

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

AB-9903

File: 21-610570; Reg: 20090386

GHASSAN SENNO,
dba Maria Discount Beer and
Wine
390 Bernard Street
Bakersfield, CA 93305,
Appellant/Applicant

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Hearing: August 6, 2021

Telephonic

ISSUED AUGUST 9, 2021

Appearances: *Appellant:* Joshua Kaplan, of the Law Offices of Joshua Kaplan,
as counsel for Ghassan Senno,

Respondent: Patrice Huber, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Ghassan Senno, doing business as Maria Discount Beer and Wine (appellant),
appeals from a decision of the Department of Alcoholic Beverage Control¹ denying his
application for an off-sale general license.

FACTS AND PROCEDURAL HISTORY

Appellant holds a type-20, off-sale beer and wine license for the premises located
in Kern County, California, known as “Maria Discount Beer and Wine.” In 2019, the
Department determined the population of Kern County had increased to the point the

¹ The decision of the Department, dated March 17, 2021, is set forth in the
appendix.

Department was authorized to issue three additional type 21, off-sale general licenses. The Department received more than three applications for off-sale general licenses and held a priority drawing. Appellant filed a full application with the Department for an off-sale general license, as he sought to replace his existing off-sale beer and wine license.

Appellant paid the required fee by a cashier's check issued by Wells Fargo Bank. Appellant's application was drawn as number one. Licensing Representative Adelina Moran (Moran) was assigned to investigate appellant's application.

Moran reviewed appellant's application questionnaire as part of her investigation. The questionnaire listed appellant as the applicant and the contact person; however, the contact email address listed Abdalla Samaan's (Samaan) email, and both applicant and Samaan were identified as having signature authority on the business bank account.

Moran pulled the files to determine if Samaan had also applied for a priority license and discovered that he had filed an application and paid the required fee by a cashier's check issued by Wells Fargo Bank. Appellant and Samaan's cashier's checks bore consecutive numbers and Moran noticed that Samaan was listed under "remitter" on the check used to pay for appellant's application. Appellant was listed under "remitter" on the cashier's check used to pay for Samaan's application. Samaan's application was drawn as number 53.

Moran contacted appellant and asked why Samaan was listed on his bank account. Appellant told Moran that Samaan was his son-in-law who helped him out and indicated that the bank had made a mistake. However, Moran later discovered from Samaan that he had lent appellant \$20,000 for his priority application.

Based on the overlapping monetary information, the Department determined that appellant and Samaan were pooling funds in violation of Business and Professions Code² section 23961, which provides that no person shall be entitled to more than one opportunity to participate in a priority drawing in any county with respect to an application for issuance or transfer of any one type of license. On that basis, the Department denied appellant's application for an off-sale general license.

At the administrative hearing held on December 17, 2020, documentary evidence was received, and testimony was offered by Moran and Samaan. Appellant did not testify but did submit the seller's permit and lease for his business. (Exhs. A and B.) Both of those documents listed appellant's name only. (*Ibid.*) Further, the application lists appellant as the sole owner of the bank account but lists Samaan as a "signer." (Exh. C.) The business type is listed as "Sole Proprietor." (*Ibid.*)

Appellant also submitted his monthly statement for his bank account covering September 2019. (Exh. D.) The account number listed on exhibits C and D matches the account number listed on the application questionnaire. (Exh. 10.) The cashier's check submitted with appellant's priority application does not list a source of funds; however, on September 18, 2019, there is a \$9,000 deposit into the account, followed by a \$13,445 withdrawal. The cashier's check was issued that same day.

Samaan testified that he does not own or control any portion of appellant's business. Rather, appellant is the sole owner and Samaan simply helps him. Samaan testified that he never deposited his own money into appellant's account, nor did he ever withdraw money from it for his own use. Further, Samaan indicated that he did not loan

² All statutory references are to the California Business and Professions Code unless otherwise stated.

\$20,000 to appellant, but did promise to provide him with the money to help with business if appellant needed it.

Samaan further testified that he purchased the two cashier's checks at the same time, which is why they have sequential check numbers. Samaan stated that he used his personal money for the cashier's check submitted with his priority application and that he used appellant's money to purchase the cashier's check submitted with appellant's priority application.

Samaan identified exhibit 8 as the monthly statement for his checking account from September 2019. The account number matches the "Purchaser Account" information on the receipt for the cashier's check submitted in connection with his own priority application. (Exhs. 7 and G.) There is no withdrawal from the account which matches the amount of the cashier's check, although there is a \$9,745 withdrawal on September 18, 2019, the same day the cashier's check was issued.

On January 10, 2021, the administrative law judge (ALJ) issued a proposed decision sustaining the denial of appellant's priority application. The ALJ reasoned that "the co-mingling of funds cannot be ruled out," and appellant failed to meet his burden "to establish that there was no co-mingling of pooling of funds." (Conclusions of Law, ¶ 12.) The Department adopted the proposed decision in its entirety on March 12, 2021 and issued a certificate of decision five days later. Appellant filed a timely appeal contending that the Department's decision is not supported by substantial evidence.

DISCUSSION

Appellant contends that he "never sought nor did he achieve more than one opportunity to participate in a priority drawing in any county with respect to an application for issuance of any one type of license." (AOB, a p. 7.) Further, appellant contends that

“even if pooling of funds occurred, there is no nexus between [the pooling] and a violation of §23961, as pled.” (*Id.* at p. 8.)

Business and Professions Code section 23961(a)(1) states, in pertinent part:

If ... the department finds that there are more applicants for the particular type of license than there are licenses available for issuance ... the department shall ... conduct a drawing to determine the priority in which all such applications filed with it shall be considered. No more than one such drawing shall be made in any county in any one year, and no person will be entitled to more than one opportunity to participate in such a drawing in any county with respect to an application for issuance or transfer of any one type of license.

Here, the Department determined that appellant’s application violated section 23961(a)(1) because he and Samaan attempted to secure more than one opportunity to enter the priority drawing. (Conclusions of Law, ¶¶ 7-12.) This Board is required to defer to those findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”]; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] [“When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department.”].) “Substantial evidence” is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

The Department made the following findings regarding the source of funds used to pay for appellant's application:

7. There is no clear record of the source of funds for the fee submitted with Senno's priority application. There is no withdrawal from Senno's business account which directly corresponds to the amount of the application fee, \$15,835, although there is a \$13,445 withdrawal the same day the cashier's check was issued. There also is a \$9,000 deposit the same day, with no evidence establishing the source of those funds. (Findings of Fact ¶¶ 2-3, 6-8 & 11-12.)

8. Assuming that the \$13,445 was used to purchase the cashier's check submitted with Senno's priority application, there is no evidence of the source of the remaining funds. Similarly, there is no evidence of the source of the \$9,000 deposit made earlier that day.

9. Samaan testified that he used Senno's funds to purchase the cashier's check submitted in connection with Senno's priority application. (Findings of Fact ¶¶ 13-14.) He did not provide any details regarding the source of these funds other than the statement that they were Senno's.

10. Samaan's priority application is not at issue here. Although he testified that he used his funds to purchase the cashier's check submitted in connection with his priority application, the cashier's check submitted in connection with Samaan's priority application lists his bank account under the heading "Purchaser Account." (Findings of Fact ¶¶ 5-6 & 14-15.)

11. In and of itself, the fact that one person is listed as a signatory on another's account--or otherwise has access to the account--does not mean that the two are co-mingling funds. It does not preclude co-mingling either.

12. In the present case, the absence of any details concerning (a) the source of the \$9,000 deposited in Senno's account and (b) the source of the remaining \$2,390 of the fee is problematic. Samaan's general statement that he used Senno's funds to purchase the cashier's check is insufficient to establish the source of these funds since it is self-serving and uncorroborated by other evidence. Coupled with the fact that Samaan apparently made the \$9,000 deposit into Senno's account and that Samaan's name appears on the cashier's check submitted with Senno's priority application, the co-mingling of funds cannot be ruled out. As the party with the burden of proof, it is incumbent upon the Applicant to establish that there was no co-mingling or pooling of funds. In the present case, the Applicant has failed to meet his burden.

(Conclusions of Law, ¶¶ 7-12.)

Based on the above, substantial evidence supports the Department's decision to deny appellant's priority application. Moran and Samaan's testimony, in addition to appellant and Samaan's bank records, applications, and cashier's checks show, at minimum, an inference that Samaan provided the money for appellant's application fee. Appellant did not present any evidence to rebut this inference. Further, evidence indicates that Samaan exercised a certain amount of control over appellant's license application and his business. This gives the appearance that Samaan was attempting to enter the priority drawing twice; one application on his own and another through appellant's application and business. Again, appellant did not offer any evidence to the contrary, and Samaan's testimony on this point was rejected as not credible by the ALJ. In any event, the Board is prohibited from re-weighing the evidence and rejecting the Department's reasonable inferences. (*Kirby, supra*, at p. 335; *Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113.) Therefore, the Department's decision must stand.

ORDER

The decision of the Department is affirmed.³

SUSAN BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ This final order is filed in accordance with Business and Professions Code section 23088 and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

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 section 23090 *et seq.*

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE APPLICATION OF:

GHASSAN SENNO
MARIA DISCOUNT BEER AND WINE
390 BERNARD ST.
BAKERSFIELD, CA 93305

FOR THE ISSUANCE OF AN OFF-SALE GENERAL
- LICENSE

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

BAKERSFIELD DISTRICT OFFICE

File: 21-610570

Reg: 20090386

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on March 12, 2021. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

Sacramento, California

Dated: March 17, 2021

RECEIVED

MAR 17 2021

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE APPLICATION OF:

Ghassan Senno
dba Maria Discount Beer and Wine
390 Bernard St.
Bakersfield, California 93305

FOR THE ISSUANCE OF A PRIORITY OFF-SALE
GENERAL LICENSE

} File: 21-610570
}
} Reg.: 20090386
}
} License Type: 21
}
} Word Count: 14,500
}
} Reporter:
} Brenda Sanchez
} iDepo

Under the Alcoholic Beverage Control Act

PROPOSED DECISION

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference on December 17, 2020.

Patrice G. Huber, Attorney, represented the Department of Alcoholic Beverage Control.

Joshua Kaplan, attorney-at-law, represented applicant Ghassan Senno, who was present.

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on December 17, 2020.

ISSUES

The issue to be determined is whether issuance of the applied-for license would be contrary to public welfare or morals on the basis that Ghassan Senno violated Business and Professions Code section 23961,¹ which provides that no person shall be entitled to more than one opportunity to participate in a priority drawing in any county with respect to an application for issuance or transfer of any one type of license.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

FINDINGS OF FACT

1. In 2019, the Department determined that the population of Kern County had increased such that the Department was authorized to issue three additional type 21, off-sale general licenses. Since the Department received more than three applications for off-sale general licenses, a priority drawing was held.
2. Ghassan Senno was one of the applicants. Senno paid the legally-required fee by means of a cashier's check issued by Wells Fargo Bank. Senno's priority application was drawn as priority number 1. (Exhibit 6.) Senno currently holds a type 20, off-sale beer and wine license, for premises located at 390 Bernard St., Bakersfield, known as Maria Discount Beer and Wine.
3. Senno filed a full application with the Department. The application sought to replace the existing off-sale beer and wine license with an off-sale general license. Licensing Representative A. Moran was assigned the investigation into Senno's application.
4. As part of her investigation, LR Moran reviewed the application questionnaire filled out by Senno. (Exhibit 10.) The questionnaire listed Senno as the applicant (box 1) and the contact person (box 21). However, the contact e-mail address listed Abdalla Samaan's e-mail (box 24) and both Senno and Samaan were identified having signature authority on the business bank account (box 35(c).)
5. LR Moran pulled the files to determine if Samaan had also applied for a priority license. She discovered that Samaan had filed a priority application and that he had paid the legally-required fee by a cashier's check issued by Wells Fargo Bank. His application was drawn as priority number 53. (Exhibit 7.)
6. LR Moran noticed that Senno's cashier check and Samaan's cashier check bore consecutive numbers. She also noticed that Samaan was listed under "remitter" on the check used to pay for Senno's application. The cashier's check used to pay for Samaan's application, on the other hand, listed Senno under "remitter."
7. LR Moran contacted Senno and asked why Samaan was listed on the bank account. Senno responded that Samaan was his son-in-law who helped him out. Samaan indicated that the bank had made a mistake. Samaan also indicated that he had lent Senno \$20,000.
8. Under source of funds, Senno's application questionnaire indicated that he received \$20,835 with the notation, "personal—work Ghassan Senno."
9. Based on the overlapping monetary information (e.g., Samaan's and Senno's names were listed on each other's cashier checks, Samaan was listed on Senno's bank account),

the Department determined that Senno and Samaan were pooling funds. Accordingly, the Department recommended that Senno's application be denied.

10. LR Moran contacted Senno to advise him of the Department's decision. Senno's daughter participated in the call as translator. Senno stated that he was going to withdraw his application and receive a refund. Samaan indicated that he wanted to fight the denial. Ultimately, Senno did not withdraw the application.

11. At the hearing, Senno submitted the seller's permit and lease for the business. Both list Senno's name only. (Exhibits A-B.) Senno also submitted the application for his business bank account. The application lists Senno as the sole owner of the account. Samaan is listed as a "signer." The business type is listed as "Sole Proprietor." (Exhibit C.²) Senno also submitted the monthly statement for the account covering September 2019. (Exhibit D.³)

12. The account number listed on exhibits C and D matches the account number listed on the application questionnaire. (Exhibit 10.) The cashier's check submitted with Senno's priority application does not list a source of funds. However, on September 18, 2019, there is a \$9,000 deposit into the account, followed by a \$13,445 withdrawal. The cashier's check was issued that same day.

13. Samaan testified that he does not own or control any portion of Senno's business. Rather, Senno is the sole owner and he simply helps out. He testified that he never deposited his own money into Senno's account, nor did he ever withdraw money from it for his own use. He indicated that he did not loan \$20,000 to Senno, but did promise to provide him with the money to help out with the business if Senno needed it.

14. Samaan testified that he purchased the two cashier's checks at the same time, which is why they have sequential check numbers. Samaan further testified that he used his personal money for the cashier's check submitted with his priority application and that he used Senno's money to purchase the cashier's check submitted with Senno's priority application.

15. Samaan identified the monthly statement for September 2019 for his everyday checking account. (Exhibit F.) The account number for this account matches the "Purchaser Account" information on the purchaser's copy (receipt) for the cashier's check submitted in connection with his priority application. (Exhibits 7 & G.) There is no withdrawal from the account which matches the amount of the cashier's check, although there is a \$9,745.00 withdrawal on September 18, 2019, the same day the cashier's check was issued.

² Exhibit 8 is identical.

³ The first three pages of Exhibit 9 are identical.

16. Except as set forth in this decision, all other allegations in the protest and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution delegates the exclusive power to license the sale of alcoholic beverages in this state to the Department of Alcoholic Beverage Control.

2. Section 23821 provides that the Department “may issue . . . one off-sale general license for each increase of 2,500 inhabitants in the county since the taking of the census.”

3. Section 23961(a)(1) provides that, if the number of applications for off-sale general licenses exceeds the number of new off-sale general licenses allowed, then “the department shall, within 60 days following the conclusion of said period, conduct a drawing to determine the priority in which all of such applications filed with it shall be considered. No more than one such drawing shall be made in any county in any one year, and no person will be entitled to more than one opportunity to participate in such a drawing in any county with respect to an application for issuance or transfer of any one type of license. The number drawn by any applicant shall indicate the priority to be given to the consideration of the application but shall not insure the issuance of a license by the department.”

4. Section 23958 requires that the Department conduct a thorough investigation to determine, among other things, if the applicant and the Proposed Premises qualify for a license, if the provisions of the Alcoholic Beverage Control Act have been complied with, and if there are any matters connected with the application which may affect public welfare or morals. It provides, in part, that the Department shall deny an application for a license if the applicant or the Proposed Premises do not qualify for a license under the Act.

5. In an application matter, the applicant bears the burden of establishing that he is entitled to a liquor license from the start of the application process until the Department makes a final determination.⁴

6. There is no prohibition against members of the same family submitting priority applications for the same drawing. However, each priority application must be separate and distinct from the others and must use a separate source of funds.

⁴ *Coffin v. Alcoholic Beverage Control Appeals Board*, 139 Cal. App. 4th 471, 43 Cal. Rptr. 3d 420, (2006).

7. There is no clear record of the source of funds for the fee submitted with Senno's priority application. There is no withdrawal from Senno's business account which directly corresponds to the amount of the application fee, \$15,835, although there is a \$13,445 withdrawal the same day the cashier's check was issued. There also is a \$9,000 deposit the same day, with no evidence establishing the source of those funds. (Findings of Fact ¶¶ 2-3, 6-8 & 11-12.)

8. Assuming that the \$13,445 was used to purchase the cashier's check submitted with Senno's priority application, there is **no** evidence of the source of the remaining funds. Similarly, there is **no** evidence of the source of the \$9,000 deposit made earlier that day.

9. Samaan testified that he used Senno's funds to purchase the cashier's check submitted in connection with Senno's priority application. (Findings of Fact ¶¶ 13-14.) He did not provide any details regarding the source of these funds other than the statement that they were Senno's.

10. Samaan's priority application is not at issue here. Although he testified that he used his funds to purchase the cashier's check submitted in connection with his priority application, there is no clear record of the source of funds for the full amount of the cashier's check. There is a withdrawal in the amount of \$9,745 on the same day the cashier's check was issued, but no evidence concerning the remaining portion of \$15,835 fee. Unlike the cashier's check submitted in connection with Senno's priority application, the cashier's check submitted in connection with Samaan's priority application lists his bank account under the heading "Purchaser Account." (Findings of Fact ¶¶ 5-6 & 14-15.)

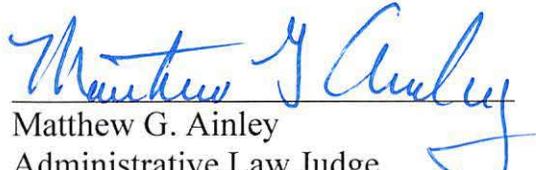
11. In and of itself, the fact that one person is listed as a signatory on another's account—or otherwise has access to the account—does not mean that the two are co-mingling funds. It does not preclude co-mingling either.

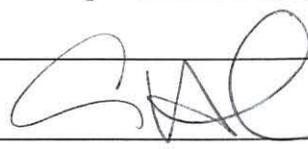
12. In the present case, the absence of any details concerning (a) the source of the \$9,000 deposited in Senno's account and (b) the source of the remaining \$2,390 of the fee is problematic. Samaan's general statement that he used Senno's funds to purchase the cashier's check is insufficient to establish the source of these funds since it is self-serving and uncorroborated by other evidence. Coupled with the fact that Samaan apparently made the \$9,000 deposit into Senno's account and that Samaan's name appears on the cashier's check submitted with Senno's priority application, the co-mingling of funds cannot be ruled out. As the party with the burden of proof, it is incumbent upon the Applicant to establish that there was no co-mingling or pooling of funds. In the present case, the Applicant has failed to meet his burden.

ORDER

Ghassan Senno's application for a type 21, off-sale general license is hereby denied.

Dated: January 10, 2021


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date: <u>03/12/21</u>