

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

AB-8605

File: 20-198677 Reg: 06062304

ABDUL ALI AMIN, dba L&K Market
2127-29 Main Street, Santa Monica, CA 90405,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: May 3, 2007
Los Angeles, CA

ISSUED AUGUST 3, 2007

Abdul Ali Amin, doing business as L&K Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 10 days, all of which were conditionally stayed for one year, for his clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Abdul Ali Amin, appearing through his counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated September 7, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 24, 1987. On March 23, 2006, the Department filed an accusation against appellant charging that his clerk made a sale to a minor.

At the administrative hearing held on June 30, 2006, documentary evidence was received and testimony concerning the violation charged was presented by the decoy, Santa Monica police officer Cody Green, Jashin Mollah (the clerk), Department investigator Katrina Blake, Nazir Chowdry, appellant Abdul Amin, and Alex Lopez.

The decoy testified that he was not asked his age, but he was asked for ID, and presented the clerk with his California driver's license showing him to be under 21 years of age. Jashin Mollah, the clerk who sold the beer, began to testify, but lacked the proficiency in English to do so. Nazir Chowdry, another clerk who works in the licensed premises, testified that he heard Mollah ask the decoy, "How old you are?" and heard the decoy respond, "21." Appellant testified he heard Mollah ask the decoy his age, but couldn't hear his answer, so he asked the decoy, "How old are you?" and the decoy responded, "21." Investigator Blake testified she was about five feet from the decoy during the transaction, and heard no one ask the decoy his age, although she did hear Mollah ask the decoy for ID. Alex Lopez, an employee of one of appellant's suppliers, testified that during the transaction, Blake was outside the door talking to him, and it was impossible to hear any conversation from inside because of the traffic noise.

Subsequent to the hearing, the Department issued its decision which determined that the violation occurred as alleged in the accusation and no defense was established by appellant. Appellant filed an appeal contending: (1) The Department's decision is not supported by the findings and the findings are not supported by substantial

evidence in this record which demonstrates gross misconduct by the Department; (2) Business and Professions Code section 24210 is unconstitutional and denies appellant due process and equal protection; and (3) the penalty is excessive.

DISCUSSION

I

Appellant styles his first argument as a contention that the decision is not supported by its findings, which are not supported by substantial evidence in this record "which is replete with gross misconduct by the Department." The actual argument, however, addresses only the latter part of that contention. He alleges a due process violation resulting from gross misconduct by law enforcement officers, entrapment, and the Department's failure to abide by its own rules, to retain and produce the alleged alcoholic beverage and/or the money used to purchase it, and to produce evidence that the beverage sold to the decoy was alcoholic.

Throughout the approximately seven pages devoted to these contentions, appellant never once mentions any fact that would support them. The court in *Guthrey v. California* (1998) 63 Cal.App.4th 1108, 1115 [75 Cal.Rptr.2d 27], faced a similar situation, and we adopt the court's conclusion as our own:

Defendants correctly contend that plaintiff's brief fails to present any issue pertaining to the summary judgment motion because he cites only general legal principles without relating them to any specific facts or admissible evidence. As a general rule, "The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, p. 627; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545 [35 Cal.Rptr.2d 574].) It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant's contentions on appeal. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 589, p. 624.) If no citation "is furnished on a particular point, the court may treat it as waived." (9 Witkin, Cal. Procedure, *supra*, Appeal, § 594, p. 627.) We find this is an appropriate case in which to apply the waiver rule.

II

Appellant contends that he has been denied due process and equal protection because Business and Professions Code section 24210 is unconstitutional. This code section authorizes the Department to appoint its own administrative law judges (ALJ's).

This Board has rejected appellant's argument many times over, such as in *Chang* (2005) AB-8335:

This is another issue counsel has raised time and time again, and which the Board has rejected every time. *RTDD, Inc.* [(2003) AB-8063], explains why the Board consistently rejects this contention:

The Appeals Board, as with other state agencies, lacks the power to declare a statute unconstitutional unless an appellate court has made such a determination. (Cal. Const., art. 3, §3.5.) None has. To the contrary, two courts of appeal have rejected constitutional challenges to the Department's employment of its own ALJ's. (See *CMPB Friends, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1250 [122 Cal.Rptr.2d 914] and *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 880 [121 Cal.Rptr.2d 753].)

The Board itself has rejected numerous challenges to the Department's use of its own ALJ's that were based on grounds other than the alleged [in]validity of section 24210. (See, e.g., *7-Eleven, Inc./Veera* (2003) AB-7890; *El Torito Restaurants, Inc.* (2003) AB-7891.)

Nothing in this case inclines us to reach a result different from that just stated.

III

Appellant contends the 10-day suspension imposed, or any suspension at all, is unfair, unreasonable, and "cruel and unusual punishment" in light of the official misconduct in this case and the evidence of appellant's substantial efforts to preclude such violations.

The Appeals Board may examine the issue of excessive penalty if it is raised by an appellant (*Joseph's of California. v. Alcoholic Beverage Control Appeals Bd.* (1971)

19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183]), but will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Beverage Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1965) 62 Cal. 2d 589, 594 [43 Cal.Rptr. 633].)

Since there was no official misconduct, appellant's contention necessarily fails. It is difficult to believe appellant is serious in his characterization of this *all stayed* penalty. There is nothing cruel, unusual, or excessive about the penalty in this matter.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.