

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

AB-8092

File: 21-337549 Reg: 02053662-

NAJLA JAMIL KOMI and ZUHEIR MANSOUR dba Chateau Liquor
4545 West Sepulveda Blvd., Torrance, CA 90505,
Appellants/Licensees

v.-

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,-
Respondent-

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen-

Appeals Board Hearing: December 2, 2003-
Los Angeles, CA-

ISSUED FEBRUARY 11, 2004

Najla Jamil Komi and Zuheir Mansour, doing business as Chateau Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk, Hekmat Aldib, having sold a 12-pack of Coors beer to Drew Jensen, a minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Najla Jamil Komi and Zuheir Mansour, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY-

Appellants' off-sale general license was issued on January 30, 1998. On August

¹The decision of the Department, dated January 30, 2003, is set forth in the appendix.

29, 2002, the Department instituted an accusation against appellants charging that their agent, employee or servant, Aldib, sold an alcoholic beverage to a person then 18 years of age.

An administrative hearing was held on December 11, 2002, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Drew Jensen, the minor, and Jonathan Rubio, a Department investigator who witnessed the transaction. Rubio testified that his attention was drawn to Jensen by Jensen's youthful appearance. Rubio watched Jensen enter the store, retrieve a 12-pack of Coors Light beer, and take it to the counter. The clerk asked Jensen for identification, briefly examined the identification Jensen presented to him, and went forward with the sale. Rubio confronted Jensen outside the store and asked him for his age and identification. Jensen spontaneously admitted he was not 21. Rubio searched Jensen and found two driver's licenses. One was Jensen's, and showed his true age, 18.- The other bore the name and photograph of Brian Bilek. Jensen testified that he had obtained Bilek's driver's license while at Berkeley, and had used it on prior occasions to purchase alcoholic beverages. The clerk, Aldib, testified that he examined for a few seconds the license which was presented to him, and believed that the photograph on it was that of the person seeking to buy the beer.

Subsequent to the hearing, the Department issued its decision which determined that the transaction had occurred as alleged and rejected appellants' claimed defense under Business and Professions Code section 25660.

Appellants thereafter filed a timely appeal and again assert that they are entitled to a defense under section 25660.

DISCUSSION-

The ALJ made the following findings (Findings of Fact 7, 8, 9, 10, and 13) relevant to the claimed defense under section 25660:

At the time of the incident, the minor was 5'11" tall, weighed 200 pounds, and his hair was teased into a standing position and kept that way by a gel. He was clean shaven, wore no jewelry and was dressed casually.

The clerk had no training with respect to the protocol on how to deal with sales to minors. He had picked up a smattering of on-the-job information from working as a clerk previously, which was entirely inadequate. Mr. Aldib testified that he examined the driver license the minor had handed to him at the time of the sale, and believed that it was a bona fide motor vehicle license depicting minor Jensen.

The evidence does not support the clerk's belief. First, the face of the minor at the time of the sale does not bear a resemblance to the photograph on Bilek's license. Secondly, the minor was then 5' 11' tall whereas Bilek's license lists his height as 6' 3" tall. Thirdly, the minor then had a full head of hair, whereas the photograph on Bilek's license shows his hair to be cut very short.

The licensees argue that height, weight and hair style can change over a period of time and this may account for the discrepancies between the minor's appearance and the information on Bilek's license. Would it not then be incumbent on the clerk to make a reasonable inquiry as to such matters?

But Aldib never inquired about those discrepancies and glossed them over as if they didn't exist. Further, the facial countenance of the minor should have been a "red flag" to the clerk, as he did not resemble the photograph on Bilek's license.

Under the case law, the licensees fail to meet the test for a successful defense. Clerk Aldib had asked the minor for his identification because he appeared to be youthful in appearance. Indeed, based on the photographic evidence of the minor at the time of the sale, the clerk's inquiry was well founded. However, the clerk did not act with due diligence.

A reasonable inspection of the license ... would have readily revealed the discrepancies set forth in Findings Nos. 9 & 10. The clerk's failure in pursuing the matter with the minor constitutes a lack of due diligence in making a reasonable inspection within the meaning of the 5501 Hollywood case².

² *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control* (1958) 155 Cal. App.2d 748 [318 P.2d 820].

Business and Professions Code section 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.

A licensee has a dual burden under section 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 section 25660. Where all he shows is good faith in relying upon evidence other than that within the ambit of section 25660, he has failed to meet his burden of proof.

(*Kirby v. Alcoholic Beverage Control Appeals Board* (1968) 267 Cal.App.2d 895, 899 [73 Cal.Rptr. 352].)

As the cases contemporaneous with and prior to *Kirby* 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, 190 [67 Cal.Rptr. 734]; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control* (1957) 155 Cal.App.2d 748, 753 [318 P.2d 820].)

The reason the reliance must be reasonable is obvious. Otherwise, a seller need only go through the motions of requesting identification, accept any driver's license handed to him, and sell the alcoholic beverage with impunity.

Where, as here, the discrepancies found to exist between the appearance of the minor and that of the person whose license has been presented are sufficiently pronounced as to put a reasonable person on notice that something is amiss, any claim

that the seller was protected by section 25660 should be rejected. Investigator Rubio testified that he knew the Bilek identification was not Jensen's because "the picture" did not resemble him. [RT 14.] The ALJ reached the same conclusion - "the face of the minor at the time of the sale does not bear a resemblance to the photograph on Bilek's license." In addition the Bilek license described a person 6' 3" tall, while Jensen was only 5' 11" tall.

Under the facts of this case, the defense under section 25660 was not available to appellant.

ORDER-

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ 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.