

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

**AB-8132**

File: 21-349205 Reg: 02054090

RAJ KUMAR and REKHA KUMAR, dba Hody Lane Liquor  
5201 East Pacific Coast Highway, Long Beach, CA 90804,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: December 2, 2003

Los Angeles, CA

**ISSUED FEBRUARY 11, 2004**

Raj Kumar and Rekha Kumar, doing business as Hody Lane Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended their license for 25 days for their clerk selling an alcoholic beverage to a person under the age of 21 years, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Raj Kumar and Rekha Kumar, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and James S. Eicher, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

**FACTS AND PROCEDURAL HISTORY**

Appellants' off-sale general license was issued on January 19, 1999. On December 3, 2002, the Department filed an accusation against appellants charging that

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<sup>1</sup>The decision of the Department, dated April 3, 2003, is set forth in the appendix.

appellants' clerk, Raghbir Singh (the clerk), sold an alcoholic beverage on August 30, 2002, to 19-year-old Mark Chicots (count 1), and on September 19, 2002, he sold an alcoholic beverage to 19-year-old Paul Munoz (count 2).

At the administrative hearing held on March 7, 2003, documentary evidence was received, and testimony concerning the sales was presented by Mark Chicots and Paul Munoz and by Department investigators Jonathan Rubio and Melissa Frasquillo.

Appellant Raj Kumar also testified.

Subsequent to the hearing, the Department issued its decision which dismissed count 1, but sustained the charge of count 2, holding that no defense was established for that count pursuant to Business and Professions Code section 25660 (hereafter referred to as "section 25660").

Appellants filed a timely appeal contending that they established a defense under section 25660.

## DISCUSSION

Appellants contend that they established a defense under section 25660, which provides a defense to a sale-to-minor charge when a licensee or his or her agent "demanded, was shown and acted in reliance upon . . . bona fide evidence" that the person attempting to buy was at least 21 years of age. The statute defines "[b]ona fide evidence of majority and identity of the person" as

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.

A licensee has an affirmative duty to maintain and operate his or her premises in accordance with law, and section 25660, as an exception to the general prohibition

against sales to minors, must be narrowly construed. (*Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 189 [67 Cal.Rptr. 734] (*Lacabanne*)). The statute provides an affirmative defense, and "[t]he licensee has the burden of proving . . . that evidence of majority and identity was demanded, shown and acted on as prescribed by . . . section 25660." (*Ibid.*)

To provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. (See, e.g., *Lacabanne, supra*; *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753 [318 P.2d 820].) Reasonable reliance cannot be established unless the appearance of the person presenting the identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (*5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control, supra*, 155 Cal.App.2d at pp. 753-754 [318 P.2d 820].) A licensee, or a licensee's agent or employee, must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances. (*Lacabanne, supra*; *Farah v. Alcoholic Bev. Control Appeals Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control, supra*, 155 Cal.App.2d at p. 753.)

Appellants argue that the clerk reasonably relied on the California driver's license shown to him by Paul Munoz (the minor), even though the license was that of Munoz's older brother, James Munoz. They assert that the minor "admitted that he had similar features as his older brother" and the administrative law judge (ALJ) stated, in Determination of Issues III, that "[b]eing brothers, [they], of course, have some features which are similar." According to appellants, the minor differences noted by the ALJ in

Determination of Issues III – "James' face is fuller than Paul's, and James' nose is flatter and wider than Paul's," and "Paul was 6'3" tall and weighed 185 pounds, whereas James was described on his driver[s] license as 6' tall and weighing 205 pounds" – were not enough to reasonably put the clerk on notice, since he "did not have the luxury of unlimited time, with no external pressures, to dissect and pour over any slight differences in appearance." (App. Br. at 6.)

What appellants neglect to mention about the minor's testimony is the following colloquy that took place between appellants' counsel and the minor during cross-examination [RT 40-41 (emphasis added)]:

- Q. So other than looking at 205 [pounds] on the I.D. card, that I.D. card – you said that he weighs a little more than you. It wouldn't be visible through that photo, though, would it?
- A. No, it would.
- Q. In what ways?
- A. ***You can tell it's obviously not me.***
- Q. And how can you tell?
- A. The thickness of the face, the thinness of the lips. Other than that, I think we have similar eyes.

Appellants also neglect to mention that, following the ALJ's acknowledgment in Determination of Issues III that, as brothers, Paul and James Munoz would be expected to display some similar physical characteristics, he stated, "However, each also has features which are quite different from his brother's." The ALJ then noted the differences as stated above, and concluded:

Considering these differences, it was not prudent or reasonable for [the clerk] to rely on James Munoz's driver[s] license as proof of Paul Munoz's majority. Therefore, Respondents have not established a Section 25660 defense for [the clerk's] sale of the beer to Paul Munoz.

The reality of the situation is that neither the ALJ ***nor the minor himself***, thought that there was sufficient likeness between Paul Munoz and the picture of James Munoz

on the driver's license, to cause anyone to reasonably believe that the driver's license was Paul's. A section 25660 defense is not established unless it is shown that the seller of alcoholic beverages used due diligence in examining, and reasonably relied on, the identification shown. Here, the clerk did not exercise due diligence in examining the driver's license and comparing what was on the license to what Paul Munoz looked like as he stood before the clerk.

Based on the testimony and the exhibits, including James Munoz's driver's license and two photos of Paul Munoz taken just after the sale, we cannot say that the ALJ's findings were unreasonable.

#### ORDER

The decision of the Department is affirmed.<sup>2</sup>

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

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<sup>2</sup>This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.