

ISSUED OCTOBER 24, 2000

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

KOO & HONG ENTERTAINMENT, INC.	)	AB-7554
dba Saga)	
625 S. Serrano Avenue	)	File: 47-289651
Los Angeles, CA 90005,	)	Reg: 97039181
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Arnold Greenberg
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	August 3, 2000
	)	Los Angeles, CA

Koo & Hong Entertainment, Inc., doing business as Saga (appellant), appeals from a decision of the Department of Alcoholic Beverage Control made pursuant to Government Code §11517, subdivision (c),¹ which suspended its license for 15 days for having purchased wine and distilled spirits from sellers who did not then hold a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a

¹The decision of the Department, dated December 8, 1999, is set forth in the appendix, together with the proposed decision which was not adopted by the Department.

violation of Business and Professions Code §23402.²

Appearances on appeal include appellant Koo & Hong Entertainment, Inc., appearing through its counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on January 19, 1994. Thereafter, the Department instituted an accusation against appellant charging that appellant, a retail licensee, had made purchases of alcoholic beverages from persons lacking the proper licenses for sale to a retail licensee.

An administrative hearing was held on June 22, 1999. At the hearing, Department investigator Jennifer Smith identified certain documents seized during an inspection of appellant's premises, appearing to show purchases of alcoholic beverages and other items from Hobart Liquors and Smart & Final, entities identified as holders of retail alcoholic beverage licenses. Appellant presented no witnesses on its behalf.

Subsequent to the hearing, the Administrative Law Judge issued his proposed decision, ordering the accusation dismissed. Although finding that the documents seized from appellant showed some purchases of alcoholic beverages for sellers who did not hold the requisite wholesale licenses, the ALJ concluded the quantities were insufficient to support a finding that the purchases were for resale

² Section 23402 prohibits a retail on- or off-sale license from purchasing alcoholic beverages for resale from persons not holding the licenses listed in that section.

rather than for personal consumption by appellant's owner and his family.

The Department declined to adopt the proposed decision, and wrote its own, pursuant to Government Code §11517, subdivision (c), ordering appellant's license suspended for 15 days. In so doing, it adopted Findings of Fact I, II, and III-A and -C, and substituted its own Finding III-B, in which it found appellant had purchased twenty-six six-packs of Coors beer, for a total of \$188.85; two Cabernet Sauvignon wines for \$8.64, and two bottles of Gallo wine for \$7.34, all from one licensee (Smart & Final), during the period August 2 through August 31, 1996.

The Department also substituted its own Determinations of Issues for those of the ALJ on which his proposed dismissal was based. The Department concluded in Determination IV that since "the purchases of alcoholic beverages ... appear on the business ledgers and daily journals" of appellant's business, and receipts for the purchases from Smart & Final were found on the premises, there is a "strong inference" that the purchases were for resale.

In Determination of Issues V, the Department concluded, from appellant's failure to present any rebuttal evidence that the purchases were not for a business purpose, that it was more probable than not that the purchases were made for resale. The Department also rejected the contention that evidence of actual sales by appellant of the alcoholic beverages in question was required.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that the Department, in its reliance solely upon cash register receipts, improperly shifted the burden to appellant to prove its innocence.

DISCUSSION

Appellant asserts that the cash register receipts (Exhibits 5(b), 6(c), 7(a), and two marked 8(b)) constitute the only evidence in support of the Department's decision. Appellant argues "there are a multitude of possible explanations" of the documents that are equally reasonable and more probable than that they show purchases for resale. Appellant suggests the receipts could represent purchases by a separate business which shares a corporate officer, Mr. Koo, with appellant; that Mr. Koo might have been at the premises working with papers from the other business; that the receipts represented personal purchases by a corporate officer, but were held at the business for possible use as a tax write-off; that the purchases were for a private event or employee use away from the premises. In sum, appellant argues that there are so many alternative explanations possible for the presence of the receipts that it was unreasonable for the Department to draw the inference that they represented purchases for resale.

The Appeals Board is bound to resolve any conflicts in the evidence in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

We believe the Department was reasonably entitled to infer that the beer

was purchased for resale. The receipts for the purchases were found on the premises, and the cost was recorded on business-like documents found on the premises. Additionally, the quantities were greater than might ordinarily be associated with personal consumption. Finally, appellant was in the best position to provide evidence of the beer's purchase for some other purpose than resale, but did not do so.

There was no shifting of the burden of proof, as appellant contends. Appellant simply failed to refute the reasonable inference which could be drawn from the evidence presented by the Department.

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.