworthiness; that there was no evidence that the person who signed the stipulations admitting the violations had the power to bind appellants; that the forms were hearsay; and that appellants are not estopped from collaterally attacking the validity of the stipulations and waivers.

These will be addressed as a single, multi-faceted, contention.

DISCUSSION

Appellants contend that the Department failed to prove the two prior sale-to-minor violations which, when combined with the violation charged in the accusation, provide the basis for the order of revocation. Thus, appellants contend, the order of revocation must be set aside and a new penalty assessed as if it were a first violation.²

The Department offered verified copies of decisions, entered pursuant to stipulation and waiver ("stipulation"), determining that appellants had violated Business and Professions Code §25658, subdivision (a), on two prior occasions. Each of two stipulations was executed by Peter Alyea, identified by Robert Barbieri

² Appellants concede that the violation charged in the current accusation occurred.

as the other 50-percent owner of Redwood Oil Co. and the person in charge of its retail operation, including the store in question.

The decisions were accompanied by the underlying accusations in each case, charging that the sale-to-minor violations occurred on December 16, 1995, and January 24, 1997. Each of the decisions, stipulations, and accusations bear the same license number as on the most recent accusation, the one directly involved in this appeal.

Appellant contends these documents are inadmissible hearsay. We disagree. We believe these documents are admissible as exceptions to the hearsay rule, as business records under Evidence Code §1271 or as public records under Evidence Code §1280. In either case, they display on their face sufficient indicia of trustworthiness; it is worthy of note that appellants never contended Alyea did not sign the stipulations, nor did they offer any evidence to suggest the documents were not what they purported to be.

We attribute little significance to the fact that the stipulations do not state Peter Alyea's position with appellants or contain the corporate seal. The hearing testimony of Barbieri established that Alyea would have had the requisite authority to bind the corporation. The requirement that the position of the signer be stated, and for the corporate seal, could be waived by the Department. We do not view the absence of either to be fatal, or to render the documents inadmissible.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
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.