

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

AB-7688

File: 21-116326 Reg: 99046734

JAMES P. WHITE and JOYFUL WHITE dba White's Liquor
2593 South Elm, Fresno, CA 93706,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Jeevan S. Ahuja

Appeals Board Hearing: October 11, 2001
San Francisco, CA

ISSUED NOVEMBER 29, 2001

James P. White and Joyful White, doing business as White's Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale general license for appellant James P. White having pled guilty to a charge of having converted public monies, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of 18 U.S.C. §641 in conjunction with Business and Professions Code §24200, subdivision (d).

Appearances on appeal include appellants James P. White and Joyful White, appearing through their counsel, Michael B. Levin, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

¹The decision of the Department, dated September 7, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on January 4, 1982. Thereafter, the Department instituted an accusation against them charging that James P. White entered a plea of guilty to a charge that he violated Title 18, U.S.C. §641, a public offense involving moral turpitude.

An administrative hearing was held on July 18, 2000. The Department introduced documentary evidence of the charge against White and his plea of guilty to the charge, while White testified that there were a number of innocent explanations for the fact that the quantity of food stamps in his possession far exceeded his sales of the items which could properly be purchased with food stamps.

Subsequent to the hearing, the Department adopted the proposed decision of the Administrative Law Judge (ALJ) which determined that the charge of the accusation had been established, that White's explanations for what had occurred did not negate the guilty plea he entered nor mitigate the penalty, and that revocation was the appropriate penalty.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants contend that the ALJ ignored or did not give sufficient weight to substantial evidence of mitigation and evidence tending to show that the violation was less aggravated or reprehensible.

DISCUSSION

Appellants' brief acknowledges (at page 2) that "the gravamen of the offense is that Appellant converted to his own use money from food stamp coupons received for non-food items. Food stamp coupon redemptions exceeded food sales." The question

on this appeal is whether White's explanations of how it came to pass that his food stamp redemptions exceeded food sales are sufficient to overcome the order of revocation.

The ALJ clearly did not ignore the exculpatory evidence offered by White. Nor can it be said that he did not accord it sufficient weight.

Instead, the proposed decision was explicit that more weight was given to the fact that, in White's plea agreement, he agreed that he was pleading guilty because he was, in fact, guilty.²

Appellants' reliance upon Business and Professions Code §493 is misplaced. That section does not apply to the Department. See Business and Professions Code §476.³ The Department is not obligated to inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline. To the extent it does so is a matter of discretion.

Section 24200, subdivision (d), provides that a plea of guilty to a public offense

² The Memorandum of Plea Agreement (Exhibit 3) includes the following:

"The defendant will plead guilty because he is in fact guilty of the crime set forth in the information. The defendant also agrees that the following are the facts of this case, although he acknowledges that, as to other facts, the parties may disagree:

"Between on or about January 1, 1993, and on or about February 10, 1997, ... the defendant willfully and knowingly converted to his own use property of the United States Department of Agriculture, namely food stamp coupons having a value of \$54,590.45 ... which were accepted for non-food items"

³ §476. Inapplicability of division to certain persons

"Nothing in this division shall apply to the licensure or registration of persons pursuant to ... Division 9 (commencing with Section 23000)"

involving moral turpitude constitutes cause for the suspension or revocation of a license. That the Department chose to revoke appellants' license rather than impose a suspension may appear harsh, especially in light of appellants' lengthy period of discipline-free operation, but we cannot say it was an abuse of discretion. The Department is entitled to expect its licensees to be honest in their dealings. Here, co-appellant James P. White formally admitted, by his plea of guilty, that he lacked that quality.

ORDER

The decision of the Department is affirmed.⁴

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

⁴ 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.