

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

AB-7916

File: 21-366097 Reg: 01051145

RICE WINE LIQUOR, INC. dba Rice Wine Liquor
147 Atlantic Avenue, Pittsburg, CA 94565,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stewart Judson

Appeals Board Hearing: July 11, 2002
San Francisco, CA

ISSUED SEPTEMBER 12, 2002

Rice Wine Liquor, Inc., doing business as Rice Wine Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days, 10 days of which were conditionally stayed, for its clerk, Varinder Kumar, having sold an alcoholic beverage (three 40-ounce bottles of Miller Genuine Draft beer and three 24-ounce cans of Steel Reserve beer), to Quyen Thanh Nguyen, an 18-year old minor, 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 Rice Wine Liquor, Inc., appearing through its counsel, Anthony Guy Ashe, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

¹The decision of the Department, dated December 20, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on June 23, 2000. Thereafter, on July 20, 2001, the Department instituted an accusation against appellant charging, in two counts, sales of alcoholic beverages to minors.

An administrative hearing was held on September 14, 2001, and November 1, 2001. Neither minor appeared at the September 14 hearing, and, upon the Department's motion, the matter was continued as to count 1, the only count in which the minor had been under a subpoena to appear. When the hearing resumed on November 1, 2000, testimony was presented by Quyen Thanh Nguyen, the minor; by Kobia West and Joe Mobley, Department investigators; by the clerk, Varinder Kumar; and by Ranjit Dosanjh, the president of appellant.

The evidence established that, when asked for identification by the clerk, Nguyen displayed an identification card issued by the California Department of Motor Vehicles to Thanh Van Ho, showing Ho's photo, physical description, and date of birth, February 6, 1978.

Subsequent to the hearing, the Department issued its decision which determined that the sale to Nguyen (count 1 of the accusation) had occurred as alleged, and that appellant had failed to establish a defense under Business and Professions Code §25660. Count 2 was dismissed. The Administrative Law Judge (ALJ) concluded that, in addition to physical differences between Nguyen and the person pictured on the identification card,² Nguyen did not resemble the photograph on the card. In addition, the ALJ concluded, from the fact that the clerk asked Nguyen if the identification was his, that a reasonably prudent seller would not have proceeded with the transaction.

² The identification card described Ho as being 5' 8" tall and weighing 145 pounds, while Nguyen was 5'4" tall and weighed 135 pounds.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contests the finding that the clerk did not rely in good faith on the identification presented by Nguyen.

DISCUSSION

Appellant contends it established a defense pursuant to Business and Professions Code §25660, which 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 and description 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."

A licensee has a dual burden under §25660: "[N]ot only must he show that he acted in good faith, free from an intent to violate the law ... but he must demonstrate that he also exercised such good faith in reliance upon a document delineated by §25660." (*Kirby v. Alcoholic Beverage Control Appeals Board* (1968) 267 Cal.App.2d 895 [73 Cal.Rptr. 352, 355].) As *Kirby* and other cases have made clear, that reliance must be reasonable, that is, the result of an exercise of due diligence. (See, e.g., *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control* (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 739]; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control* (1957) 155 Cal.App.2d 748 [318 P.2d 820, 823].)

The ALJ simply concluded that appellant had not met its burden of showing that its clerk acted in good faith, i.e., as a reasonably prudent seller. The ALJ's reasoning is summed up in Determination of Issue V:

"The obvious youthful appearance of Nguyen, the obvious discrepancy between

his facial appearance and that of the issuee, and the obvious height differential between that stated on the identification card and Nguyen's height coupled with the fact that the clerk, when shown the identification, asked Nguyen if it was his, undercut the clerk's purported good faith reliance on the identification. A reasonably prudent seller of alcoholic beverages would have asked Nguyen to proffer further bona fide identification before concluding the transaction."

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.³

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (*Universal Camera Corporation v. National Labor Relations Board* (1951) 340 US 474, 477 [71 S.Ct. 456]; *Toyota Motor Sales USA, Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there

³ California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers_v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].) Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of California* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

In this case, the ALJ was in a far better position than is this Board to judge whether appellant's clerk acted in a reasonably prudent manner when he accepted the identification card tendered by Nguyen. We see no reason to disagree with his determinations.

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.