

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

LORBROS, INC.	)	AB-6843
dba The Ponderosa)	
1259 South A Street	)	File: 48-200006
Santa Rosa, CA 95404,	)	Reg: 96035795
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Michael B. Dorais
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	December 3, 1997
	)	San Francisco, CA
)	

Lorbros, Inc., doing business as The Ponderosa (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 20 days for its bartender selling a beer to a minor and allowing a minor to remain on the premises without lawful business, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from violations of Business and Professions Code §§25658, subdivision (a), and 25665.

¹The decision of the Department, dated March 13, 1997, is set forth in the appendix.

Appearances on appeal include appellant Lorbro's, Inc., appearing through its counsel, Richard W. Freeman, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on April 13, 1987. Thereafter, the Department instituted an accusation against appellant charging that appellant's bartender sold an alcoholic beverage (beer) to a 20-year-old minor and allowed the minor to remain on the premises without lawful business.

An administrative hearing was held on February 11, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented by the minor, by bartender Dick Lee Cooper, and by police officer John Bixler concerning the request for and sale of the beer to the minor, the identification used by the minor, and the officer's actions with regard to the sale.

Subsequent to the hearing, the Department issued its decision which determined that the allegations of the accusation were true and that no defense had been established under Business and Professions Code §25660. The Department ordered appellant's license suspended for 20 days.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the issue that the decision is not supported by the findings and the findings are not supported by substantial evidence in light of the whole record.

DISCUSSION

Appellant contends that the conflicting testimony of the bartender regarding a second ID being used by the minor “was not appropriately considered by the administrative law judge and renders the Decision not supported by the findings and the findings not supported by substantial evidence.” (App. Br. at 4.)

The minor testified that he asked appellant’s bartender for a beer and showed the bartender his driver’s license when requested to do so [RT 7-8]. The license showed the minor to be 20 years old. The minor testified that the bartender said something about the minor having just turned 21 after looking at the ID [RT 16]. At the hearing, the minor denied having had a second driver’s license showing he was over 21 [RT 14].

The officer testified that the minor’s identification showed that the minor was 20 years old [RT 20]. The minor told the officer that “Dick” had sold him the beer, so the officer went to appellant’s bartender, Dick Lee Cooper, and spoke to him about the incident [RT 24-26]. The officer testified that Cooper admitted he had made a mistake in selling to the minor [RT 27].

Appellant’s bartender testified that the minor used an ID that showed he was 21 years old [RT 35] and that the officer admitted he had not searched the minor for another ID [RT 37]. The bartender stated that the ID produced by the minor at the hearing was not the one the minor had shown him at the bar [RT 42].

Appellant is, essentially, asking this Board to reevaluate the testimony

presented and to substitute this Board's judgment of the facts and the credibility of the witnesses for that of the ALJ. Even if it were so inclined, this Board is not authorized to do this.

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. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

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] (in which the positions of both the Department and the license-applicant were supported by substantial evidence); Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage

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

Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

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].)

Contrary to appellant's assertion, the ALJ specifically considered and evaluated the conflicting testimony in Finding VI - Findings re Section 25660 of the Business and Professions Code, and specifically concluded that the testimony of the minor and the officer was more believable than that of the bartender.

CONCLUSION

The decision of the Department is affirmed.³

BEN DAVIDIAN, CHAIRMAN
 RAY T. BLAIR, JR., MEMBER
 JOHN B. TSU, MEMBER
 ALCOHOLIC BEVERAGE CONTROL
 APPEALS BOARD

³This final order 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 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.