

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

AB-7658

File: 48-303296 Reg: 00048597

CARESSA CAMILLE, INC. dba Joey's
415 Broadway, Chula Vista, CA 91910,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: September 6, 2001
Los Angeles, CA

ISSUED NOVEMBER 14, 2001

Caressa Camille, Inc., doing business as Joey's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its license for its clerk having sold alcoholic beverages to two minors, 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 Caressa Camille, Inc., appearing through its counsel, William R. Winship, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on January 24, 1995. Thereafter, the Department instituted an accusation against appellant charging that, on January 14, 2000, appellant's clerk, Chuan Imbimbo ("Imbimbo"), sold an

¹The decision of the Department, dated July 6, 2000, is set forth in the appendix.

alcoholic beverage (beer) to Joshua J. Ortiz (“Ortiz”) and Melinda Joy Blakley-Bowen (“Bowen”), both of whom were minors. Although not stated in the accusation, both Ortiz and Bowen were acting as minor decoys for the Chula Vista Police Department

An administrative hearing was held on May 26, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented by the two decoys and Chula Vista police officer Ricardo Cruz regarding the purchases by the decoys and their identification of the seller, and by Evelyn R. Jones (“Jones”), who presented evidence in mitigation on behalf of appellant.

Subsequent to the hearing, the Department issued its decision which determined that the sales had occurred as alleged, that this was appellant’s third violation within a 36-month period, and ordered appellant’s license revoked.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that the Department failed to prove that Imbimbo was an agent, servant, or employee of appellant; therefore, it was error to impute to appellant Imbimbo’s unauthorized conduct.

DISCUSSION

Appellant contends that the Department failed to offer any evidence to refute appellant’s claim that Imbimbo was not an agent, servant, or employee when she sold the beer to Ortiz and Blakley-Bowen. It suggests that Imbimbo simply took it upon herself to wait on customers while appellant’s owner was in her office.

Appellant does not dispute the testimony of officer Cruz that Imbimbo waited on tables, took orders from customers, served drinks to customers, and accepted payment from those customers, for at least a 15-minute period while Jones was in her office and supposedly unaware of what was going on.

Civil Code §2298 states: "An agency is either actual or ostensible." Civil Code §2300 defines "ostensible agency" as: "An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." (See also 2 Summary of California Law, Witkin, pages 52-53 for a full discussion of ostensible agency).

We find it somewhat curious that Imbimbo would have been acting without Jones's knowledge. Jones had invited her over for an employment interview, and knew Imbimbo had expressed an interest in returning to work for appellant. Imimbo was dressed in clothing similar to that of other employees of the licensee. By remaining in her office and ignoring what Imbimbo might be doing, Jones showed a lack of ordinary care, and is estopped from contending Imbimbo was her agent, employee, or servant.

Therefore, there is substantial evidence to support the finding of the ALJ that Imbimbo was acting as appellant's agent when she served the two beers to the two minors.

ORDER

The decision of the Department is affirmed.²

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

² 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.