

ISSUED APRIL 17, 2001

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

IQBAL SINGH SANGHA, KASHMIR	)	AB-7521
SINGH, and PAL SINGH)	
dba Manzanita Food and Liquor	)	File: 21-299357
4150 Manzanita Avenue, Suite 400	)	Reg: 98045358
Carmichael, CA 95608,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Michael B. Dorais
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	February 15, 2001
Respondent.	)	San Francisco, CA
)	

Iqbal Singh Sangha, Kashmir Singh, and Pal Singh, doing business as Manzanita Food and Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale general license for their having purchased and negotiated to purchase cigarettes and distilled spirits which they believed had been stolen, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising

¹The proposed decision of the Administrative Law Judge (ALJ), dated April 23, 1999, together with a copy the Department's Order dated October 12, 1999, acknowledging the Department's adoption of the proposed decision pursuant to Government Code §11517, subdivision (d), are set forth in the appendix.

from a violation of Penal Code §§664² and 496, subdivision (a).

Appearances on appeal include appellants Iqbal Sangha, Kashmir Singh, and Pal Singh, appearing through their counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on October 3, 1994.

Thereafter, the Department instituted an accusation charging, in counts 2 and 4, that, on October 7, 1997, appellant Iqbal Sangha purchased cigarettes from an undercover Department investigator, and on October 15, 1997, purchased cigarettes and distilled spirits, on both days believing he was purchasing stolen property, in violation of Penal Code §§664 and 496. The accusation contained additional counts charging that various of the appellants negotiated to purchase stolen property, a count charging them with possession of property they believed to have been stolen, and a count alleging that appellant Iqbal Sangha was convicted upon a plea of guilty to having attempted to purchase stolen property.

An administrative hearing was held on April 20, 1999, at which time oral and documentary evidence was received. At that hearing, Department investigator Susan Perri testified about her visits to appellants' premises, her discussions with the appellants, and the purchase by Iqbal Sangha from her of cigarettes and

² Penal Code § 664 provides that a person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished. Section 496 makes it unlawful to buy or receive property which has been stolen, knowing it to have been stolen. The two provisions in combination embrace the conduct here involved.

distilled spirits which she told him had been stolen. Department investigator Blake Graham testified that, pursuant to a search warrant, he located and seized cartons of cigarettes and bottles of distilled spirits containing numbers and symbols which identified them as among the items which had been sold to appellants by investigator Perri. Appellants presented no witnesses on their behalf.

Subsequent to the hearing, the ALJ issued his proposed decision, sustaining each of the charges of the accusation except that alleging that Iqbal Sangha had been convicted upon a plea of guilty to a charge of attempting to receive stolen property. Thereafter, the Department advised the parties of its intention not to adopt the proposed decision, but to decide the case itself, pursuant to Government Code §11517, subdivision (c). By its order dated October 12, 1998, the Department acknowledged that it had not issued its own decision within the time permitted under that code section, and, for that reason, it was adopting the proposed decision as its own.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) appellants were the victims of entrapment; (2) the penalty (of revocation) constitutes cruel and unusual punishment; and (3) the decision is not supported by the findings and the findings are not supported by substantial evidence.

DISCUSSION

I

Appellants contend that they were entrapped into purchasing the supposedly stolen cigarettes and liquor by the Department investigator's persistent desire to

effect a sale, exemplified by her allegedly having engaged in “hard and protracted negotiations, grinding, arguing and fighting.” They argue that, in connection with the transaction alleged to have taken place on October 7, 1997, she made repeated efforts to make a sale despite appellants’ initial refusal to accept her offer of “cheap cigarettes.” Further, they contend, with respect to the October 15, 1997, transaction, she did not tell them the cigarettes she offered them had been stolen, and said only that “a couple” of the bottles of distilled spirits that they purchased had been stolen.

The test for entrapment has been stated in the California Supreme Court case of People v. Barraza (1979) 23 Cal.3d 675 [153 Cal.Rptr. 459], as follows:

"We hold that the proper test of entrapment in California is the following: was the conduct of the law enforcement agent likely to induce a normally law-abiding person to commit the offense? For the purposes of this test, we presume that such a person would normally resist the temptation to commit a crime presented by the simple opportunity to act unlawfully. Official conduct that does no more than offer that opportunity to the suspect - for example, a decoy program - is therefore permissible; but it is impermissible for the police or their agents to pressure the suspect by overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime." (23 Cal.3d at 689-690) (fn. omitted).

The teachings of Barraza were reaffirmed in People v. Watson (2000) 22 Cal.4th 220, 223 [91 Cal.Rptr.2d 822], where the Court, quoting from Proviso Corp. v. Alcoholic Beverage Control Appeals Board, stated:

“‘[T]he rule is clear that “ruses, stings and decoys are permissible stratagems in the enforcement of criminal law, and they become invalid only when badgering or importuning takes place to an extent and degree that is likely to induce an otherwise law-abiding person to commit a crime.” ’”

It seems clear from our review of the evidence that there was no conduct by

the investigator that could reasonably be characterized as badgering or importuning. The “hard and protracted negotiations” reflect only the investigator’s unwillingness to yield to appellants’ efforts to obtain a lower price - an attitude utterly inconsistent with badgering or importuning.

Nor does the record support appellants’ claims that they rejected her initial attempts to sell the cigarettes. Investigator Perri testified that it was made known to her on several occasions that appellants preferred to conduct the sale transaction at a time there would be no witnesses, and that it was this desire which resulted in her making several visits to the premises on October 7.

Much of appellant’s attack is directed at investigator Perri’s credibility. 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, who had the advantage of hearing her testimony and observing her while she testified, deemed her testimony credible. It would be inappropriate for the Board to substitute its judgment for his, especially when there is nothing inherently incredible in the account the investigator gave.

II

Appellants contend that the penalty of revocation constitutes cruel and unusual punishment, since it is grossly disproportionate to the allegedly unlawful conduct.

The concept of cruel and unusual punishment is a province of the field of criminal law. The term has no application in administrative proceedings.

The offense in this case is one which involves moral turpitude. Moral turpitude is susceptible to broad interpretation, and inherent in crimes involving fraudulent intent or intentional dishonesty for personal gain. (See Rice v. Alcoholic Beverage Control Appeals Board (1979)89 Cal.App.3d 30 [152 Cal.Rptr. 285.]

In Mohamed Ali Asumairi and Fatima N. Mohamed (1998) AB-6935, a case also involving the purchase of cigarettes believed to have been stolen, the Board stated:

“The Appeals Board has routinely affirmed the Department’s imposition of discipline, usually revocation, in instances where licensees have been found to have attempted to purchase ‘stolen’ cigarettes. This case is no different.”

III

Although appellants contend that the decision is not supported by the findings, and the findings are not supported by the evidence, their real complaint seems to be that certain of the counts (counts 1, 3, and 5) of the accusation, which alleged that appellants “negotiated” to purchase cigarettes believed to have been stolen, failed to allege offenses under the Penal Code provisions alleged to have been violated. Similarly, appellants contend that count 6, which charged appellants with possession of the purportedly stolen property, was simply duplicative of the counts directed at the purchase of the cigarettes and distilled spirits.

It is doubtful that the mere negotiation to purchase property believed to have been stolen, with nothing more, would violate the Penal Code provisions involved.

Even if the findings and determinations of counts 1, 3, 5, and 6 are disregarded, however, there is no reason to set aside the Department's order. There clearly was substantial evidence of two occasions where appellants violated §§ 664 and 496, subdivision (a), enough to support the order of revocation.

ORDER

The decision of the Department is affirmed.³

TED HUNT, 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.