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

AB-7496a
File: 20-214610 Reg: 99046280

THE SOUTHLAND CORPORATION, SUNG D. HONG, and KEUM J. HONG
dba 7-Eleven #25801
31696 Pacific Coast Highway, Laguna Beach, CA 92677,
Appellants/Licensees,

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: May 9, 2002
Los Angeles, CA

ISSUED AUGUST 8, 2002

The Southland Corporation, Sung D. Hong, and Keum J. Hong, doing business as 7-Eleven #25801 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] after remand which again suspended their license for 20 days for appellants' clerk 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 appellants The Southland Corporation, Sung D. Hong, and Keum J. Hong, appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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[1]The decision of the Department, dated September 27, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. The first appeal was taken from the Department's order suspending appellants' off-sale beer and wine license for 20 days for a sale-to-minor violation. The Appeals Board affirmed the decision of the Department in all respects except with regard to discovery, and remanded the matter to the Department "for such further proceedings as are necessary and appropriate."[2] In its Amended Decision Following Appeals Board Decision, the Department remanded the matter to Administrative Law Judge (ALJ) Rodolfo Echeverria for compliance with the discovery request as directed by the Board, and to "take further evidence and argument, by way of affidavit and briefing only, as to what new evidence [appellants intend] to offer at any further hearing on this matter and how such evidence is relevant to the proceeding." Quite obviously, such new evidence would be that stemming from the discovery information regarding other sellers. Thereafter, the ALJ was to "hold any further proceedings as he determines are necessary and appropriate, in his exclusive discretion."

The ALJ directed the Department to provide to appellants the discovery ordered by the Appeals Board. The Department identified one other licensee who sold an alcoholic beverage to the same decoy on the same night that appellants' clerk did.

Appellants filed an offer of proof requesting further proceedings and the Department filed a reply. The ALJ's decision, adopted by the Department, found that appellants failed to establish the existence of any new and relevant evidence to be presented at any subsequent proceeding. The ALJ also noted that, since appellants'

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[2]The Southland Corporation & Hong (2001) AB-7496.

counsel also represented the only other licensee whose employee sold to the decoy that night, they had notice before the August 3, 1999, hearing, of the identity of the other seller and could have produced the other seller at the hearing. The decision concluded that no further proceedings were appropriate or necessary and again ordered the license suspended for 20 days.

Appellants filed a timely appeal from the Department's decision in which they argue that the Department denied them their right to cross examination.

DISCUSSION

Appellants contend that they did not have all the information they needed to fully cross-examine at the initial hearing because the Department failed to provide the discovery they requested. Having received the requested discovery, they argue that the ALJ improperly prevented them from calling newly-discovered witnesses and conducting further cross-examination of the decoy based upon such discovery. Their brief attacks at length the procedure followed by the Department, arguing that it was improper to require an offer of proof with respect to new evidence gained as a result of the Department's discovery response.

In this case, appellants' contention that they did not have all the information they needed to fully cross-examine at the initial hearing is disingenuous. They possessed the same information the Department provided in its discovery response *before the administrative hearing in this matter*.

The decoy in this matter was able to purchase an alcoholic beverage at only one other premises on the night in question: The Boom Boom Room in Laguna Beach. Appellants' counsel also represented The Boom Boom Room with regard to the accusation filed against it, filing a Notice of Defense on April 8, 1999. The Notice of

Defense in appellants' case was filed on May 11, 1999. The hearing on The Boom Boom Room's accusation took place on July 27, 1999.[3] The hearing in the present matter took place a week later, on August 3, 1999.

Obviously, appellants' counsel was in possession of all the knowledge appellants purported to lack,[4] but called no witness nor offered any evidence from that matter during the hearing on appellants' accusation. At the time of the previous hearing, appellants' counsel had the exact information appellants requested, yet did not use it then. They have been accorded the opportunity for conducting a full and fair cross-examination of the decoy, and they are not now entitled to have a second bite of the apple.

There was no basis for any reconsideration of any of the findings and conclusions of the Department, and the Department was entitled to reaffirm its original decision.

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[3]The Boom Boom Room also filed an appeal before this Board (JTC Laguna Resorts dba The Boom Boom Room, AB-7504), the record of which we take official notice. That appeal was subsequently withdrawn, and the appeal was dismissed by this Board on April 12, 2000.

[4]The general rule of agency, that notice to or knowledge possessed by an agent is imputable to the principal, applies for certain purposes in the relation of attorney and client. *Freeman* v. *Superior Court* (1955) 44Cal.2d 533 [282 P.2d 857, 860]. As explained in 2 Witkin, Summary of California Law (9th ed. 1987) Agency and Employment §101, pp. 98-99:

> "The test of imputed notice is whether the facts *concern the subject matter* of the agency and are *within its scope*. Generally speaking, notice is imputed to the principal of any facts relating to the subject matter of the agency of which the agent acquires knowledge or notice while acting as such within the scope of his authority. It is not enough that the facts concern the business of the principal; they must be so related to the subject of the agency as to bring them within the duties of the agent." (Emphasis in original.)

ORDER

The decision of the Department is affirmed.[5]

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

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[5]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.