

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

AB-8027

File: 20-382191 Reg: 02052805

7-ELEVEN, INC., ISRAR AHMED SIDDIQUI, and SAEEDA AKHTAR SIDDIQUI,
dba 7-Eleven # 2173 27062
1100 S. La Brea Ave., Inglewood, CA 90301,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: August 14, 2003
Los Angeles, CA

ISSUED OCTOBER 7, 2003

7-Eleven, Inc., Israr Ahmed Siddiqui, and Saeeda Akhtar Siddiqui, doing business as 7-Eleven # 2173 27062 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk selling an alcoholic beverage to a 19-year-old police decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Israr Ahmed Siddiqui, and Saeeda Akhtar Siddiqui, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and James S. Eicher, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

¹The decision of the Department, dated September 19, 2002, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on December 6, 2001. Thereafter, the Department instituted an accusation against appellants charging that, on December 12, 2001, appellants' clerk, Paulino Ramirez (the clerk), sold a six-pack of Budweiser beer to 19-year-old Rafael Villareal. Although not noted in the accusation, Villareal was working as a minor decoy for the Inglewood Police Department.

An administrative hearing was held on August 13, 2002, at which time documentary evidence was received, and testimony concerning the violation charged was presented. Subsequent to the hearing, the Department issued its decision which determined that the sale had occurred as alleged, and appellants had not established an affirmative defense.

Appellants filed a timely appeal in which they contend that the appearance of the decoy violated Department rule 141(b)(2).² (4 Cal. Code Regs., § 141, subd. (b)(2).)

DISCUSSION

Appellants contend Villareal did not "display the appearance that could generally be expected of a person under 21 years of age," thus violating rule 141(b)(2). They base their contention on the decoy's testimony that he "felt normal" while at their premises, that he was five feet eleven inches tall and weighed more than 175 pounds at the time of the decoy operation, that he had additional experience with law enforcement personnel, and that he had prior experience as a decoy. Appellants emphasize, with bold lettering, that **"there was no substantial evidence of the decoy displaying any**

²This rule provides: "The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense."

nervousness while operating at Appellant's [sic] premises." Thus, appellants argue, "the weight of the evidence presented at the hearing" established that the decoy had the maturity, size, and demeanor of an individual 21 years of age or older.

The Appeals Board's role is limited. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.³

It is readily apparent from the decision that the administrative law judge (ALJ), who observed the decoy as he testified, was satisfied from what he saw and heard that the decoy met the standard imposed by rule 141(b)(2). His proposed decision indicates that he took into consideration the same factors relied upon by appellants. It does not appear that there is any particular aspect of the decoy's appearance that compels a different result. As the Board has said many times, the ALJ is the trier of fact, and had the opportunity, which the Board does not, of observing the decoy as he testified. Under these circumstances, the Board is not in a position to second guess the ALJ. (See *7-Eleven, Inc./Gonser* (2001) AB-7750.)

³The California Constitution, article XX, section 22; Business and Professions Code sections 23084 and 23085; and *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

Appellants' emphasis on the decoy's lack of nervousness is futile. There is no requirement that a decoy be nervous during a decoy operation.

ORDER

The decision of the Department is affirmed.⁴

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.