

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

AB-7809

File: 21-345020 Reg: 00049581

MANSOUR ALCHEHAYED dba El Cerrito Market Liquor
19480 Ontario Avenue, Ste. C & D, Corona, CA 91719,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: February 7, 2002
Los Angeles, CA

ISSUED APRIL 18, 2002

Mansour Alchehayed, doing business as El Cerrito Market Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his off-sale general license for 25 days for allowing his clerk to sell an alcoholic beverage to a person 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 Mansour Alchehayed, appearing through his counsel, Stephen Jamieson, Ralph Barat Saltsman, and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

¹The decision of the Department, dated April 19, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on August 31, 1998. Thereafter, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to an underage person.

An administrative hearing was held on March 13, 2001, at which time oral and documentary evidence was received. The record shows that appellant's license had suffered another underage sale in 1999. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: the underage person properly showed, and the clerk in good faith relied on, evidence of majority, and the Department improperly allowed an amendment to the accusation which prejudiced appellant's rights.

DISCUSSION

I

Appellant contends the underage person properly showed, and the clerk properly relied on, evidence of majority.

On June 9, 2000, Joseph Alan Hawes (minor), being approximately 19 years of age, entered the premises and purchased an alcoholic beverage. The minor was asked for identification, and the minor showed a California Driver's License of his brother [Exhibit 2]. The exhibit had the red stripe showing majority in 2000, with a red indication that the license expired on March 28, 1998, slightly in excess of two years prior to the sale. Most testimony showed the picture of the brother on the license and the minor were substantially similar [RT 18-19, 33-35].

The issue is whether the false identification as to the purchasing minor, was

reasonably in good faith accepted by appellant's employees as bona fide identification.

The minor testified that he showed his wallet to both clerks with the license visible to both clerks. He did not remember if he held the wallet or handed the wallet to the clerks for their review [RT 15, 20].

The Department investigator testified that Sipriano David Castro (Castro), the younger clerk, took the wallet containing the license [RT 26].

Castro testified he was bagging, but asked for identification from the minor and when tendered, took possession of the identification, and showed the identification to the other clerk, Ghadas Kasih (Kasih). Castro also stated that had been told to look at the expiration date on a license [RT 43-45, 50-52].

Kashi testified that he asked for and checked the identification, with Castro reviewing the identification and then Kashi reviewing [RT 55-57].

In this matter, both clerks reviewed the license, and apparently took little concern that it was expired for more than two years prior to the date of the sale. We have not been shown why or can we conceive of any legitimate reason a 21-year old would carry, for over two years, his expired license. It seems a more careful inquiry should have been made.

The Board has considered this issue on many occasions.² In the recent case of 7-Eleven & Pearce (2001) AB-7573, the Board reviewed the cases shown in the

²Nourollahi (1997) AB-6649, a license expired over two years, with the Board sustaining the Department's decision; Loresco (2000) AB-7310, an adult school identification had expired over two years, with the Board sustaining the Department's decision; 22000, Inc. (2000) AB-7543, a license expired for three years, with The Board sustaining the Department, and stating: "[T]he longer a license has been expired, the higher the level of diligence which should be required for a successful defense under §25660" - citing Nourollahi.

footnote below, and came to the same conclusion as to the expiration of the license – such is a call for further and careful diligence and inquiry, factors which were not reasonably made.

II

Appellant contends the Department improperly allowed an amendment to the accusation which prejudiced appellant's rights.

The accusation states:

“On or about 06-09-00, [appellant], by his agent, employee or servant, Sipriano Castro, caused or permitted Joseph Hawes, a person who was then approximately 19 years of age, to purchase an alcoholic beverage, to-wit beer, in the above-designated licensed premises, in violation of Section 25658(a) of the Business and Professions Code.”

After argument during the Department's hearing, the following amendment was made:

“The [appellant], by his agent, employee, or servant, either Sipriano Castro or Ghadas Kasih, so furnished, gave, or caused to be so furnished, or given the beer.”

The record shows that the minor testified that there was more than one clerk, the older man (Kasih) took care of the sale and asked for identification with both clerks (Kasih and Castro) reviewing the offered identification [RT 12-15, 20-21].

The investigator testified that he saw two clerks; that Castro asked for identification and took the wallet with the driver's license therein; and Castro conducted the sale with Kasih bagging [RT 24-26, 28, 35-36].

Castro testified that there were two clerks, Kasih running the cash register, and Castro bagging. Castro asked for identification and took the same from the minor and showed the identification to Kasih. Castro stated Kasih and he often worked as a team [RT 43-45, 51-52].

Kasih testified that he was the cashier, and that Castro and he asked for identification with the identification going to Castro first [RT 54, 56].

This is essentially an amendment to conform the accusation to proof shown in the hearing. There appears to be no prejudice to appellant. The sale was made, either by one clerk in concert with the other, or as a team. In any event, both clerks were there and from the record, were both involved in the process of the sale.

Appellant's argument that "but for the accusation showing only one clerk," he was forced to have both clerks testify to show the accusation was not proper as to this incident. Such argument is fallacious. Both clerks participated, and the one running the cash register, if Kasih is believed, is not necessarily the one who makes the sale, with both clerks working together. If one believes the investigator, and Castro, Castro was every bit involved in the sale.

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.