

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

AB-7560

ABDULWAHEED ALAWDI dba Sunrise Market
900 Sterling Road, Bakersfield, CA 93006,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 21-307213 Reg: 9046825

Administrative Law Judge at the Dept. Hearing: Sonny Lo

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

ISSUED JULY 6, 2001

Abdulwaheed Alawdi, doing business as Sunrise Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his off-sale general license for a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Abdulwaheed Alawdi, appearing through his counsel, Larry Errea, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on July 7, 1995. Thereafter, on

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

July 14, 1999, the Department instituted an accusation against appellant charging that, on June 4, 1999, appellant's son, Kabil Alawdi, sold an alcoholic beverage (two 18-packs of 12-ounce cans of Bud Light beer) to Keith Lyles, a minor.

An administrative hearing was held on November 17, 1999. Testimony was presented by Kern County deputy sheriff Dennis Sterk, by Department investigator Jason T. Montgomery, by the minor, Keith Lyles, and by appellant in his own behalf. The Department also presented documentary evidence of prior violations found to have been committed by appellant, on February 8, 1997, and January 15, 1999.² Appellant did not contest the charge of the accusation, but urged a penalty other than outright revocation, which the Department had recommended.

Following the conclusion of the hearing, the Administrative Law Judge issued his proposed decision in which he recommended that appellant's license be revoked.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant challenges the penalty as excessive.

DISCUSSION

Citing Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal.2d 589 [43 Cal.Rptr. 633], where, despite multiple violations, the Department's order of revocation was overturned as an abuse of discretion, appellant challenges the penalty

² The Department asserts in its brief (at page 3) that "the same clerk was involved in all three violations ... having personally committed the violation in two of the incidents." This is somewhat misleading. The clerk involved in the prior violations, Galal Saleh, was accused in count one of the current accusation of having sold beer to Lyles, but that count was dismissed after the minor testified that it was appellant's son who sold him the beer. While Saleh was present when the sale took place, there was no evidence that he had any involvement in the transaction.

as excessive. Appellant asserts that it was unreasonable for the Department to order revocation in his case, where three violations spanned a period of 28 months, while in Harris, there were 18 violations within a span of only eight days. Appellant also contends that the ALJ's statement that "there is no reason to deviate from the policy suggested by Business and Professions Code §25658.1(b)" evidences a failure to exercise discretion in the selection of a proposed penalty.

The attempt to contrast the result in Harris with the result in this case is unpersuasive, principally because of the adoption by the Legislature in 1994 of Business and Professions Code §25658.1. It cannot be denied that the Legislature intended to make clear, by its enactment, that the sale of alcohol to minors was not to be condoned. It did this not only by authorizing license revocation after three violations within a 36-month period, and by acknowledging that, in appropriate cases, a license could be revoked where there were fewer than three violations, but also by barring any petition for an offer in compromise for any second or subsequent violation within a 36-month period.

The fact that the violations in Harris (some of which would not even be violations under existing law) all occurred within an eight-day period of time was considered a mitigating factor because of that licensee's previously clean record.

The ALJ's statement that he saw no reason to deviate from the policy suggested by Business and Professions Code §25658.1, subdivision (b), must be read in context. He was clearly influenced in his decision by the ease with which the minor was able to buy the beer despite appellant's previous violations, suggesting appellant had not learned from the prior disciplinary actions.

It is true that where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].) However, the Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].)

We do not believe it can be said that the order of revocation was an abuse of discretion.

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.