

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

AB-8854

File: 20-398147 Reg: 07066918

ONKAR SINGH DOSANJH, dba Dosanjh Market
2101 Tully Road, Modesto, CA 95350,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: January 15, 2009
San Francisco

ISSUED MAY 22, 2009

Onkar Singh Dosanjh, doing business as Dosanjh Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for appellant's clerk, William Lucero, selling a 12-pack of Budweiser beer, an alcoholic beverage, to Ryan Shaw, an 18-year-old police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Onkar Singh Dosanjh, appearing in pro per., and the Department of Alcoholic Beverage Control, appearing through its counsel, Gary Agerbek.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on May 9, 2003. In

¹The decision of the Department, dated March 21, 2008, is set forth in the appendix.

September 2007, the Department filed an accusation against appellant charging that, on June 30, 2007, appellant's clerk, William Lucero (the clerk), sold an alcoholic beverage to 18-year-old Ryan Shaw. Although not noted in the accusation, Shaw was working as a minor decoy for the Modesto Police Department at the time.

At the administrative hearing held on February 21, 2008, documentary evidence was received, and testimony concerning the sale was presented by Shaw (the decoy). The evidence established that the clerk asked the decoy for identification and was handed the decoy's California driver's license. Despite the fact that the license set forth the decoy's true date of birth, and carried a red stripe with the words "AGE 21 IN 2009," the clerk made the sale.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established. The Department's order called for a 25-day suspension, but with a proviso that, if the Director adopts the proposed decision in a separate pending disciplinary proceeding heard the same day (*Onkar Singh Dosanjh* Reg. No. 07065610 (AB-8853), and the decision is affirmed after all appeals, then the license shall be revoked.

Appellant has filed an appeal in this case which raises no issues relating to the merits, but asks the Board for leniency, based on hardship grounds.

DISCUSSION

There is little in this case the Board can do for Mr. Dosanjh, whose clerks seem to have been uniformly careless in their examination of the documents presented them as proof of legal age. 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].) We cannot say there was an abuse of discretion, since the violation was conceded, and the licensee had a prior violation. (See Department Rule 144 (4 Cal. Code Regs., §144).

The conditional order of revocation in this case is, however, problematic. The Department seeks to eliminate the need to bring a new accusation once the decision becomes final and stands as a third strike.²

The problem we face in this case is that the order is contingent upon the occurrence of an event some time in the future. The Appeals Board may only hear an appeal from a final order (See Business and Professions Code section 23081). Since the Department has retained power to take further action in the case, depending upon what could happen in a related case, its decision cannot be considered final, and the Appeals Board necessarily lacks jurisdiction to review it. There is little doubt that appellant's license will eventually be revoked on the basis of three strikes within a 36-month period. However, no matter the merit to the Department's desire to expedite the revocation of the license of a multiple offender, it is insufficient to confer jurisdiction on the Board. We must dismiss the appeal in this case as premature. The Department's decision is defective as lacking finality.

² The hearing transcript reveals that Department counsel knew the order he sought, and the administrative law judge (ALJ) issued, might pose finality questions. He acknowledged that he knew of no precedent for such an order, and told the ALJ, "You could be breaking ground here."

ORDER

The appeal is dismissed as premature, without prejudice to appellant's right to file a new appeal once a final order is entered.³

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

³ 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.