

ISSUED NOVEMBER 21, 2000

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

MICHAEL MASSOUD and JULIETTE	)	AB-7551
MASSOUD)	
dba Mike's Liquor	)	File: 21-047583
302 Rolph street	)	Reg: 99046077
San Francisco, CA 94112,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Robert R. Coffman
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	September 21, 2000
	)	San Francisco, CA

Michael Massoud and Juliette Massoud, doing business as Mike's Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale general license for co-appellant Juliette Massoud selling an alcoholic beverage to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivisions (a) and b), arising from a violation of Business and

¹The Decision Under Government Code Section 11517, subdivision (c), dated November 30, 1999, and the Proposed Decision which was rejected by the Department, dated June 29, 1999, are set forth in the appendix.

Professions Code §25658, subdivision (a).

Appearances on appeal include appellants Michael Massoud and Juliette Massoud, appearing through their counsel, Richard D. Warren, and the Department of Alcoholic Beverage Control, appearing through its counsel, John R. Peirce

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued on May 18, 1976. Thereafter, the Department instituted an accusation against appellants charging the violation of selling an alcoholic beverage to a person under the age of 21 years (minor), and alleging two prior violations in 1996, of the same type. An administrative hearing was held on June 29, 1999, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred, and because of the two prior similar violations, the license would be revoked. Appellants thereafter filed a timely notice of appeal.

In their appeal, appellants raise the issue that there is no substantial evidence of the prior violations.

DISCUSSION

Appellants contend there was a failure of proof as to the two prior violations. Proof of these prior violations as having occurred within a 36-month period prior to January 21, 1999, the date of the present appeal's violation, is mandatory to be able to come within the provisions of Business and Professions Code §25658.1, subdivision (b), which states in pertinent part:

“... the department may revoke a license for a third violation of Section 25658 that occurs within any 36-month period”

Finding IV of the proposed decision renders almost no assistance in determining when the prior violations occurred. However, some light is shed by the Department’s decision which states in the second paragraph of Finding III, that “... his mother [co-appellant] sold to a minor on May 24, 1996 (Exhibit 2), and his father [co-appellant] sold to a minor on August 13, 1996 (Exhibit 3).” The dates as shown in the Department’s decision are dates which come within the necessary 36-month period. The question then must be whether there is substantial evidence to support the Finding.

Exhibit 2 is a four-page document where each page has been certified as a true copy by the area district administrator. Each page shows the same file number, a very minor point as the file number is the license number assigned to appellants. The exhibit contains a decision showing the file number and a “registration” number which registration number is assigned at the time the accusation is filed with the main office of the Department, and officially registered against a licensee. The decision sets forth information that appellants violated the statutes pertinent to this review, but little else relevant to the issue under review. The next form is a stipulation and waiver form, being an agreement that certain discipline may be imposed and a decision can be issued against appellants. There is no evidence of a registration number being assigned at the time of the signing of the stipulation and waiver. The accusation which commences the matter, does list

the date of the violation and any prior violations. Missing from the accusation is the registration number and the date that the accusation was filed by the Department. It would appear that Exhibit 2 was gathered at the district level rather than from properly filed documents in the Department's main office, which documents would have the proper filings and registration numbering.

It seems to the Board that where the Department is at all serious in taking a license from a licensee, proper documentation, and procedural due process should be somewhat present, which it is sorely absent in this matter.

Exhibit 3 suffers from some of the same defects as Exhibit 2. There is an order granting compromise, showing the file number and registration number. However, there is no decision by the Department, as in Exhibit 2, which sets forth officially the terms and sanctions for the violation. The stipulation and waiver form has the necessary registration number. The accusation is defective as in Exhibit 2.

It is quite obvious that the matters all concern prior violations of these appellants and their license. However, while the forms are certified by the local district administrator, they seem to have been hurriedly obtained without the necessary filing stamps and registration numbers to insure that, as a matter of proof, the documents sought to be used to revoke the license are proof as to the issue. When the Board compares the accusation in the present appeal, and other sundry documents included in the present appeal, they are properly numbered and show the date of filing the accusation.

The Appeals Board in the recent case of Kim (1999) AB-7103, reversed a

decision of the Department due to the defective documentation on prior matters. Therein, with other defects such as improper certification by a Department person, the common problem was the lack of registration of the accusing documents. The case of Loresco (2000) AB-7310, was as to the penalty, reversed, due to the same defects as noted in this review .

ORDER

The decision of the Department is reversed.²

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

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.