

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

AB-8618

File: 20-395097 Reg: 06061901

7-ELEVEN, INC., and SABSONSHA, INC. dba 7-Eleven #2174-17462C
17465 Imperial Highway, Yorba Linda, CA 92886,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 1, 2007
Los Angeles, CA

ISSUED JANUARY 16, 2008

7-Eleven, Inc., and Sabsonsha, Inc., doing business as 7-Eleven #2174-17462C (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days, all of which were conditionally stayed subject to one year of discipline-free operation, for their clerk, Maricar Rodriguez Limlingan, having sold a six-pack of Budweiser beer to Nicholas Harms, an 18-year-old minor decoy working with the Department of Alcoholic Beverage Control, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Sabsonsha, Inc., appearing through their counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated September 21, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 9, 2003.

Thereafter, the Department instituted an accusation against appellants charging the unlawful sale of an alcoholic beverage to a minor on November 10, 2005.

An administrative hearing was held on July 11, 2006, at which time oral and documentary evidence was received. The evidence showed that the clerk sold the beer to the decoy after requesting and examining the decoy's California driver's license (Exhibit 4), which showed his true date of birth (November 19, 1986) and the words "AGE 21 in 2006" superimposed on a red stripe on the front of the license.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged in the accusation, and appellant had failed to establish an affirmative defense under Rule 141.

Appellants thereafter filed a timely appeal in which they raise the following issues: (1) the Department violated the proscription against ex parte communications in the Administrative Procedure Act; and (2) appellants were denied proper discovery.

DISCUSSION

The contention that the Department violated the proscription against ex parte communications in the Administrative Procedure Act has been made many times before and has been adjudicated by the California Supreme Court in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [145 P.3d 462, 50 Cal.Rptr.3d 585] (*Quintanar*). This Board has followed *Quintanar* in numerous appeals, remanding the matters to the Department for evidentiary hearings to resolve the factual issues regarding ex parte communications raised in these cases. (E.g., *Dakramanji* (2007) AB-8572; *BP West Coast Products, LLC* (2007) AB-8549;

Hong (2007) AB-8492; *Chevron Stations, Inc.* (2007) AB-8488; *Circle K Stores, Inc.* (2006) AB-8404.) The *ex parte* communication contention in the present appeal is virtually identical to those made in the earlier appeals, and we decide this issue in the present appeal as we did the same issue in the earlier appeals just cited.

II

Appellants assert in their brief that the ALJ improperly denied their pre-hearing motion to compel discovery. Their motion was brought in response to the Department's failure to comply with those parts of their discovery request that sought copies of any findings or decisions which determined that the present decoy's appearance was not that which could be generally expected of a person under the age of 21 and all decisions certified by the Department over a four-year period which determined that any decoy failed to comply with rule 141(b)(2). For all of the decisions specified, appellants also requested all photographs of the decoys in those decisions.

ALJ Gruen, who heard the motion, denied it because he concluded it would cause the Department an undue burden and consumption of time and because appellants failed to show that the requested items were relevant or would lead to admissible evidence. Appellants argue that the items requested are expressly included as discoverable matters in the APA and the ALJ used erroneous standards in denying the motion.

This Board has discussed, and rejected, this argument numerous times before. Just as appellants' arguments are the same ones made before, our response is the same as before. We see no reason to once again go over our reasons for rejecting these arguments. Should appellants wish to review those reasons, they may find

them fully set out in *7-Eleven, Inc./Virk* (2007) AB-8577, as well as many other Appeals Board opinions.

ORDER

The decision of the Department is affirmed as to issues raised other than that regarding the allegation of an ex parte communication in the form of a report of hearing, and the matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.