

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

AB-7649

CHUNG H. YOO and MYUNG K. YOO dba Blooms Liquor
2718 West Vernon Avenue, Los Angeles, CA 90008,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 21-232265 Reg: 99047600

Administrative Law Judge at the Dept. Hearing: Sonny Lo

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

ISSUED JUNE 19, 2001

Chung H. Yoo and Myung K. Yoo, doing business as Blooms Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license pursuant to Business and Professions Code §24200, subdivision (d), following the entry by Myung K. Yoo of a plea of nolo contendere to a charge of having violated Penal Code 67.5, subdivision (a).²

Appearances on appeal include appellants Chung H. Yoo and Myung K. Yoo, appearing through their counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

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

² Penal Code §67.5, subdivision (a), provides that “[e]very person who gives or offers as a bribe to any ministerial officer, employee, or appointee of the State of California, county or city therein, or political subdivision thereof, any thing the theft of which would be petty theft is guilty of a misdemeanor.”

FACTS AND PROCEDURAL HISTORY

Appellant Myung K. Yoo entered a plea of nolo contendere to a charge of bribery under Penal Code §67.5. At a later date, the Department filed an accusation charging the entry of the plea as a violation of Business and Professions Code §24200, subdivision (d). The accusation, as amended, described the offense as “bribery of a peace officer ... a public offense, under the circumstances, involving moral turpitude.”

The Department, following the administrative hearing, adopted the proposed decision of the Administrative Law Judge (ALJ) which had recommended that appellant’s license be revoked. The only evidence offered by the Department in support of its case was the court docket establishing the plea. This timely appeal followed.

Appellants, focusing on the phrase “under the circumstances involving moral turpitude” of the accusation, now renew their contention, rejected by the ALJ, that the failure of the Department to offer evidence of the circumstances of the offense precludes it from finding the offense was one involving moral turpitude.

DISCUSSION

Appellants contend the Department may not order revocation without first having established the circumstances of the bribery offense committed by appellant Myung K. Yoo.

In In re Hallinan (1955) 43 Cal.2d 243, 248 [272 P.2d 768], where the issue was whether the crime of wilful filing of a false federal tax return was one involving moral turpitude, the court said:

“While the problem of defining moral turpitude is not without difficulty ... it is

settled that whatever else it may mean, it includes fraud and that a crime in which an intent to defraud is an essential element is a crime involving moral turpitude. ... It is also settled that the related group of offenses involving intentional dishonesty for purposes of personal gain are crimes involving moral turpitude.”

In re Hallinan, *supra*, 272 P.2d at 771.

The court went on to cite other examples of crimes involving moral turpitude, including petty theft and attempted bribery.

In re Hanley (1975) 13 Cal.3d 448, 450 [119 Cal.Rptr. 5], a case cited by the ALJ, was an action to disbar an attorney following his entry of a plea of guilty to a charge of bribing a witness not to testify in a criminal proceeding, in violation of what is now Penal Code §138. That section makes such conduct a felony. That the court thought the bribery offense one involving moral turpitude is evident in the following statement from the opinion: “Petitioner’s guilt of the crime charged has been conclusively determined ... and the fact that his offense involved moral turpitude has been heretofore determined by our order of interim suspension.” (In re Hanley, *supra*, 13 Cal.3d at 451.)

In Werner v. State Bar (1944) 24 Cal.2d 611 [150 P.2d 892, 895], another case cited by the ALJ, the court stated, in reference to an attempt to bribe a deputy district attorney: “In any event, the making of such an offer, whether or not there was any intention to carry it out, is an act of moral turpitude.”

The language in the Department’s Procedures Manual upon which appellant relies does not compel a different result. As we read it, it is saying only that where the accusation is based upon Business and Professions Code §24200, subdivision (d), the offense upon which the licensee was convicted must be one involving

moral turpitude, and where the accusation is based upon § 24200, subdivision (a), the circumstances of the offense must be shown in order to show cause for discipline, i.e., that the conduct was contrary to welfare and morals. In the latter case, it may, but need not be, an offense involving moral turpitude.

Thus, the ALJ was correct in concluding that the “under the circumstances, involving moral turpitude” phrase of the accusation was “immaterial and unnecessary to be found.” (See Mercurio v. Department of Alcoholic Beverage Control (1956) 144 Cal.App.2d 626 [391 P.2d 474].

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.