

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

AB-7733

File: 21-258925 Reg: 00048935

EID TABEL dba Eddie's Liquor
1433 West Ramsey Street, Banning, CA 92220,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: August 16, 2001

Los Angeles, CA

ISSUED OCTOBER 18, 2001

Eid Tabel, doing business as Eddie's Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 15 days for his clerk selling alcoholic beverages to two persons under the age of 21 years, 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 Eid Tabel, appearing through his counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on April 29, 1991. Thereafter,

¹The decision of the Department, dated October 26, 2000, is set forth in the appendix.

the Department instituted an accusation against appellant charging the sales to the persons under age 21 years (minors).

An administrative hearing was held on September 13, 2000, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the sales had been made and that the license should be suspended.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the issue that the findings are not supported by substantial evidence.

DISCUSSION

Appellant contends that the findings are not supported by substantial evidence arguing that the minors were not credible witnesses as they could not identify the clerk at the premises or the hearing, the clerk denied the sale at the time the police officers confronted him and said an adult had bought the beer, and the alleged alcoholic beverages were not entered into evidence at the administrative hearing before the Administrative Law Judge (ALJ).

The 17-year-old minors entered the premises and placed two 30-packs of Budweiser beer in cans, and one 20-pack of Budweiser beer in bottles, on the sales counter, having obtained the beer from the premises' coolers. The minors paid for the beer and left the premises [RT 10-12, 21-22, 25-28].

Two police officers were parked across the street from the premises, and saw the minors' vehicle stop at the premises, with the occupants not exiting from the vehicle immediately. The officers saw two youthful looking males finally exiting the vehicle and entering the premises with their hands empty. The minors later exited the premises

carrying three large packages of beer. The minors were “not running.” These observations were made through binoculars. The minors were later arrested while driving, and subsequently placed in the backseat of the police vehicle [RT 34-36].

The packages of beer were found in the minors’ vehicle. The minors were returned to the premises and the minors identified a man standing outside the premises as the clerk who sold the beer [RT 39-45].

Appellant argues that the minors could not identify the clerk at the premises or at the hearing. The minors testified that they were not sure of the identity of the man at the premises as they were looking through a screen in the back seat of the police vehicle [RT 18-21, 32]. The police officers testified that the minors identified the clerk [RT 40, 53].

The Administrative Law Judge (ALJ) found that “[the minors] were asked if the man standing in the premises doorway had sold beer to them, and [the minors] identified this man as the clerk who sold them the beer.” The ALJ then concluded that “Based upon the consistent and credible testimony of Officers Smith and Caldwell, greater weight was given to their (the officers) testimony regarding what actually took place when Alvarez and Flores were asked to identify the clerk who had sold them beer than to the testimony provided by the two minors at the hearing.”

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, 641]).

It appears from the record that there was only one employee (clerk) at the

premises. The man (alleged clerk) "identified" by the minors, as officer Smith so testified, stated to the officers that he did not sell the beer to the minors, and if the minors got the beer, it was from another customer, thus reasonably inferring that the man accused by the police as being the selling clerk, was in fact, the clerk of the store.

Appellant also argues that the clerk denied the sale at the time the police officers confronted him and said an adult had bought the beer. Officer Caldwell testified that the clerk denied selling the beer to the minors and alleged another person had bought the beer [RT 55].

The whole of appellant's defense is based upon what the police stated the clerk said, as the clerk, while at the hearing, did not testify [RT 54]. The minors left the premises with a large amount of beer and placed it in their vehicle. Therefore, it can be reasonably inferred that if an adult male bought the beer, and the beer, in such large quantities was carried from the premises by the minors, the clerk would have seen the transfer of the beer in the premises to two minors, and had a duty to stop the transfer of possession before the beer left the premises.

The last argument of appellant is that the alleged alcoholic beverages were not entered into evidence at the administrative hearing before the ALJ. Officer Smith testified that the beer was left at the police station. However, the two officers testified that the three boxes contained cans and bottles of Budweiser beer. The minors also testified that they purchased, and carried out of the premises, Budweiser beer. This testimony seems to be reasonably sufficient.

ORDER

The decision of the Department is affirmed.²

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

²This 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.