

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

AB-8201

File: 20-345308 Reg: 03054939

APRIL D. AHMED and SAUD AHMED, dba Can Do Market
4802 Etiwanda Avenue, Mira Loma, CA 91752,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: August 5, 2004
Los Angeles, CA

ISSUED SEPTEMBER 17, 2004

April D. Ahmed and Saud Ahmed, doing business as Can Do Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 days for their clerk selling an alcoholic beverage to a person under the age of 21, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants April D. Ahmed and Saud Ahmed, appearing through their counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 14, 1998. On April 28, 2003 the Department instituted an accusation against appellants charging

¹The decision of the Department, dated September 18, 2003, is set forth in the appendix.

that their clerk, Ravi Lal,² sold a 12-pack of Corona beer to 18-year-old Tomas Bedolla (the minor).³

At the administrative hearing held on August 8, 2003, documentary evidence was received and testimony concerning the violation charged was presented by the minor, Department investigator Kimberly Rohde, the clerk, and Zaibun Nisa.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as charged and ordered a 25-day suspension.

Appellants have filed an appeal contending: 1) The administrative law judge should not have allowed Saud Ahmed, a non-lawyer, to represent himself and his wife at the hearing, and 2) appellants were deprived of due process because they were not advised of the potential consequences of not having legal counsel and they did not knowingly and intelligently waive their right to counsel.

DISCUSSION

I

Appellants contend that the administrative law judge (ALJ) improperly allowed Saud Ahmed (hereafter "Saud"), a non-lawyer, to engage in the unauthorized practice of law, which is a misdemeanor, by allowing Saud to represent appellants at the administrative hearing. (Bus. & Prof. Code, §§ 6125, 6126, subd. (a).⁴) In addition,

²The decision spells the clerk's name Lal. However, the clerk spelled his name Lel for the record at the hearing. We use Lel in this summary.

³"Minor" is used here to designate one who is not old enough to purchase alcoholic beverages, i.e., under 21 years of age.

⁴Section 6125 provides that "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (a), provides that one who engages in the unauthorized practice of law is guilty of a misdemeanor.

appellants assert, Saud was obviously incompetent, as a matter of law, to provide such representation, and as a result appellants were deprived of "adequate and competent counsel."

The ALJ did not allow Saud to engage in the unauthorized practice of law. Clearly, Saud could represent himself at the administrative hearing without running afoul of Business and Professions Code section 6125. (*Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 127 [70 Cal.Rptr.2d 304] ["the general rule has been that, although persons may represent themselves and their own interests regardless of State Bar membership, no one but an active member of the State Bar may practice law for another person in California"].)

The only possibility of the unauthorized practice of law by Saud would be in his representing his wife. Appellants attempt to draw support from the proposition that "no corporate licensee could appear either in pro per or by any representative who is not a licensed attorney."

However, the Court of Appeal, in *Caressa Camille v. Department of Alcoholic Beverage Control* (2002) 99 Cal.App.4th 1094 [121 Cal.Rptr.2d 758], rejected that proposition in the context of an administrative proceeding. The court stated that the prohibition against nonattorney corporate representatives is applicable only to proceedings in *courts of record*. The Department has been granted limited judicial power, but "an administrative tribunal is not a 'court of record' as defined by article VI, section 1 of the California Constitution" (*Id.* at p. 1103.) While "courts of record are entitled to expect to be aided in resolution of contested issues by presentation of causes through qualified professionals rather than a layperson," such issues "are greatly minimized in the more informal setting of a proceeding in a court which is not of

record." (*Ibid.*) The same reasoning seems applicable to the present situation. In addition, the situation of a nonattorney husband representing his wife in a civil action is instructive. While a nonattorney husband may not represent his wife as a plaintiff in a civil case (*Abar v. Rogers* (1981) 124 Cal.App.3d 862, 865 [177 Cal.Rptr. 655]), where a husband and wife are sued together, if one spouse does not defend, the other may defend for that spouse also. (Code Civ. Proc., § 371.)

Whether or not Saud was incompetent to represent appellants at the hearing is not properly an issue in this appeal. The right to the effective assistance of counsel is a criminal law concept not applicable to administrative license disciplinary actions. "While due process requires the right to counsel, the right to 'effective' counsel in civil proceedings that lack overhanging criminal penalties has yet to be recognized. (*Chevalier v. Dubin* [(1980)] 104 Cal.App.3d 975, 978-979 [164 Cal.Rptr. 118].)" (*White v. Board of Medical Quality Assurance* (1982) 128 Cal.App.3d 699, 707 [180 Cal.Rptr. 516].)

Allowing a nonattorney husband to represent his wife, who is also his co-licensee, is consistent with the general goals of most administrative hearings, as well as small claims courts, to provide "quick, impartial and inexpensive adjudication of disputes . . . under rules of procedure and evidence that are less stringent and complicated than those that apply in more formal courts of record." (*Caressa Camille v. Department of Alcoholic Beverage Control, supra*, 99 Cal.App.4th at p. 1102.) Where there has been no showing that the co-licensee wife has any interest adverse to that of her co-licensee husband or has objected to his representation of her in this matter, we see no unfairness or prejudice that would affect the legitimacy of the Department's decision.

II

Appellants contend that the ALJ violated due process by not advising appellants of the potential consequences of proceeding without legal counsel. They also assert that they did not knowingly, understandingly, or intelligently waive the presence of counsel to assist them at the hearing.

The Court of Appeal in *Borrer v. Department of Investment* (1971) 15 Cal.App.3d 531, 539-544 [92 Cal. Rptr. 525], addressed contentions similar to those made by appellants here:

Reconciling the nature of the administrative proceeding with the foregoing principles and authorities, we conclude that in a proceeding to revoke or suspend a license or other administrative action of a disciplinary nature the licensee or respondent is entitled to have counsel of his own choosing, which burden he must bear himself, and that he is not denied due process of law when counsel is not furnished him, even though he is unable to afford counsel. Such a proceeding does not bear a close identity to the aims and objectives of criminal law enforcement, but has for its objective the protection of the public rather than to punish the offender. There is no constitutional requirement, therefore, that the hearing officer or the agency advise a party that he is entitled to be represented by counsel and that if he cannot afford counsel one will be afforded him. In proceedings under the Administrative Procedure Act there is a statutory requirement, however, that a party be advised that he is entitled to be represented by counsel chosen and employed by him. (§ 11509.) In the present case the licensee does not maintain that she was deprived of this right.

Since the requirements of due process are satisfied in a proceeding under the Administrative Procedure Act, insofar as representation by counsel is concerned, if a party is advised that he is entitled to be represented by counsel employed by him and such attorney is permitted to represent him in the proceeding, there is no requirement, in the event that the party does not choose to be represented by counsel, or does not have the funds with which to hire an attorney, that the analogies of the criminal law be followed in ascertaining whether there has been an intelligent waiver of counsel. Accordingly, there is no requirement that the hearing officer determine whether the accused understands the nature of the charge, the elements of the offense, the pleas and defenses which may be available, or the punishment or penalty which may be exacted. In this regard we apprehend that as to all of the elements, other than the last

mentioned, these are adequately specified under the Administrative Procedure Act in the accusation (§ 11503) and the notice of defense (§ 11506). As to the penalties involved, it is inconceivable that a licensee is not aware by virtue of the licensing procedures of the sanctions which may be imposed for violation of his duties and obligations as such licensee. . . .

Appellants assert that *Borrer, supra*, is distinguishable from the present case because the ALJ in *Borrer* suggested the licensee hire counsel, and the ALJ in the present case did not. We find nothing in *Borrer* indicating that its holding was in any way dependant on the ALJ's suggestion. Rather, as the language quoted above indicates, the requirements of due process and section 11509 of the Administrative Procedure Act were satisfied once the licensee was advised of her right to be represented by counsel chosen and employed by her. The licensee in *Borrer* was so advised, and that was sufficient to uphold the decision of the Department in that case. The licensees in the present case were also provided with the notice required by the APA, and this was sufficient to uphold the decision of the Department in the present case.

ORDER

The decision of the Department is affirmed.⁵

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

⁵This 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.