

ISSUED NOVEMBER 21, 2000

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

SUBASH CHANDAR	)	AB-7480
dba S & S Liquors)	
7335 Bollinger Road, Unit F	)	File: 21-314103
Cupertino, CA 95014,	)	Reg: 99046412
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Stuart A. Judson
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	September 21, 2000
	)	San Francisco, CA

Subash Chandar, doing business as S & S Liquors (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellant's off-sale general license for 25 days with 10 of those days stayed for a probationary period of two years, for selling alcoholic beverages to persons under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivisions (a) and (b), arising from a violation of

¹The decision of the Department, dated August 5, 1999, is set forth in the appendix.

Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Subash Chandar, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on November 13, 1995. Thereafter, the Department instituted an accusation against appellant charging violations of selling alcoholic beverages to underage purchasers. An administrative hearing was held on June 30, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented that three persons under the age of 21 years (minors) entered the premises and later placed several brands of beer on the sales counter. Appellant was the sales person at that time. One of the minors showed false identification that he had obtained in San Francisco. Appellant told the first minor that his identification was fake. The second minor also showed false identification purchased in San Francisco, but this minor later hid his identification from the Department investigators. The third minor did not show any identification. The minors had previously pooled their funds, but when the beers were rung up, the total was more than the minor who had the funds possessed. The minors in the presence of appellant, again contributed to the fund for the payment of the bill [RT 9-12, 16, 19, 21-23, 29-30, 35, 36-37, 43, 45, 47-49, 51].

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred. Appellant thereafter filed a timely

notice of appeal.

In his appeal, appellant raises the issue that the findings are not supported by substantial evidence.

DISCUSSION

Appellant contends there was no substantial evidence to support the findings, arguing that he had sold the beers to an adult, and the Department investigators did not properly search that person to discover identification that would show that the alleged minor was an adult.

Appellant argues his cause as the only true state of the facts, ignoring the record and the Department's decision. The Administrative Law Judge (ALJ) in his proposed decision accepted the testimony of the minors and Department investigator rather than the testimony of appellant.

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 credibility of witnesses is at issue, most often there are conflicts in the evidence. 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] (a case where 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 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 Department is authorized by the California Constitution to exercise its discretion whether to suspend or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the continuance of such license would be contrary to public welfare or morals.

Different than the authority of the Department, 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.²

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

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].

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, 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 order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.