

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

AB-8500

File: 21-367921 Reg: 05059812

LATIF KALAMA MAROGY dba 4Js Mini Market
4090-D El Cajon Boulevard, San Diego, CA 92105,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: September 7, 2006
Los Angeles, CA

ISSUED DECEMBER 28, 2006

Latif Kalama Marogy, doing business as 4J's Mini Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked his license, the order being stayed 180 days to permit transfer of the license, for appellant having pled guilty to a misdemeanor charge of having attempted to purchase stolen property, a violation of Penal Code sections 664/496 in conjunction with Business and Professions Code section 24200, subdivision (d).

Appearances on appeal include appellant Latif Kalama Marogy, appearing through his counsel, William R. Winship, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

¹The decision of the Department, dated December 29, 2005, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on November 14, 2001.

Thereafter, the Department instituted an accusation against appellant charging that appellant plead guilty to misdemeanor charges of having attempted to purchase stolen property.

An administrative hearing was held on September 14, 2005, at which time oral and documentary evidence was received. The parties stipulated to the charges set forth in count one of the accusation. Character testimony was presented by Sabah Toma, Arkan Somo, and Auday Arabo, and appellant testified on his own behalf. Subsequent to the hearing, the Department issued its order of revocation. The order was stayed for 180 days to permit transfer to a person or persons acceptable to the Department, and the license was suspended for 60 days and indefinitely thereafter until it has been transferred.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant contends that the penalty is unreasonably harsh and punitive.

DISCUSSION

Appellant stipulated to a misdemeanor conviction for having attempted to purchase stolen property, and offered evidence in mitigation. Three of appellant's acquaintances offered evidence of appellant's good character, and appellant himself testified that he had never had an ABC violation during the 15 years he had been licensed, nor any criminal conviction of any kind. Appellant's counsel, arguing against the Department recommendation that appellant's license be revoked, suggested to the administrative law judge (ALJ) that "something in terms of a hefty suspension ... a suspension of 30 days" be imposed. This same proposal was made to the Appeals

Board.

Appellant contends that the ALJ did not accord sufficient weight to the evidence of mitigation put forth by appellant, stressing his good works in the community and his long record free of discipline. He also asserts that the purchases were insignificant, involving “a few bottles of liquor at a total expense of about \$60.” (App. Br., p. 2.) The Department argues that appellant’s conduct - three instances of purchasing property believed to be stolen - warranted the penalty ordered.

The Appeals Board may 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 order in question stops short of outright revocation, and affords appellant the opportunity to sell his license and/or business. The order is less drastic than many this Board has seen in similar cases involving attempted purchases of stolen property, where the penalty has been outright revocation.

We cannot know what penalty the ALJ may have thought appropriate had there been little or no evidence of mitigation. Nonetheless, it is plainly apparent to the members of this Board that the ALJ did take into account appellant’s mitigation evidence. He simply was not as lenient as appellant wished.

The Department has considerable latitude when it comes to the question of penalty. In a departure from the character described by his business and social acquaintances, appellant committed a crime involving moral turpitude, one for which the

sanction of revocation is specifically authorized by statute. (See Business and Professions Code section 24200, subdivision (d).) And he admittedly did so on three occasions, each time in his store [RT 36].

We do not believe it can be said that the Department abused its discretion, so are not in a position to afford appellant any relief.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, 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.