

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

AB-7626a

File: 20-295721 Reg: 99047664

CIRCLE K STORES, INC. dba Circle K Food Store #5244
16125 Baseline, Fontana, CA 92336,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

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

ISSUED MAY 21, 2003

Circle K Stores, Inc., doing business as Circle K Food Store #5244 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for having sold an alcoholic beverage to a minor in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Board affirmed the decision of the Department on all issues except that regarding discovery.

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

The Board concluded that appellant was entitled to discovery of the identities of any other licensees who themselves or through their employees had on the same night made sales of alcoholic beverages to the decoy who made the purchase in this case, and ordered the case remanded to the Department for further proceedings consistent with its order.

The Department, accordingly, remanded the matter to the Administrative Law Judge (ALJ) for the taking, by way of affidavit and argument only, such new evidence the licensee intended to offer at any further hearing. Quite obviously, such new evidence would be that derived from the discovery information regarding other sellers.

Finding that appellant's offer of proof "fail[ed] to specify with any precision whatever the new evidence that would be presented" in any additional hearing, the ALJ determined that further proceedings were neither appropriate nor necessary, and reaffirmed the original order.

Appellant filed a timely appeal, in which it contended that the Department, by rejecting its offer of proof, denied it a fair opportunity to cross-examine the decoy and the police officer. However, at oral argument before the Appeals Board, counsel for appellant stipulated that the decision of the Department be affirmed.

ORDER

Pursuant to stipulation, the decision of the Department is affirmed.²

TED HUNT, 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.