

ISSUED SEPTEMBER 24, 1997

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

THE SOUTHLAND CORPORATION and	)	AB-6742
HARMANDER and PARMINDER GREWAL)	
dba 7-Eleven #13834	)	File: 20-214343
8475 Sunland Boulevard	)	Reg: 96035183
Sun Valley, CA 91352,)	
Appellants/Licensees,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	August 6, 1997
	)	Los Angeles, CA
)	

The Southland Corporation and Harmander and Parminder Grewal, doing business as 7-Eleven #13834 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which ordered their off-sale beer and wine license suspended for 30 days, with enforcement of 10 days thereof stayed for a two-year probationary period, for their clerk having sold alcoholic beverages (two six-packs of Corona Extra beer) to a

¹ The decision of the Department dated October 3, 1996, is set forth in the appendix.

17-year-old minor, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §26568, subdivision (a).

Appearances on appeal include appellants The Southland Corporation, Harmander Grewal and Parminder Grewal, appearing through their counsel, Ralph B. Saltsman; and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on May 12, 1981. Thereafter, the Department instituted an accusation alleging that on October 27, 1995, appellants' clerk sold alcoholic beverages (two six-packs of Corona Extra) to a 17-year old minor who was not asked his age or to produce identification.

An administrative hearing was held on September 4, 1996, at which time oral and documentary evidence was received concerning the charges of the accusation.

A police officer of the Los Angeles Police Department testified that he observed a youthful-looking man enter appellants' store, bring two six-packs of beer to the sales counter, pay for the beer, and leave the store. The young man was stopped by the officer, and when asked his age, told the officer he was 19. In fact, as the officer learned from the minor's mother, he was only 17. The minor admitted making the purchase, and admitted that he attempted to mislead the police officer as to his true age. He denied, however, that the beer had been purchased for him by an adult

companion who entered the store with him. He did admit entering the store with the friend, but stated that his friend was in another part of the store when he (the minor) bought and paid for the beer.

Appellants' clerk denied making the sale to the minor, and claimed the beer was purchased by the minor's companion, who appeared to be between 25 and 30.

Subsequent to the hearing, the Administrative Law Judge (ALJ) filed his proposed decision, in which he accepted the testimony of the police officer and the minor, and rejected the defense offered by appellants that the beer was purchased by the adult friend. The proposed decision was adopted by the Department, and appellants' timely notice of appeal followed.

In their appeal, appellants contend that there is insufficient evidence to support the finding that the testimony of the minor was credible.

DISCUSSION

Appellants contend that since the Administrative Law Judge made a specific finding as to the credibility of the minor who, the Department contends, made the purchase in question, there must be facts to support that finding. Thus, appellants contend, where the testimony demonstrates that the minor's testimony is inherently incredible, the finding is not supported by the evidence and the decision must be reversed.

Appellants point to admissions by the minor that he lied to the police officer when he was stopped, and to conflicts and inconsistencies in his testimony and that of

the police officer. Appellants argue that these inconsistencies undermine the ALJ's finding that the testimony of the police officer corroborated that of the minor.

We think appellants' argument is simply a way of raising an issue of credibility dressed in new garb.

The ALJ was obviously confronted with testimony reflecting conflicts and inconsistencies. In every case where there is an accuser and an accused, the trier of fact has to decide, among other things, whom to believe or disbelieve. Determinations of credibility are based on an overall assessment of demeanor, motive to falsify, bias, interest and a multitude of other considerations.

The ALJ is not required to explain what went on in his mind in deciding whether to believe one witness over another, and why he resolved inconsistencies and conflicts in accord with what he thought was the more truthful rendition of what happened.

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857] (substantial evidence supported both the Department's and the license-applicant's position); Kruse v. Bank of America

(1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; Gore v. Harris (1964) 229 Cal.App.2d 821 [40 Cal.Rptr. 666].)

Appellants attack the officer's testimony that his car was parked in a manner which permitted him to see inside the store and observe the transaction in question. They assert that this testimony is inconsistent with that of the minor, and was contradicted by the testimony of the store owner, who testified that one parked where the officer said he was parked would not have been able to see inside the store.

Appellants' attack on the police officer's ability to observe the transaction is also overstated. The minor testified the police officer's car was parked in front of the business next to appellants' store, "about four parking spaces away" from his own car and the front door of appellants' business [RT 58]. The police officer testified that he parked "up against the sidewalk area in front of the front part of the store" [RT 19].

When appellants' counsel later sought to pinpoint where the officer parked, by asking the officer to state "with the greatest precision" where his car was in relation to the store, he was told it was "directly in front of it" [RT 73]. Counsel did not pursue what the officer meant by "directly," so we do not know what the answer allowed in terms of angle of view. It may very well be that when there are a number of parking places fronting a business, they all could be said to be "directly" in front. Appellant, in fact, acknowledged there were six or seven parking spaces in front of his store, the front consisting of about 60 feet of floor to ceiling glass frontage [RT 97,

99]. Thus, it does not appear inherently impossible for the officer to have been able to see into the interior of the store and observe the transaction.

Appellant's contention that the minor's testimony is inherently incredible is little more than rhetoric. There is no evidence which demonstrates conclusively that the minor was not the purchaser. There is no evidence which demonstrates conclusively that the purchase was made by the adult companion. Instead there was simply evidence from several witnesses from which the ALJ had to sort out what he believed were the true facts, drawing on his judgment, experience, observation of the witnesses, and a myriad of other intangible considerations. To say that he must reduce these thought processes to precise factual determinations is to ask the impossible.

CONCLUSION

The decision of the Department is affirmed.²

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, 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 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.