

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

AB-7634

PARAMJIT SINGH dba Anthony's Wine Liquor
65 Brookwood Avenue, Ste 1, Santa Rosa, CA 95404,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 21-312906 Reg: 99047759

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: February 15, 2001
San Francisco, CA

ISSUED MAY 30, 2001

Paramjit Singh, doing business as Anthony's Wine Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 15 days for appellant selling an alcoholic beverage to a person under the age of 21 years (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).

Appearances on appeal include appellant Paramjit Singh, appearing through his counsel, Peter Ottenweller, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on December 15, 1995.

¹The decision of the Department, dated May 4, 2000, is set forth in the appendix.

Thereafter, the Department instituted an accusation against appellant charging that appellant sold an alcoholic beverage to a person under the age of 21 years.

An administrative hearing was held on March 14, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the circumstances of the sale.

Subsequent to the hearing, the Department issued its decision which determined that a violation had occurred. Appellant thereafter filed a timely notice of appeal.

In his appeal, appellant raises the issue that appellant acted in good faith as the minor had shown to appellant on prior occasions bona fide identification of majority.

DISCUSSION

Police officer David MacDonald (officer) testified that he entered the premises and saw two persons purchasing a large quantity of alcoholic beverages [Exhibit 2]. The officer told appellant that the officer thought the purchasers were under age and appellant should check the identification of the purchasers.² The officer also showed his police badge to the purchasers and appellant. One of the purchasers admitted he was underage and left the premises. The other purchaser said he was 21 years of age [RT 6-8, 10-13, 17, 27].

The officer continued his testimony by stating appellant asked the remaining purchaser, David Michael Faught (minor), for identification while in the presence of the

²The officer testified on direct examination that he knew the purchasing minor was underage from contacts on two prior occasions [RT 12]. On cross examination, the officer stated he did not tell appellant he knew the purchasing minor was under age. However, the officer's report apparently stated that the officer only thought the minor purchaser was under age [RT 17]. The minor stated he recognized the officer before the officer identified himself to the minors and appellant, but was not sure if the man was the officer he knew [RT 27].

officer. The minor stated he did not have identification on his person, but reminded appellant that the minor had shown identification to appellant on prior occasions. Appellant made the sale [RT 13, 17-18].

Appellant testified that the minor had previously shown him a valid California identification card. At the time of the present sale, appellant relied on his memory of the prior identification presentation [RT 36-38, 41, 44].

The minor testified that he had gone to the premises before on three to five occasions, and recently within a week. He had shown appellant a check cashing card he purchased from, possibly, Check Systems or Check Max, and altered the card to show a proper age. He did not have the card at the time of the present purchases as a doorman at a bar confiscated the card. However, he did have a valid identification on his person which did show his correct age. He did not show this valid identification to appellant, only to the officer on his arrest [23-27, 30].

Business and Professions Code §25660 states:

“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 ... which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee ... demanded, was shown and acted in reliance upon such bona fide evidence in any transaction ... shall be a defense to any ... proceedings for the suspension or revocation of any license based thereon.”

Appellant argues that reliance upon bona fide evidence of identity in any transaction is a defense. In reality, appellant would have this Board accept his testimony that on a prior occasion he asked for and received valid identification. Considering the facts of this transaction, appellant's argument lacks credibility. Appellant did ask for, and did not receive, proper identification at the time of the present sale. All he was told by the minor was that he had been shown identification on

prior occasions. Appellant with a complete lack of proper wisdom in his duty to obey the law, and at his own peril, made the sale.

If appellant had in some reasonable manner followed the law in this instance, and not made the sale without the showing of proper identification, this incident would not be before us. It does not follow unnoticed, that by offering a defense as stated, no one is able to examine the alleged identification alleged to have been shown to appellant on a prior occasion.

The Administrative Law Judge (ALJ) rejected appellant's defense. Apparently, the ALJ based his decision on the credibility of the police officer and possibly on some of the testimony of the minor. The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].) We conclude the ALJ reasonably rejected the offered defense.

ORDER

The decision of the Department is affirmed.³

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

³This 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.