

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

AB-8140

File: 20-361758 Reg: 02052151

7-ELEVEN, INC., ISRAR AHMED SIDDIQUI, and SAEEDA AKHTAR SIDDIQUI,
dba 7-Eleven # 2173-24904
1519 North Gaffey, San Pedro, CA 90731,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: February 19, 2004
Los Angeles, CA

ISSUED MAY 25, 2004

7-Eleven, Inc., Israr Ahmed Siddiqui, and Saeeda Akhtar Siddiqui, doing business as 7-Eleven # 2173-24904 (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 police minor 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 Gary Laban, and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

¹The decision of the Department, dated May 1, 2003, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on February 14, 2000. On January 2, 2002, the Department filed an accusation against appellants charging that, on November 7, 2001, appellants' clerk sold an alcoholic beverage to 18-year-old Josaphat Orozco. Although not noted in the accusation, Orozco was working as a minor decoy for the Los Angeles Police Department at the time.

At the administrative hearing held on February 5, 2003, documentary evidence was received, and testimony concerning the sale was presented by Josaphat Orozco (the decoy). On April 11, 2003, a second day of hearing was scheduled, but no witnesses were called.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established. Appellants then filed a timely appeal contending that Rule 141(b)(5)² was violated.

DISCUSSION

Rule 141(b)(5) provides that, following a sale of an alcoholic beverage to minor decoy, "the peace officer directing the decoy shall . . . have the minor decoy . . . make a face to face identification of the alleged seller of the alcoholic beverages." Appellants contend that a proper face-to-face identification was not done by the decoy because he only pointed to the seller, and did not say anything. Appellants argue that the Board's decision in *Chun* (1999) AB-7287, requires a "mutual acknowledgment" between the seller and the decoy and that this did not happen here.

²References to Rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

In *Chun*, the Board said that a face-to-face identification "means that the two, the decoy and the seller, in some reasonable proximity to each other, acknowledge each other's presence, by the decoy's identification, and the seller's presence such that the seller is, or reasonably ought to be, knowledgeable that he or she is being accused and pointed out as the seller." "Mutual acknowledgment," however, is not required. In *Greer* (2000) AB-7403, the Board responded to a similar argument, saying:

Appellants' argument turns the requirement of the rule on its head. The minor decoy must identify the seller; there is no requirement that the seller identify the minor, nor is it necessary for the clerk to be actually aware that the identification is taking place.

Appellants argue that in *Chun*, the decoy pointed out the seller, and the Board held that was not sufficient, so the result should be the same in this case.

In *Chun*, the Board said that the findings in the Department's decision "only allude to a pointing out of the seller from somewhere within the premises." In the present case, however, Finding IV specifically finds that the decoy pointed to the clerk, "while face-to-face with [her]" and that the identification complied with rule 141(b)(5). The evidence clearly supports this finding. The decoy testified that he was facing the clerk, and she was facing him [RT 11-12, 20], that he was no more than five feet away from her, almost within arm's reach of her, at the time [RT 18, 20], and that she was not engaged in conversation with the officers, but just standing there with them [RT 19].

Appellants argue there was no evidence the clerk was aware, or should have been aware, that she was being identified, as required by *Chun*. However, given the close proximity of the decoy and the seller at the time and the lack of evidence that the clerk was doing anything other than paying attention to the decoy, we agree with the finding that the requirements of rule 141(b)(5) were satisfied. Appellant has presented

nothing, beyond rank speculation, indicating that the clerk might not have been aware she was being identified by the decoy.

ORDER

The decision of the Department is affirmed.³

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

³This 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.