

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

AB-7844

File: 20-060294 Reg: 00049458

CIRCLE K STORES, INC. dba Circle K Store #642
44775 San Pablo Road, Palm Desert, CA 92260,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: April 4, 2002
Los Angeles, CA

ISSUED MAY 28, 2002

Circle K Stores, Inc., doing business as Circle K Store #642 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its clerk, Marsha Gale Reda (“the clerk”), having sold an alcoholic beverage (a twelve-pack of Bud Light beer) to Arturo Galeana (“Galeana”), 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 Circle K Stores, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

¹The decision of the Department, dated June 21, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on October 11, 1985. Thereafter, on August 29, 2000, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to a minor on February 1, 2000.

An administrative hearing was held on November 30, 2000, at which time oral and documentary evidence was received. At that hearing, Riverside County sheriff's deputy Jorge Ramirez testified that he saw Arturo Galeana emerging from appellant's store at approximately midnight on the day in question with what appeared to be a 12-pack of beer. When questioned, Galeana told Ramirez he was 18 years of age, had purchased the beer at appellant's store, and had not been asked either his age or for identification.

Galeana also testified. He said he was 18 years of age, and admitted purchasing the beer. He said he was not asked his age or for identification. He said he had been in the store on earlier occasions, but had never shown identification at this store. He denied having any false identification with him. On cross-examination, Galeana again testified that he had not been required to produce identification.

Darold Edmund Carter, the district manager for Circle K Stores, also testified. He described the programs used by Circle K to train its personnel in the sale of alcoholic beverages.

Subsequent to the hearing, the Department issued a decision which sustained the charge of the accusation.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the clerk relied on government identification produced on a prior occasion; (2) explicit credibility findings were not made; (3) implicit findings without

a factual basis do not satisfy the requirement that findings be made. Issues 2 and 3 will be treated as a single issue involving credibility.

DISCUSSION

I

Business and Professions Code § 25660 provides:

"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 suggests that it has a defense under this statute, but has pointed to nothing in the record that would suggest that any government issued identification of any kind was exhibited to the clerk at the time of the sale or at any other time. Galeana denied exhibiting any identification when he bought the beer, and, despite appellant's attack on his credibility, there is no contrary testimony.

Presumably, had there been some showing of identification, appellant's clerk would have been produced to provide such testimony. Since, according to appellant's district manager, she is still employed, it was within appellant's ability to produce her at the hearing. It is reasonable to infer from her absence that she would not refute Galeana's testimony.

II

Appellant contends that the Department was obligated to make explicit credibility findings, and that when it based its decision on Galeana's testimony, it was required to explain why it did so.

Appellant appears to have lost sight of the basic facts of this case.

Galeana was seen emerging from appellant's store with a 12-pack of beer. Galeana testified that he had purchased the beer at appellant's store. Appellant's clerk admitted to a police officer that she sold it to him. No contrary testimony was introduced. Appellant's suggestion that Galeana may have produced false identification is without any evidentiary support whatsoever.

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, 644].) The ALJ carefully considered Galeana's testimony, and found it credible. We are not inclined to disagree.

We are satisfied that the Department's findings are consistent with the evidence and sufficient to withstand appellant's challenge.

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.