

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

AB-8844

File: 21-351567 Reg: 07067258

CHARANJIT SINGH BINNING, dba Pittsburg Liquor & Deli
2279 Railroad Avenue, Pittsburg, CA 94565,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Robert R. Coffman

Appeals Board Hearing: October 1, 2009
San Francisco, CA

ISSUED JANUARY 5, 2010

Charanjit Singh Binning, doing business as Pittsburg Liquor & Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 15 days, 7 of which were stayed subject to a one-year probationary period, for his clerk selling alcoholic beverages to a person under the age of 21, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Charanjit Singh Binning, appearing through his counsel, Ralph B. Saltsman, Stephen W. Solomon, and Alicia R. Ekland, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

¹The decision of the Department, dated February 28, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on April 16, 1999. On November 7, 2007, the Department filed an accusation charging that appellant's clerk, Satish Bharwag (the clerk), sold an alcoholic beverage to 20-year-old Edward Eastman on August 29, 2007.

At the administrative hearing held on January 24, 2008, documentary evidence was received, and testimony concerning the sale was presented by Eastman, by Department investigator Casey Tinloy, and by the clerk.

On August 29, 2007, Eastman purchased a six-pack of Budweiser beer and a bottle of vodka in appellant's licensed premises. The clerk did not request identification from Eastman or ask him his age. Eastman was detained outside, and the Department investigator determined that he was carrying only his own identification showing him to be 20 years old. Eastman told the investigator that he had purchased alcoholic beverages at the premises several times before, but had never shown identification when he had done so. Eastman denied ever going back to appellant's premises after August 29, 2007.

The clerk testified that he did not ask Eastman for identification because he had checked Eastman's identification several times before and determined that Eastman was over the age of 21. He also said that five or ten days after August 29, Eastman come in to the store again. The clerk copied information from the driver's license that Eastman presented at that time. The name and birthdate that he copied from the license were identified at the hearing by Eastman as the name and birthdate of Eastman's older brother.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established. Appellant filed an appeal contending he had established a defense to the charge pursuant to Business and Professions Code section 25660.

DISCUSSION

Appellant contends that the clerk acted reasonably and diligently in relying on a driver's license Eastman had shown him previously and that the Department abused its discretion when it determined that appellant had not established a section 25660 defense. While acknowledging that the identification shown to the clerk was not produced at the hearing, appellant argues that "there was overwhelming evidence presented showing that Minor Eastman looked like the true owner of the license."

To establish a defense under section 25660, a licensee must establish that an identification which reasonably purported to be issued by a government agency had been displayed and that the clerk's reliance on that identification was reasonable. (*Dept. of Alcoholic Bev. Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429 [13 Cal.Rptr.3d 826] (*Masani*).) The burden in such a case is on the party asserting the defense.

"It is well established that reliance in good faith upon a document issued by one of the governmental entities enumerated in section 25660 constitutes a defense to a license suspension proceeding even though the document is altered, forged or otherwise spurious." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1968) 267 Cal.App.2d 895, 897 [73 Cal.Rptr. 352].) Reliance on the document is considered reasonable if it is shown to be the result of exercising due diligence. (See, e.g., *Lacabanne Properties, Inc. v. Alcoholic Beverage etc. Appeals Board* (1968) 261 Cal.App.2d 181, 189 [67

Cal.Rptr. 734] (*Lacabanne*); *5501 Hollywood, Inc. v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753 [318 P.2d 820] (*5501 Hollywood*).

Reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered. (*5501 Hollywood, supra*, 155 Cal.App.2d at pp. 753-754.) A licensee, or a licensee's agent or employee, must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances. (*Lacabanne, supra*; *Farah v. Alcoholic Bev. Control Appeals Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*, 155 Cal.App.2d at p. 753.)

Although section 25660 was designed "to relieve vendors of alcoholic beverages from having in all events to determine at their peril the age of the purchaser," by allowing them to rely on certain documentary evidence of majority and identity, "the bona fides of such documents must be ascertained if the lack of it would be disclosed by reasonable inspection, the circumstances considered." (*Dethlefsen v. State Bd. of Equalization* (1956) 145 Cal.App.2d 561, 567 [303 P.2d 7].)

Appellant argues that the due diligence required for a defense under section 25660 is established by the clerk's testimony that he had always refused to sell alcoholic beverages to Eastman until, sometime before August 29, 2007, Eastman produced a driver's license showing him to be 21 years old. The ALJ found that Eastman had shown the clerk a driver's license belonging to Eastman's brother, who was about a year and a half older than Eastman.

Appellant contends the evidence established that Eastman looked like the owner of the driver's license he showed to the clerk, i.e., Eastman's older brother. Appellant

asserts this based on his assumptions that it was Eastman's brother who went to the premises after August 29, 2007, and that the clerk mistook the brother for Eastman because the resemblance is so strong, appellant asserts, "that they are indistinguishable." (App. Br. at p. 8.)

In the face of this "overwhelming evidence," appellant argues, it was an abuse of discretion for the ALJ to find that reasonable reliance was not established because the driver's license of Eastman's brother was not entered into evidence at the hearing. The ALJ said, in the fifth paragraph of Finding of Fact 3:

[T]he minor did not have the purported identification on his person when he purchased the alcohol on August 29. The purported identification card was not present or available at the time of the January 24, 2008, administrative hearing. The purported identification cannot be examined by the trier of fact (the administrative law judge) or any appellate body. For this reason the respondent cannot establish that his clerk exercised due diligence when he accepted it as proof of majority.

The Appeals Board has confronted this situation before, where reasonable reliance on identification is asserted, but the identification itself is not produced. It has rejected a section 25660 defense under these circumstances, as explained in *Circle K Stores, Inc.* (2003) AB-8116:

Even if the minor had admitted that he possessed false identification, the absence of any evidence of what it might have been dooms appellant's section 25660 defense. With no opportunity to view the supposed false identification, neither the ALJ nor this Board could make any assessment whatsoever as to whether a clerk may have reasonably relied upon it.

(*Accord, Fulton & Fulton, Inc.* (2008) AB-8638; *Circle K Stores, Inc.* (2001) AB-7701.)

The ALJ did not abuse his discretion in finding that appellant failed to establish a section 25660 defense.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, 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.