

ISSUED MAY 8, 2000

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

PRESTIGE STATIONS, INC.	)	AB-7107a
dba AM/PM Mini Mart)	
2590 South Cherry Avenue	)	File: 20-248457
Fresno, CA 93706,	)	Reg: 98042647
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Jeevan S. Ahuja
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	March 16, 2000
	)	San Francisco, CA

Prestige Stations, Inc., doing business as AM/PM Mini Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's employee selling an alcoholic beverage to a person under the age of 21, being contrary to the universal and generic 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 appellant Prestige Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department

¹The decision of the Department, dated November 25, 1998, is set forth in the appendix.

of Alcoholic Beverage Control, appearing through its counsel, John Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on May 23, 1991.

Thereafter, the Department instituted an accusation against appellant charging that, on December 4, 1997, appellant's clerk, Angel Perez, sold an alcoholic beverage to Danny Campos, who was then 19 years old.

An administrative hearing was held on September 25, 1998, at which time oral and documentary evidence was received, and testimony was presented by Campos, a minor decoy for the Fresno Police Department, and Gregory Rayburn, a Fresno police officer, concerning the alleged violation.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as charged and that no defense pursuant to Business and Professions Code §25660 had been established.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the Department used an impermissibly limited analysis of the decoy's appearance, thus violating Rule 141(b)(2); (2) the Department violated appellant's right to discovery; and (3) the Department violated Government Code §11512, subdivision (d), when a court reporter was not provided to record the hearing on appellant's Motion to Compel.

DISCUSSION

I

Appellant contends the ALJ improperly limited his analysis of the decoy's appearance to the decoy's physical appearance, in contravention of Rule 141(b)(2).

Finding III.1. of the decision states: "Danny Campos (hereinafter 'minor') is a male person whose physical appearance is such as to be considered under twenty-one years of age." This is the only reference to the decoy's appearance. This decision uses the same language with regard to appearance that we have rejected previously in Appeals Board decisions such as Circle K Stores, Inc. (1998) AB-7080, and Circle K Stores, Inc. (1999) AB-7122. We reject it here as well.

II

Appellant claims it was prejudiced in its ability to defend against the accusation by the Department's refusal and failure to provide it discovery with respect to the identities of other licensees alleged to have sold, through employees, representatives or agents, alcoholic beverages to the decoy involved in this case, during the 30 days preceding and following the sale in this case.

This Board has recently issued a number of decisions directly addressing this issue. (See, e.g., The Circle K Corporation (Jan. 2000) AB-7031a; The Southland Corporation and Mouannes (Jan. 2000) AB-7077a; Circle K Stores, Inc. (Jan. 2000) AB-7091a; Prestige Stations, Inc. (Jan. 2000) AB-7248; The Southland Corporation and Pooni (Jan. 2000) AB-7264.) In these cases, and many others, we reviewed the discovery provisions of the Civil Discovery Act (Code of Civ. Proc., §§2016-2036) and the Administrative Procedure Act (Gov. Code §§11507.5-11507.7). We determined that the appellants were limited to the discovery provided in Government Code

§11506.6, but that “witnesses” in subdivision (a) of that section was not restricted to percipient witnesses. We concluded that:

“We believe that a reasonable interpretation of the term “witnesses” in §11507.6 would entitle appellant to the names and addresses of the other licensees, if any, who sold to the same decoy as in this case, in the course of the same decoy operation conducted during the same work shift as in this case. This limitation will help keep the number of intervening variables at a minimum and prevent a “fishing expedition” while ensuring fairness to the parties in preparing their cases.”

We find no reason to deviate from those decisions in this case.

III

Appellant contends that the decision of the ALJ to conduct the hearing on its discovery motion without a court reporter present also constituted error, citing Government Code §11512, subdivision (d), which provides, in pertinent part, that “the proceedings at the hearing shall be reported by a stenographic reporter.” The Department contends that this reference is only to the evidentiary hearing, and not to a hearing on a motion where no evidence is taken.

This issue has also been decided in the cases mentioned in II, above. We held that a court reporter was not required for the hearing on the discovery motion. We continue to adhere to that conclusion.

ORDER

The decision of the Department is reversed and the case is remanded to the Department for reconsideration in light of the comments herein with respect to Rule 141(b)(2), for compliance with appellant’s discovery request as limited by this opinion, and for such other and further proceedings as are appropriate and necessary.²

²This 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

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

a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.