

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

AB-7813

File: 48-328632 Reg: 00049850

CMPB FRIENDS, INC. dba Royal Room
9214½ & 9216 East Alondra Boulevard, Bellflower, CA 90706,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

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

ISSUED FEBRUARY 22, 2002

CMPB Friends, Inc., doing business as Royal Room (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for appellant's employee allowing a person under the age of 21 to enter and remain in the licensed premises without lawful business therein, 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 §25665.

Appearances on appeal include appellant CMPB Friends, Inc., appearing through its counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on April 1, 1997. Thereafter, the Department instituted an accusation against appellant charging that, on June 15, 2000, appellant, through its employee, Jackie Wisniewski, permitted 20-year-old Celeste Jimenez to enter and remain in the premises in violation of Business and Professions Code §25665.

An administrative hearing was held on March 27, 2001, at which time documentary evidence was received and testimony was presented by Department investigators Eric Christopherson and Gary Smith, by Jimenez, by Wisniewski, and by appellant's president, Patricia Boggs.

The testimony revealed that Jimenez entered appellant's premises and, approximately 10 minutes later, Wisniewski approached her and asked for her identification. Jimenez fumbled in her purse, pulled out an ID card, looked at it, and handed it to Wisniewski. Jimenez testified she showed Wisniewski her own California identification card which showed her true age, 20. Wisniewski testified that Jimenez showed her an identification card for Melissa Guzman, which showed a birthdate in 1972, which would have made Jimenez almost 28 years old on the night in question.

The two Department investigators, doing a routine bar check, noticed Jimenez and asked her age. She said she was twenty and the investigators took her outside the premises. There she produced her own ID and the investigators found the ID of Melissa Guzman. Wisniewski came out of the premises and told the investigators that she had checked Jimenez's ID and it showed her to be over 21.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been sustained. Appellant thereafter filed a

timely notice of appeal. In its appeal, appellant contends that it established a defense to the charge under Business and Professions Code §25660.

DISCUSSION

Appellant contends Wisniewski demanded, was shown, and acted in reliance on bona fide identification and evidence of age of majority, thus establishing a defense pursuant to Business and Professions Code §25660, which reads:

"Bona fide evidence of majority and identity of the person is a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person. Proof that the defendant-licensee, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon."

Appellant also contends that the Department's decision is erroneous in holding that it does not matter whether Wisniewski acted upon bona fide identification because the violation of §25665 had already occurred by the time she asked for Jimenez's identification. Section 25665 provides:

"Any licensee under an on-sale license issued for public premises, as defined in Section 23039, who permits a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein is guilty of a misdemeanor. Any person under the age of 21 years who enters and remains in the licensed public premises without lawful business therein is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$ 200), no part of which shall be suspended."

Appellant argues that §25660 provides a defense to this alleged violation no matter when the bona fide identification was relied on. Alternatively, appellant argues, even if there were a requirement that demand for identification be made within a certain time of a minor entering a premises, that time must be construed as a "reasonable" time, and

the ten minutes involved in the present case certainly falls within a reasonable time period.

Appellant holds an on-sale general public premises license. The California Constitution provides, with respect to a public premises, that "No person under the age of 21 years shall be permitted to enter and remain in any such premises without lawful business therein." Business and Professions Code §25665, above, provides penalties for permitting a person under 21 to enter and remain in a public premises.

Appellant's argument that inspection and reliance on a bona fide ID provides a defense to a §25665 violation *whenever* the inspection occurs goes too far. It would defeat the purpose of the statute, which is to protect minors from "harmful influences" (Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181, 188 [67 Cal.Rptr. 734, 739]), if a licensee could permit a minor to enter and remain in the premises for a substantial length of time and still have a defense because someone eventually got around to checking the minor's ID.

Appellant's alternative argument, that a §25660 defense is still available if a bona fide ID is inspected and relied upon within a "reasonable" amount of time after the minor enters the premises, has some appeal. Appellant contends that the ten minutes Jimenez was in the premises before her ID was checked falls within that reasonable time period. However, under similar circumstances, the court of appeal held that a violation of §25665 was properly found. In Ballesteros v. Alcoholic Beverage Control Appeals Board (1965) 234 Cal.App.2d 694 [44 Cal.Rptr. 633], an 18-year-old woman, Mrs. Miller, entered a public premises with her husband and several other friends, all of whom were over 21. Mrs. Miller sat down at a table and her husband and one or two of the others went to the bar, where they purchased beer for themselves and a soft drink

for Mrs. Miller. About 10 minutes later, a police officer came in, noticed Mrs. Miller, and ascertained that she was under 21. The licensee was charged with a violation of §25665, which the appellate court upheld, noting that Mrs. Miller had entered and remained in the licensed premises "for a period of at least ten minutes before the officer entered the premises." (Ballesteros, supra, 234 Cal.App.2d at 700.)

While it may well be that, under appropriate circumstances, a §25660 defense could be maintained where a minor entered a public premises and remained there for some minutes before the ID was checked, ten minutes is apparently too long. We cannot say how many minutes would be acceptable, but we imagine it would not be many. It is unlikely that simply entering a public premises would cause a violation; "remaining," however, would undoubtedly require very little time. In the present case, Jimenez was permitted to enter and remain in the licensed premises within the meaning of §25665.

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.