

ISSUED OCTOBER 19, 2000

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

EHAB MANKARIOS and HARUMI	)	AB-7456
MANKARIOS)	
dba Palm Tree Liquor	)	File: 21-319090
10425 Venice Boulevard	)	Reg: 99045581
Los Angeles, CA 90034,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Sonny Lo
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	August 3, 2000
Respondent.	)	Los Angeles, CA
)	

Ehab Mankarios and Harumi Mankarios, doing business as Palm Tree Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, with five days thereof stayed for a two-year probationary period, for appellant Ehab Mankarios having sold an alcoholic beverage² to Eric Martin, a minor, contrary to the universal and generic

¹The decision of the Department, dated July 22, 1999, is set forth in the appendix.

² The decision states, and the record indicates [at RT 45], that the item purchased was a bottle of Beck's beer.

public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellants Ehab Mankarios and Harumi Mankarios, appearing through their counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on August 27, 1996. On February 5, 1999, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor, in violation of Business and Professions Code §25658, subdivision (a).

An administrative hearing was held on June 8, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Department investigators Dana Cook and Eric Hirata; by Eric Martin, the minor; and by Ehab Mankarios ("Ehab").

Subsequent to the hearing, the Department issued its decision which sustained the charge of the accusation.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the following issues: (1) the sale would not have occurred but for the misconduct of the Department investigators; (2) the Department's use of its own administrative law judge vitiated the entire proceeding; and (3) the penalty is so excessive as to constitute cruel and unusual punishment.

DISCUSSION

I

Appellants contend that the sale was the result of misconduct by Department investigators. They contend that the investigators pressured and distracted appellant Ehab, who was working alone, by continual eye contact while they were purportedly arranging the purchase of a keg of beer.³ They quote Ehab's explanation given at the hearing for not asking the minor for identification [at RT 56]:

“Two reasons. I was very distracted because I wanted to help these other gentlemen, customers, which is the officers, and he [the minor] had this companion with him that looked - he looked old enough to me and they're together.”

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

³ It appears that the investigators were initially testing whether appellants were complying with the paperwork requirements associated with the sale of beer by the keg. The appearance of the minor was serendipitous.

jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.⁴

Applying these well established rules, we believe that the finding by the Department that the sale was not caused by any misconduct on the part of the investigators should not be disturbed.

Ehab said he was in the process of moving a keg to the front of the store when he saw the minor pick up the beer [RT 50]:

“I moved the keg towards the front of the store and then I waited until he finished with the – until he grabbed this bottle of beer. And then he came to the counter with his friend and, you know, and then I sold him the beer.”

Contrary to appellants’ contention that the sale was the result of distraction, Ehab’s own testimony indicates he simply made a decision to deal with the customer first. This is consistent with the testimony of the investigators, and the findings by the Administrative Law Judge, that the investigators had invited Ehab to serve other customers first.

We cannot say that Ehab’s desire to complete a sale, rather than risk possibly inconvenience to a customer, excuses him from the consequences of a sale to a minor. Nor does the record support the suggestion that the investigators pressured Ehab to the point of distraction. If he felt any pressure, it was self-generated:

Q. And did they [the investigators] continue to have conversations with you while you were helping other customers?

A. Not constantly, just a few words here and there. I told them to bear with

⁴ California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

me, 'I'm trying to finish it.'

Q. Did they ever say to you, 'Go ahead and take care of your other customers? We'll just patiently wait?'

A. No, they were just quiet. ...

Q. How were you feeling as far as customers being there and them waiting for this keg?

A. I felt – I felt bad. I felt pressured. I felt that he needs – they need to go. They've been waiting 15, 20 minutes. I wanted to get them out, but I could not because I was the only person in the store.

Ehab's time estimate may be somewhat exaggerated, since the testimony indicates there were only two other customers involved while the investigators were waiting to finish the keg transaction.

II

Appellants contend that the Department's use of administrative law judges appointed by the Director is improper. This contention challenges the constitutionality of Business and Professions Code §24210. Article 3, §3.5, of the California Constitution bars any administrative agency from declaring an act of the Legislature unconstitutional or from refusing to enforce any such act. Consequently, the Appeals Board declines to address this contention.

III

Appellants challenge the penalty as so excessive as to amount to cruel and unusual punishment. The contention has no merit.

The penalty, a 15-day suspension with five days stayed, is more lenient than the standard Department penalty for a sale to a minor.

ORDER

The decision of the Department is affirmed.⁵

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ 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.