

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

**AB-8167**

File: 20-341315 Reg: 02052288

MAKHAIAL ABDALLAH ABDALLAH and SONIA MESEH ABDALLAH  
dba Mike's AM/PM Mini Mart  
10201 East Artesia Boulevard, Bellflower, CA 90706,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: June 10, 2004  
Los Angeles, CA

**ISSUED JULY 30, 2004**

Makhaial Abdallah Abdallah and Sonia Meseh Abdallah, doing business as Mike's AM/PM Mini Mart (appellants), appeal from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended their 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 appellants Makhaial Abdallah Abdallah and Sonia Meseh Abdallah, appearing through their counsel, Rick Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

**FACTS AND PROCEDURAL HISTORY**

Appellants' off-sale beer and wine license was issued on May 26, 1998.

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

Thereafter, the Department instituted an accusation against appellants charging that appellants' employee, George Halim Youssef, sold beer to Reynaldo Juarez, a person then 20 years of age.

An administrative hearing was held on April 8, 2003, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Scott Stonebrook, a Department investigator who witnessed the transaction, and by Reynaldo Juarez, the minor, who purchased the beer without having been required to produce evidence of majority. The parties stipulated that if Youssef were called as a witness, he would testify that he has been selling alcoholic beverages for three or four years, and he believed Juarez to be older than 21. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been proven. The violation was appellants' second within a three-year period.

Appellants have filed a timely appeal, and contend that, because the administrative law judge (ALJ) failed to consider the minor's apparent age as a factor in mitigation, the penalty is excessive.

#### DISCUSSION

Appellants' license was suspended for 25 days. The offense was appellants' second within a 36-month period, and the penalty is that frequently imposed by the Department in such circumstances. Appellants argue that the minor's apparent age was older than his actual age, such that a reasonable person could believe he was over 21. They contend that "it is clear from both the transcript and decision that the Administrative Law Judge absolutely and positively had no intention of considering any mitigating factor." (App. Br., page 4.)

Appellants' bold assertion that the ALJ had "absolutely and positively no

intention” of considering any mitigating factor is unfair to the ALJ, to the transcript, and even to the decision.

It was not until appellants’ counsel’s closing argument that he suggested that the minor’s supposedly mature appearance should be a factor leading to a reduced penalty. Until that point, his argument had been that the minor’s appearance and ability to purchase alcoholic beverages should be a complete defense, and it was this argument that the ALJ correctly refused to accept.

Nothing in the record suggests that the ALJ was “absolutely and positively unwilling” to consider mitigation. Further, the decision itself indicates that the ALJ did not think the minor’s appearance anything remarkable in terms of mitigation:

While Youssef is entitled to his subjective opinion regarding how old Juarez appeared, neither Youssef, nor Respondents articulated any features of Juarez’s which made Juarez appear over twenty-one years old.

The photograph of Juarez taken immediately after his purchase of the beer is “arguably the most important piece of evidence in considering whether (he) displayed the physical appearance of someone under 21 years of age.” Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (The Southland Corporation, Real Party in Interest) (2002) 103 Cal.App.4th 1084, 127 Cal.Rptr.2d 652, 659.

There is nothing remarkable about Juarez’s appearance in the photograph. Like most people who are twenty years old, Juarez displayed in the photograph an appearance of someone who could “pass” for anywhere from eighteen to twenty-two years old. This fact is not helpful to Respondents.

The issue of a clerk mistakenly believing that an underage customer was older than his age has been addressed by the Alcoholic Beverage Control Appeals Board:

“(T)he fact that a particular clerk mistakenly believes the decoy to be older than he or she actually is, is not a defense if in fact, the decoy’s appearance is one which could generally be expected of a person under 21 years of age. We have no doubt that it is the recognition of this possibility that impels many, if not most, sellers of alcoholic beverages to pursue a policy of demanding identification from any prospective buyer who appears to be under 30 years of age, or even older.” 7-Eleven/Williams (2001) Alcoholic Beverage Control Appeals Board Case

Number AB-7591, page 4.

Although the Appeals Board in the above case was discussing underage customers who were decoys, its analysis nevertheless is applicable here. In other words, if the non-decoy customer does not look quite a bit older than his age, the penalty for a licensee who sells alcoholic beverages to that customer does not warrant mitigation.

There is little basis for any quarrel with the ALJ's sentiments. Any clerk who declines to ask for identification is gambling that his ability to judge a person's age is infallible. Appellants' clerk bet and lost.

It is worth noting that although Juarez testified that he was able to purchase alcoholic beverages at other locations, he also said there were places who turned him down because he had no identification. At best, he had a borderline appearance, not so substantial as to persuade the ALJ that mitigation was warranted.

#### ORDER

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

TED HUNT, CHAIRMAN  
KAREN GETMAN, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup> 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.