

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

**AB-7557**

SONG JOOK HONG and TAE KEON HONG dba Adam's Square Liquor  
1021 E. Chevy Chase Dr., Glendale, CA 91205,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

File: 21-241826 Reg: 99046794

Administrative Law Judge at the Dept. Hearing: Arnold Greenberg

Appeals Board Hearing: February 1, 2001  
Los Angeles, CA

**ISSUED APRIL 12, 2001**

Song Jook Hong and Tae Keon Hong, doing business as Adam's Square Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended their license for 15 days for appellant's clerk selling an alcoholic beverage to a person under the age of 21, 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).

Appearances on appeal include appellants Song Jook Hong and Tae Keon Hong, appearing through Abel S. Hong, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

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<sup>1</sup>The decision of the Department, dated December 9, 1999, is set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on January 29, 1990. Thereafter, the Department instituted an accusation against appellants charging that, on May 15, 1999, appellant's clerk sold an alcoholic beverage to a person under the age of 21.

An administrative hearing was held on September 14, 1999, at which time documentary evidence was received and testimony was presented by Department investigators John Sutton and Dan Shoham; by the minor, David Woo; and by appellants' clerk, Abel Hong.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged.

Appellants thereafter filed a timely appeal in which they contend that the decision is not supported by substantial evidence.

## DISCUSSION

Appellants contend the decision is erroneously based on assumptions and inconsistent testimony. They argue that the investigators did not witness the minor purchasing the beer, so the finding of a violation is based on the assumption that the minor made the purchase. In addition, they argue, the decision is based on inconsistent and contradictory statements made by the Department's witnesses.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the

findings. The Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.<sup>2</sup>

"Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

The evidence supporting the determination that the minor did purchase the beer, while circumstantial rather than direct, and the reasonable inferences drawn from the evidence, are sufficient to constitute substantial evidence of the violation.

The minor was observed by the investigator standing in front of the beer coolers in appellants' premises. Within just a few minutes after the investigator left the store, the minor emerged, carrying a black plastic bag containing a six-pack of beer. The black plastic bag containing the beer was identical to the bags ordinarily used to bag beer purchased at appellants' store. After being questioned by the investigators, who

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<sup>2</sup>The California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

determined that he was 18 years of age, the minor re-entered the store and identified Abel Hong as the one who sold the beer to him. The clerk, while not admitting that he sold the beer to the minor, said that he was busy and had not checked the minor's ID. The minor also testified that he gave money to the clerk and received change in return. The inference that the minor purchased the beer from the clerk in appellants' store is a reasonable one. Even if the actual purchase might be questioned, the minor clearly was furnished the beer in appellants' store. Either way, the finding of a violation is based on substantial evidence.

Any alleged conflicts or discrepancies in the testimony of the Department's witnesses appear to be the result of questions that were confusing to the witnesses. The only major discrepancy is between the testimony of the Department's witnesses and the testimony of the clerk, which the ALJ found to be "generally evasive."

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them 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] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); 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].)

The findings and determinations of the ALJ were based on substantial evidence, and that is sufficient to sustain the decision of the Department.

ORDER

The decision of the Department is affirmed.<sup>3</sup>

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

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<sup>3</sup>This 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.