

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

AB-7417a

File: 20-215033 Reg: 98044951

7-ELEVEN, INC., RAMESH K. MADAN, and SUDESH R. MADAN
dba 7-Eleven Store #2066
401 Atlantic Avenue, Long Beach, CA 90805,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: April 3, 2003
Los Angeles, CA

ISSUED JUNE 9, 2003

7-Eleven, Inc., Ramesh K. Madan, and Sudesh R. Madan (appellants), doing business as 7-Eleven Store #2066, appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for having violated Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Ramesh K. Madan, and Sudesh R. Madan, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David Sakamoto.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Appeals Board affirmed the Department's decision in all respects except for the issue involving

¹The decision of the Department, dated October 18, 2001, is set forth in the appendix.

discovery. The Board remanded the case to the Department, directing it to furnish to appellants the identity of any other licensees who sold alcoholic beverages to the decoy involved in this case, and to conduct such further proceedings as may be appropriate thereafter. Appellants had contended they were entitled to such discovery in order to facilitate their cross-examination of the decoy and the accompanying police officer.

When the case returned to the Department, the Department submitted a declaration on June 18, 2001, indicating that there was no decoy program work sheet in either the Long Beach District Office base file or the Southern Division Headquarters legal file, and there was no other discovery that existed.² Two months later, appellants filed an offer of proof outlining in general terms their intention to subpoena additional witnesses and documents.

The Administrative Law Judge, after reviewing appellants' offer of proof, concluded that it failed to establish the existence of any new and relevant evidence to support their request for further proceedings, and reaffirmed the original order.

Appellants, in a timely appeal, contend that the refusal of the Department to grant appellants a further hearing was an abuse of discretion. Appellants also assert that there was or should have been available to the Department the identities of the other licensees who sold to the decoy in question but which were not disclosed to appellants. They argue that the Department's inability to supply this information did not excuse it from its obligation to comply with the Board's order regarding discovery.

DISCUSSION

² Appellants did not challenge the Department's discovery response in its offer of proof, even though the police officer testified that the decoy had a "number" of successful purchases in the course of visiting a total of 18 locations. The Board's records do not reveal any other appeal where James Newman was the decoy.

The purpose of the remand, of course, was to give appellants the opportunity to conduct a full and fair cross-examination of the police and decoy witnesses testifying against them, utilizing such information they would have gained through the discovery ordered by the Board. Ordinarily, when no new information is gained by appellants in the discovery process, there would appear to be no reason for any further proceeding.

Appellants have filed with their brief a copy of what they describe as a decoy work sheet and which purports to show that the decoy in question was able to make purchases of alcoholic beverages in five of the eighteen licensed premises he visited on the night in question.³ Thus, according to appellants, the Department's discovery response that there was no decoy program work sheet in either the Long Beach District Office base file or the Southern Division Headquarters legal file, and there was no other discovery that existed, implies that the Department lost or simply failed to disclose the identities of the other licensees who made sales to the decoy.

The Board is not in a position to determine whether or not the Department complied with its order. However, we do note that appellants were aware of the existence of the decoy fact sheet at the time of the original hearing, yet apparently said nothing about any failure or refusal on the part of the Department to provide them with discovery information to which they were entitled when they filed their offer of proof two months after receiving the Department's discovery response, nor did they call the ALJ's attention to the decoy fact sheet upon which they now rely.

Had appellants truly believed they would acquire new or useful information from

³ The police officer who testified said that appellants' store was the last of eighteen locations he visited, and agreed that he had a number of successful purchases before this location.

further discovery from the Department, we can only assume they would have challenged the Department's discovery response in a timely manner. The offer of proof filed on behalf of appellants is essentially the same as offers of proof filed by appellants' attorneys on behalf of other licensee clients, and contains nothing indicating that this was a special case because of the discovery response filed by the Department.

We believe, consequently, that the issue was waived, and the present appeal is without merit. With no new information for use on cross-examination, there was no need for any further hearing.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴ 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.