

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

AB-8855

File: 20-407735 Reg: 07065649

SAMETH KIM SRUN and CHAMROEUN VORNG, dba Olive Mini Mart Gas
1703 West Olive Avenue, Fresno, CA 93728,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: April 2, 2009
San Francisco, CA

ISSUED JUNE 30, 2009

Sameth Kim Srun and Chamroeun Vorng,¹ doing business as Olive Mini Mart Gas (appellants), appeal from a decision of the Department of Alcoholic Beverage Control² which revoked their license for violations of Welfare and Institutions Code section 10980(g) and United States Code section 2024()(1) (food stamp trafficking).

Appearances on appeal include appellants Sameth Kim Srun and Chamroeun Vorng, appearing through Sameth Kim Srun, in propria persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

¹ For convenience, we have referred to appellant Srun in the same manner as did the Department decision, even though Srun stated his name as Kim Sameth at the administrative hearing.

²The decision of the Department, dated March 21, 2008, is set forth in the appendix.

PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on February 7, 2004. On April 7, 2007, the Department instituted an accusation against appellants charging violations of Welfare and Institutions Code section 10980, subdivision (g) (food stamp trafficking) over a period of three months in 2006.

An administrative hearing was held on January 31, 2008, at which time documentary evidence was received and testimony concerning the violation charged was presented by Teresa L. Toups, a representative of the United States Department of Agriculture, the agency in charge of the food stamp program, and Sameth Kim Srun and Chamroeun Vorng, co-licensees. The evidence established numerous instances in which appellant paid food stamp recipients cash in return for debits on their EBT cards.

Subsequent to the hearing, the Department issued its decision which determined that the violation had been proved, and ordered the license revoked.

Appellants filed a timely notice of appeal, renewing the contention first made at the administrative hearing that Srun did not know what he was doing was improper.

Srun's testimony at the administrative hearing regarding his knowledge of what was permissible was rejected by the administrative law judge (ALJ) (Finding of Fact V):

Respondent Srun admitted purchasing the food stamps as alleged in the Accusation. He testified that he did not know it was illegal to exchange cash for food stamps. According to Respondent Srun, he thought that his customers' EBT cards were like ATM cards, which they may use to withdraw cash. Respondent Srun's testimony is given no weight, considering that 1) prior to qualifying as a retailer in the Food Stamp program, Respondent Srun received instructions, by phone, from a U.S.D.A. representative regarding the rules pertaining to the program, 2) he received a tape regarding the rules, and 3) he took steps to avoid detection of the purchases of the food stamps.

We are constrained from granting appellants any relief by our inability to review findings of fact supported, as here, by substantial evidence. The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings.³

Similarly, we are unable to afford appellants the leniency they seek. 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].)

In this case, the evidence established 700 violations of the Food Stamp Act (Determination of Issues I). The evidence also established that appellant Srun made repetitive transactions for the purpose of minimizing the amount shown on each individual transaction, an effort to avoid scrutiny. Given the state of the evidence, we cannot say the Department abused its discretion in ordering revocation.

³The California Constitution, article XX, section 22; Business and Professions Code sections 23084 and 23085; and *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

ORDER

The decision of the Department is affirmed.⁴

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

⁴ 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.