

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

PRESTIGE STATIONS, INC. dba Arco Station #9725
2811 W. Lincoln Avenue, Anaheim, CA 92801,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent
AB-7541

File: 21-331760 Reg: 99046792

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 3, 2000
Los Angeles, CA

ISSUED APRIL 11, 2001

Prestige Stations, Inc., doing business as Arco Station #9725 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's 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 appellant Prestige Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Kim.

¹The decision of the Department, dated November 18, 1999, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on September 18, 1997.

Thereafter, the Department instituted an accusation against appellant charging the violation noted above. Although not noted in the accusation, the minor to whom the alcoholic beverage was sold was acting as a police decoy at the time of the sale.

An administrative hearing was held on October 26, 1999, at which time documentary evidence was received and testimony was presented by Anaheim police officer Mark Van Meter and by the minor.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established.

Appellant thereafter filed a timely appeal raising the following issues: (1) expert testimony was improperly excluded, and (2) appellant's discovery rights were violated.

DISCUSSION

I

Appellant contends the ALJ improperly denied appellant's request to call Edward Ritvo, M.D., a psychiatrist, as an expert witness. Appellant proposed to have Dr. Ritvo called as a witness to testify as to indicia of the decoy's age.

The Board has affirmed the Department's exclusion of the proposed testimony in a number of cases. (See, e.g., Prestige Stations, Inc. (Jan. 2000) AB-7248.) This case raises no issue concerning such testimony not previously considered and rejected by this Board.

II

Appellant claims it was denied discovery rights under Government Code

§11507.6 when the Department refused its request for the names and addresses of licensees whose clerks, during the 30 days preceding and following, had sold to the decoy who purchased an alcoholic beverage at appellant's premises. Appellant also claims error in the Department's unwillingness to provide a court reporter for the hearing on its motion to compel discovery, which was denied in relevant part following the Department's refusal to produce the requested information. Appellant cites 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.

The Board has 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, the Board 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). The Board determined that appellants were limited to the discovery provided in Government Code §11507.6, 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.”

The issue concerning the court reporter has also been decided in the cases mentioned above. The Board held that a court reporter was not required for the hearing on the discovery motion. Nothing in the present appeal compels a different decision.

ORDER

The decision of the Department is affirmed in all respects except as to the availability of discovery as limited by the Board’s prior decisions, which issue is remanded to the Department for such further proceedings as are necessary and appropriate.²

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

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