

ISSUED AUGUST 22, 2000

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

22000, INC.	)	AB-7543
dba Mel's Liquor King)	
14 1 East Imperial Highway	)	File: 21-186605
La Habra, CA 90631,	)	Reg: 99046200
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	July 6, 2000
	)	Los Angeles, CA

22000, Inc., doing business as Mel's Liquor King (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its off-sale general license for 25 days for having sold an alcoholic beverage 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 Code §25658, subdivision (a).

¹The decision of the Department, dated November 17, 1999, and issued pursuant to Government Code §11517, subdivision (c), is set forth in the appendix, together with the proposed decision of Administrative Law Judge McCarthy.

Appearances on appeal include appellant 22000, Inc., appearing through its counsel, Rodney Mesriani, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on June 2, 1986. On April 9, 1999, the Department instituted an accusation against appellant charging that its clerk, Mohsen Jafari,² sold an alcoholic beverage (wine) to Jesse Daniel Jones, an 18-year-old minor.

An administrative hearing was held on June 22, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Salvador Zavala ("Zavala"), a Department investigator who observed the transaction; by Jesse Daniel Jones ("Jones"), the minor who purchased the wine; by Mohes Jafari ("Jafari"), the clerk; and by Mohammed Sedighy, the president of appellant corporation.

Subsequent to the hearing, the Administrative Law Judge ("ALJ") issued his proposed decision, finding that the transaction had occurred as alleged, rejecting appellant's defense under Business and Professions Code §25660 (reliance upon government-issued identification), and recommending a 15-day suspension, despite the fact the violation was appellant's second within a 36-month period.

The Department elected not to adopt the proposed decision. Instead, it issued its own decision pursuant to Government Code §11517, subdivision (c),

² Jafari's first name is Mohes, not Mohsen.

adopted the bulk of the findings and determinations from the proposed decision, and ordered a 25-day suspension. The Department rejected the ALJ's rationale for limiting the suspension to 15-days, that being the close physical resemblance between the minor and the California driver's license he had presented to the clerk, an expired license which had been issued to one Randon Scott Brown,³ and ordered a 25-day suspension.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) The Department's findings are not supported by substantial evidence; (2) Business and Professions Code §25660 requires only that a licensee or its employee make a reasonable appraisal of a customer's physical appearance; (3) the Department abused its discretion by acting arbitrarily and capriciously; (4) the Department erred in increasing the penalty from that ordered by the ALJ; and (5) appellant was never criminally convicted of having violated Business and Professions Code §25660. Issues 1 through 4 simply present the same issue in different phraseology - that appellant's defense under Government Code §25660 should have been sustained. Issue number 5 is irrelevant to this appeal. (See Cornell v. Reilly (1954) 273 P.2d 572 [127 Cal.App.2d 178 (acquittal in criminal proceeding no bar to Department accusation)].

³ The proposed decision included findings that, but for the fact that the license had been expired for nearly three years, the minor discrepancies between the minor's appearance and that of the photo and description on the license would not have prevented the license from providing the defense available under Business and Professions Code §25660.

DISCUSSION

Appellant has, in its presentation of issues, asked the Appeals Board to find that the Department acted arbitrarily in rejecting its defense under Government Code §25660 and, alternatively, in increasing from 15 days to 25 days the suspension of its license.

Section 25660 provides as follows:

"Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon."

It is appellant's position that its clerk's reliance on the California driver's license presented to him by Jones as proof he was over 21 years of age was reasonable and entitled appellant to the defense provided by §25660. Appellant stresses the close similarity between the appearance of Jones and the photo and description on the license, and argues there was no requirement that the clerk consider the fact that the license had expired almost three years earlier.

Read literally, it would seem that §25660 is not available when the identification proffered by a minor is that of a person other than the minor - "Bona fide evidence of majority and identity of the person is a document ... including, but not limited to, a motor vehicle operator's license ... which contains the name, date of birth, description, and picture of the person." (Emphasis added.) However, the

Board need not go this far to sustain the Department in this case.

The fact that the driver's license had expired nearly three years earlier cannot be ignored. The current validity of a document offered to prove identification is always a material factor to be considered in according the proper deference to the document. The likelihood that a licensed driver will present a license that has long been expired, to prove his or her identity, is so unlikely that its acceptance cannot be said to have been reasonable.

The clerk's insistence that he was focusing on the photograph on the license and not on the date of expiration is undercut by his admission (at RT 48) that, even if he had seen that the license expired three years earlier, he would have made the sale anyway.

Further, there is no basis for the implication that the clerk was entitled to focus only on the photograph on the license. Common sense dictates that he is required to give appropriate weight to each item of information on the license which tends to show that it is the property of the person tendering it, and that the person is 21 years of age or older. A license which expired three years earlier must be seen as a red flag which should not be ignored. (See Nourollahi (1997) AB-6649 ("[T]he longer a license has been expired, the higher the level of diligence which should be required for a successful defense under §25660.))

The Department's increase in the penalty, from the 15 days suggested by the Administrative Law Judge, to the 25 days in the Department's order, cannot be said to be an abuse of discretion. The Department simply disagreed with the ALJ as to what an appropriate penalty should be, given all the circumstances.

That this was appellant's second violation within a 36-month period would appear to be a sufficient basis for an enhanced penalty, and the apparent unwillingness of the Department to treat with leniency the clerk's reliance upon physical similarity to the exclusion of other relevant information would seem to be well within its broad discretion.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

Board Member Ray T. Blair, Jr., did not participate in the deliberation of this appeal.

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.