

**ISSUED DECEMBER 22, 2008**

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

**AB-8791**

File: 41-374789 Reg: 07066081

RAJENDRA K. PATEL, dba Amigos Taqueria  
14449 Chandler Street, #A, Corona, CA 92880,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Consolidated for hearing with

**AB-8792**

File: 20/21-367474 Reg: 07066079

SANNY, INC., dba Brazil Market  
14449 Chandler Street, #B, Corona, CA 92880,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the consolidated Dept. Hearings: John W. Lewis

Appeals Board Hearing: September 4, 2008  
Los Angeles, CA

Rajendra K. Patel, doing business as Amigos Taqueria, and Sanny, Inc., dba Brazil Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which revoked the licenses of both for Patel's violation of Business and Professions Code section 24200, subdivision (d). These cases have been consolidated on appeal and involve identical issues.

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<sup>1</sup>The decision of the Department, dated November 29, 2007, is set forth in the appendix.

Appearances on appeal include appellants Rajendra K. Patel and Sanny, Inc., appearing through their counsel, Ronald G. Parker, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

#### FACTS AND PROCEDURAL HISTORY

Appellant Patel's on-sale beer and wine eating place license was issued on May 11, 2001. Sanny, Inc.'s off-sale beer and wine license was issued on August 7, 2000. Patel is the owner and sole shareholder of Sanny, Inc.

The Department instituted accusations against appellants charging that Patel's conviction for having bribed a government official in violation of 18 United States Code section 201, subdivision (b)(1)(A), was a violation of Business and Professions Code section 24200, subdivision (d).<sup>2</sup>

The two matters were consolidated in an administrative hearing held on October 16, 2007, at which time documentary evidence was received and testimony concerning the violations charged was presented. At the hearing, the parties stipulated that the charges of the accusations were true. Counsel for appellants argued for a penalty short of revocation, while the Department argued that both licenses should be revoked.

Subsequent to the hearing, the Department issued its decision in the

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<sup>2</sup> Business and Professions Code 24200 provides in pertinent part:

"The following are the grounds that constitute a basis for the suspension or revocation of licenses:

"(d) The plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude or under any federal law prohibiting or regulating the sale, exposing for sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors or prohibiting the refilling or reuse of distilled spirits containers charged against the licensee.

consolidated cases which determined that both licenses should be revoked.

Appellants filed a timely notice of appeal in which they raise the following issues: (1) the penalty is excessive; and (2) the offense was not related to the sale of alcoholic beverages.

## DISCUSSION

### I

Appellants contend that neither the language of the California Constitution nor case law supports the proposition that conviction of a crime involving moral turpitude is, in itself, sufficient justification for a license suspension, and that the decision fails to set forth any rationale for the severity of the penalty.

It is well settled that 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, as here, an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue to determine whether there was such an abuse. (*Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board* (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].) In this case we do not believe there was.

The case law cited by appellants (*Sierra Club v. California Coastal Commission* (1993) 19 Cal.App.4th 547, 556 [23 Cal.Rptr.2d 534], and *Village of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035 [185 Cal.Rptr. 41]) does not support appellants' contention, and the language of the California Constitution expressly refutes it.

Section 22 of the California Constitution provides, among other things, that the

Department of Alcoholic Beverage Control "shall have the power, in its discretion, to deny, suspend or revoke any specific license if it shall determine ... that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude."

Business and Professions Code section 24200, subdivision (d), in turn, provides that a "plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude" are grounds that constitute a basis for suspension or revocation of a licenses.

Appellant does not contend that the federal offense for which he was convicted (the bribing of a public official) is not a public offense involving moral turpitude. Instead, appellant argues that the administrative law judge did not sufficiently explain the reasoning that led to his conclusion that revocation was an appropriate remedy.

To the contrary, it is clear from the decision that the choice of revocation as the appropriate penalty was based on the conviction of a public offense (Conclusion of Law 4), involving moral turpitude (Conclusion of Law 3, citing *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.2d 30 [152 Cal.Rptr. 285]), demonstrating that appellant is not trustworthy (Penalty finding 3), and requiring Department action to protect public welfare and morals (Penalty finding 4). The decision is ultimately, and correctly, an exercise of the Department's broad discretion under the Constitution and the Alcoholic Beverage Control Act. Department Rule 144 (4 Cal. Code Regs., §144), the Department's penalty schedule, prescribes revocation as its standard penalty for an offense such as committed by appellants. The rule also sets forth factors which may be considered in mitigation, none of which were shown.

This Board has acknowledged the Department's wide discretion when it comes to the imposition of penalties, and understands its concern when the offense being penalized is one involving dishonesty and moral turpitude.

II

Appellants contend in their brief that the criminal offense had no relationship to the sale of alcoholic beverages, hence, there is no ground for discipline.

Appellants are mistaken. Section 24200, subdivision (d), is not limited by its terms to offenses involving a relationship to the sale of alcoholic beverages. It extends to "any" public offense involving moral turpitude. (See *Tim Taylor* (2006) AB-8434.)

ORDER

The decision of the Department is affirmed.<sup>3</sup>

FRED ARMENDARIZ, CHAIRMAN  
TINA FRANK, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>3</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.