

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

AB-8873

File: 21-430005 Reg: 07066701

HARJEET KAUR and PARVINDER SINGH, dba EZ Stop
10501 Folsom Boulevard, Rancho Cordova, CA 95670,
Appellants/Licensees

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 JUNE 2, 2009

Harjeet Kaur and Parvinder Singh, doing business as EZ Stop (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a). The violation was appellants' third in a span of slightly less than nine months.

Appearances on appeal include appellants Harjeet Kaur and Parvinder Singh, appearing through their counsel, Danny D. Brace, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on October 28, 2005. On August

¹The decision of the Department, dated April 4, 2008, is set forth in the appendix.

21, 2007, the Department instituted an accusation against appellants charging that, on April 19, 2007, appellants' clerk, Michael Smith (the clerk), sold an alcoholic beverage to Ashley Keilor, a minor. The accusation also alleged prior violations on September 9, 2006, and January 26, 2007.

An administrative hearing was held on March 6, 2008. At the hearing, appellants stipulated that the charges of the accusation were true, and presented evidence in support of their plea for leniency. Parvinder Singh testified about training provided to appellants' employees, the hours he worked, his firing of the offending clerk, the current procedure in checking ID's, and how he was told what happened in the transaction.

Subsequent to the hearing, the Department issued its decision which ordered appellants' license revoked.

Appellants filed an appeal making the following contention: the penalty is excessive, since appellants never personally sold alcoholic beverages to a minor. Citing Business and Professions Code section 24200, subdivision (b), they argue that they had never been charged or convicted of violating any California Penal Code provision.

DISCUSSION

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].) The issue here is whether the Department's standard penalty of revocation (See Department Rule 144 (4 Cal. Code Regs., §144))

for three violations within a 36-month period (in this case, just short of nine months) was an abuse of its discretion in the circumstances of this case.

Appellants' apparent belief they must personally be charged with a Penal Code violation before their license is subjected to discipline - in this case, revoked - is mistaken. It is well settled in Alcoholic Beverage Control Act case law that an employee's on-premises knowledge and misconduct is imputed to the licensee/employer. (See *Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 377 [3 Cal.Rptr.2d 779]; *Kirby v. Alcoholic Bev. Etc. Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291]; *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 174, 178-181 [17 Cal.Rptr. 315]; *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504, 514 [22 Cal.Rptr. 405]; *Mack v. Department of Alcoholic Beverage Control* (1960) 178 Cal.App.2d 149, 153-154 [2 Cal.Rptr. 629]; and *Endo v. State Board of Equalization* (1956) 143 Cal.App.2d 395, 402 [300 P.2d 366].)

The sale by appellants' clerk was a misdemeanor on the part of the clerk, (see Business and Professions Code section 25658, subdivision (a)), and a basis for discipline of the licensee under the authorities cited above. It is irrelevant that appellants were not charged personally.

Three sales to minors in less than nine months is indicative of an almost complete lack of control. Appellants' explanation of how these violations occurred was insufficient to persuade the administrative law judge (ALJ) that the Department's standard penalty for three sale-to-minor violations within three years was inappropriate.

Nor does it persuade us.

We do not doubt that appellants will incur some economic hardship. Economic hardship often follows as a result of license discipline. In this case, appellants face the loss of a valuable off-sale general license. But if economic loss were a controlling criterion, virtually no order of revocation could stand. We do not advocate such a rule, and are satisfied that the Department acted well within its discretion. Protection of public welfare and morals deserves no less, given the facts of this case.

ORDER

The decision of the Department is affirmed.²

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

² 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.