

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

AB-7477a

File: 20-215131 Reg: 99046196

THE SOUTHLAND CORPORATION, ARMANDO FRANCISCO, and
TERESITA FRANCISCO dba 7-Eleven Store #19670
11351 Moorpark Street, North Hollywood, CA 91601,
Appellants/Licensees

V.-

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

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

ISSUED MAY 22, 2003

The Southland Corporation, Armando Francisco, and Teresita Francisco, doing business as 7-Eleven Store #19670 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk having sold an alcoholic beverage to a minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants The Southland Corporation, Armando Francisco, and Teresita Francisco, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

¹The decision of the Department, dated October 11, 2001, is set forth in the appendix.

This is the second appeal in this matter. In the original appeal, the Board affirmed those parts of the Department decision which found that a sale to a minor decoy had been made, and which rejected a defense based upon Rule 141(b)(2), but remanded the matter to the Department to permit appellants to obtain the identity of other licensees who made sales to the same decoy in the course of the same decoy operation.

The Department ordered the case remanded to Administrative Law Judge Sonny Lo (“the ALJ”), following compliance with the Board’s discovery ruling, to “initially take further evidence and argument, by way of affidavit and briefing only, as to what new evidence [appellants] intended to offer at any further hearing on this matter,” and authorizing the ALJ to hold such further hearings as he determines are necessary and appropriate.

The Department submitted a declaration indicating that no discoverable information existed that had not already been provided to appellants. Thereafter, the ALJ directed the parties to submit evidence and argument, and, on the basis of those submissions, ruled as follows:

In light of the fact that no discoverable information exists which had not already been produced, there is no additional evidence for the Administrative Law Judge to consider. Further proceedings in this case are not appropriate and are not necessary.

Appellants now contend that there was other discoverable material, and the Department, by failing to provide it to appellants, violated the mandate of the Board.

DISCUSSION-

This is another of the numerous appeals from orders entered by the Department following the Board's ruling that licensees accused of having sold an alcoholic beverage to a minor decoy were entitled to learn, via discovery, the identity of other licensees who made sales to that same decoy during the course of the same decoy operation.

Most of these appeals fall into one of three basic categories.

In some of the appeals, the record disclosed that there had been no other sales to the decoy in question. In those cases, the Board agreed with the Department that there was no need for further proceedings, since no new information had surfaced.

In other appeals, it appeared that information about other sellers was obtained via discovery. In those cases, the Board felt that appellants' ability to cross-examine the decoy and the police officers involved in the operation had been impaired, and held that relief was warranted.

Appeals were filed in some cases where it appeared that counsel representing those appellants had also represented other licensees who had made sales to the decoy in question, so knew prior to the administrative hearing the very information that supposedly was only available through discovery. The Board was persuaded that the licensee had already had an opportunity to use that information in cross-examination or pre-hearing investigation, and did not believe further relief was appropriate. This appears to be such a case.

Oral argument in an appeal filed by 7-Eleven, Inc., and Shoukat C. Ali (AB-7481a) was heard by the Appeals Board on May 9, 2002. The record in that case reveals that the same attorneys who represent appellants in the present appeal, the Solomon, Saltsman & Jamieson law firm, represented the appellants in that appeal.

The record in that appeal also reveals that a copy of the accusation, which disclosed a sale to the same decoy on the same night in question, was mailed to that law firm on April 23, 1999. A special notice of defense was filed on May 14, 1999.

Appellants complain in their brief that there were eight sales to the decoy in question, citing to a "Decoy Fact Sheet" purportedly attached to an unidentified police report. Neither the decoy fact sheet nor the police report were in evidence.² There is no evidence in the record which has come to us of any other sale except the sale of which we have taken official notice from our own appellate record in the 7-*Eleven/Shoukat* appeal, *supra*. Since appellants, through their attorneys, already possessed that information, there is no valid reason why they should be given a second opportunity to make use of it.

ORDER

The decision of the Department is affirmed.³

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

² We do not know whether the information in the police report ever reached the Department. Department counsel disclaimed any knowledge of it.

³ 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.