

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

BELEN MEDRANO CARILLO and	)	AB-7245
MANUEL C. GONZALEZ)	
dba Calimex Deli	)	File: 20-88078
711-1/2 South Kern Avenue	)	Reg: 98043114
Los angeles, CA 90022,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	John P. McCarthy
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	July 1, 1999
Respondent.	)	Los Angeles, CA
)	

Belen Medrano Carillo and Manuel C. Gonzalez, doing business as Calimex Deli (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their off-sale beer and wine license following Belen Medrano Carillo's 1996 plea of guilty to the commission of grand theft, in violation of Penal Code §487, subdivision (a), being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22,

¹The decision of the Department, dated October 1, 1998, is set forth in the appendix.

arising from a violation of Business and Professions Code §24200, subdivisions (a) and (b).

Appearances on appeal include appellants Belen Medrano Carillo and Manuel C. Gonzalez, appearing through their counsel, Edgardo Gonzalez, and the Department of Alcoholic Beverage Control, appearing through its counsel, Thanh-Le Nguyen.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on June 24, 1980. Thereafter, the Department instituted an accusation against appellants charging the guilty plea as ground for suspension or revocation under the California Constitution and Business and Professions Code §24200, subdivisions (a) and (b).

An administrative hearing was held on August 10, 1998. At that hearing, documentary evidence of the plea of guilty and ensuing conviction was presented by Department counsel. Appellants presented no witnesses. Letters written on appellants' behalf were received as administrative hearsay.

Subsequent to the hearing, the Department issued its decision which ordered appellants' license revoked, an order from which appellants have filed a timely appeal, alleging that it constitutes an abuse of discretion.

DISCUSSION

Appellants acknowledge that an administrative body such as the Department of Alcoholic Beverage Control has broad discretion in its selection of discipline, and that such discretion will not be disturbed unless the agency's action is arbitrary,

capricious or patently abusive, which they contend it was in this case. Appellants cite cases arising from decisions of the Board of Medical Examiners, but decisions reviewing the exercise of discipline by the Department are in accord. (See Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].)

Appellants, who are unrelated other than as co-licensees, stress their discipline-free history since the issuance of their license in 1980; the single misdemeanor theft conviction, which, according to their counsel, involved clothing taken for Carillo's five children; the absence of any other criminal history; Carillo's successful completion of her criminal sentence; and the fact that the sale of beer and wine is a major part of the deli business, upon which appellant relies for her sole support.

Appellants compare their situation to that in Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal.2d 589 [43 Cal.Rptr. 633], where an order of revocation based upon a sale to a minor, the employment of a female bartender, service to an obviously intoxicated patron, and possession of distilled spirits on the premises, was ruled to be a clear abuse of discretion. The Court, affirming the Appeals Board's reversal of the Department penalty order, stressed, among other things, the appellant's five-year history of discipline-free licensure.

The Department contends the order of revocation was proper, arguing that the burden of operating their business without a license to sell alcoholic beverages is outweighed by the benefit to the public welfare and morals from restricting

licenses to persons who have not committed crimes involving moral turpitude.

Although claiming that Carillo entered a guilty plea to only a misdemeanor, appellants do not dispute the fact that the crime was one involving moral turpitude. (See Rice v. Alcoholic Beverage Control Appeals Board (1979) 89 Cal.App.3d 30, 37 [152 Cal.Rptr. 285] (“moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for purposes of personal gain or other corrupt purpose”).

The Department routinely orders revocation in cases involving theft and other crimes of moral turpitude.

Appellants question that part of the Department’s decision which recites that appellant Carillo’s crime is “the very sort which disqualifies a person from holding a Department license,” asserting that only felony convictions routinely do so. Appellants cite Business and Professions Code §23952, which requires an applicant to state he or she has not been convicted of a felony. However, that code section relates to a felony conviction as a bar against the issuance of a license in the first instance. The Department is certainly entitled to consider evidence of bad moral character, such as the commission of a crime for personal gain, as a reason to remove the privileges of the license from a wrongdoer.

The Department appropriately gave little weight to the letters which were admitted as administrative hearsay. Whatever her friends may think of her, Carillo admitted committing a criminal offense.

The Administrative Law Judge (ALJ) declined to stay the order of revocation

to permit transfer of the license into the name of the innocent partner, stating that “no evidence was presented on which a decision to permit transfer of the licensee to an innocent licensee could be based.” Although the Department on occasion has stayed revocation to permit transfer when it is obvious that outright revocation could be punitive, it is not bound to do so in every case. In this case, according to counsel, Carillo, although willing to surrender her interest in the license, intended to retain her ownership interest in the business. Given this, only outright revocation would effectively deny her the ability to benefit financially from the sale of alcoholic beverages while unworthy of holding a license to do so.

ORDER

The decision of the Department is affirmed.²

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

² This 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.