

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

AB-8052

File: 20-314391 Reg: 02053475

ANTONIO A. GARCIA dba Tony's Market
4098 Park Avenue, Riverside, CA 92507,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: July 3, 2003
Los Angeles, CA

ISSUED AUGUST 28, 2003

Antonio A. Garcia, doing business as Tony's Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for having sold an alcoholic beverage to a minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Antonio A. Garcia, appearing through his counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on December 29, 1995. Thereafter, the Department instituted an accusation against appellant charging that, on May 31, 2002, he sold an alcoholic beverage (beer) to Armando Sanchez, a 17-year-old

¹The decision of the Department, dated November 7, 2002, is set forth in the appendix.

minor.

An administrative hearing was held on October 4, 2002, at which time oral and documentary evidence was received. Yvette Vasquez, a Department investigator who witnessed the transaction, and Sanchez, the minor, both testified that Sanchez was not asked for his age or for identification before making the purchase. Appellant presented no witnesses.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant questions only the length of the suspension.

DISCUSSION

Appellant concedes that the violation was his second within a 36-month period, but contends, nonetheless, that the penalty is excessive. He asserts that his business is not a community crime problem, and that the minor appeared to be 21 or over. Appellant also contends that the length of the suspension would work an economic hardship.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (*Martin v. Alcoholic Beverage Control Appeals Board & Haley* (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (*Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board* (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

The 25-day suspension is the typical suspension imposed by the Department for a second violation within a 36-month period.

There is no evidence in the record with respect to whether appellant's store is a community crime problem, but even if it is not, that does not appear to be a significant consideration. More compelling is that the violation was the second within a 36-month period.

In all probability, there will be some hardship flowing from the suspension. Appellant will be deprived of the revenue he would ordinarily receive from the sale of alcoholic beverages. The loss of that revenue will be the motivating force for appellant to be more careful in the future when selling alcoholic beverages. In that light, we cannot say that the penalty is excessive.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
KAREN GETMAN, 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.