

ISSUED NOVEMBER 20, 2000

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

7-ELEVEN, INC., AMERK. PANNU and	)	AB-7563
GURBAX S. PANNU)	
dba 7-Eleven #24014	)	File: 20-214346
6000 Laurel Canyon Boulevard	)	Reg: 99047148
North Hollywood, CA 91606,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Ronald M. Gruen
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	October 5, 2000
Respondent.	)	Los Angeles, CA
)	

7-Eleven, Inc., Amer K. Pannu, and Gurbax S. Pannu, doing business as 7-Eleven #24014 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for their clerk having sold an alcoholic beverage (a 22-ounce bottle of Corona beer) to a minor acting as a police decoy, said sale being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a

¹The decision of the Department, dated December 23, 1999, is set forth in the appendix.

violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant 7-Eleven, Inc., Amer K. Pannu, and Gurbax S. Pannu, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 15, 1986. Thereafter, the Department instituted an accusation against appellants charging that, on January 29, 1999, their clerk, Sikandez Singh, sold an alcoholic beverage (beer) to Natalie Alvarado, a minor.

An administrative hearing was held on November 19, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Angelica Guzman, a Los Angeles police officer, and by Natalie Alvarado, the minor, who was a police decoy.

Subsequent to the hearing, the Department issued its decision which sustained the charge of the accusation.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants initially raised the following issues: (1) appellants were denied due process as a result of the Department's reliance upon a photograph not produced to them in response to their discovery request; (2) appellants were denied discovery of the identities of other sellers to the decoy during the 30-day periods preceding and following the date of the sale in question; and (3) appellants were denied a

transcript of the hearing on their motion to compel discovery. However, appellant's counsel advised the Board, in the course of oral argument, that appellant was withdrawing its contentions regarding the photograph, and that its appeal would be limited solely to the discovery issues.

DISCUSSION

Appellants claim they were prejudiced in their ability to defend against the accusation by the Department's refusal and failure to provide them 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. They also claim error in the Department's failure to provide a court reporter for the hearing on their motion to compel discovery. Appellants cite 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 an evidentiary hearing and not to a hearing on a motion where no evidence is taken.

This case is different from the many other cases which have preceded it in which this issue has been raised, in that, according to appellant, the Department provided the requested discovery for the day of the decoy operation, although refusing to produce the information for the more extensive time periods. (See App. Br., at pages 4, 23.)

The Board has issued a number of decisions directly addressing the discovery

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 has 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 the appellants were limited to the discovery provided in Government Code §11506.6, but that “witnesses,” as used in subdivision (a) of that section was not restricted to percipient witnesses. We concluded 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.”

In this case, since the Department has apparently furnished what the Appeals Board has said must be furnished, appellants’ discovery objections must be overruled.

The Board also held in the cases mentioned above that a court reporter was not required for the hearing on the discovery motion. We continue to adhere to that position.

ORDER

The decision of the Department is affirmed.²

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

² 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.