

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

AB-8624

File: 20-299100 Reg: 06061618

CHEVRON STATIONS, INC. dba Chevron
2200 Alessandro Boulevard, Riverside, CA 92508,
Appellant/Licensee

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

Chevron Stations, Inc., doing business as Chevron (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days, all of which were conditionally stayed, subject to one year of discipline-free operation, for its clerk having sold a 24-ounce can of Budweiser beer to Yesenia Hernandez, an 18-year-old Department minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Chevron Stations, Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated September 28, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on June 14, 1996.

Thereafter, the Department instituted an accusation against appellant charging the unlawful sale of an alcoholic beverage to a minor on December 22, 2005.

An administrative hearing was held on July 14, 2006, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged. The evidence established that the decoy selected a 24-ounce can of Budweiser beer from the store refrigerator, and took it to the counter. The clerk asked the decoy, "Are you old enough?" She replied, "No, I'm only eighteen." (Finding of Fact II.2.) The clerk then asked the decoy for her identification, but before she could show it to him, he said, "That's okay" (*ibid.*), and sold her the beer. She left the store with the beer, and then reentered the store with the Department investigators and identified the clerk as the person who sold her the beer. There was only one clerk on duty.

Appellant has filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the Department made an ex parte communication available to its decision maker in violation of the APA; and (2) appellant was denied proper discovery.

DISCUSSION

I

The contention that the Department made an ex parte communication available to its decision maker in violation of the APA 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

Appellant asserts in its brief that the ALJ improperly denied its pre-hearing motion to compel discovery. Its motion was brought in response to the Department's failure to comply with those parts of its 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, appellant 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 appellant failed to show that the requested items were relevant or would lead to admissible evidence. Appellant argues 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 appellant's 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 appellant wish to review those reasons, it 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 the issue involving discovery, and the case is remanded to the Department for an evidentiary hearing on the issue involving the claimed ex parte communication.²

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

² This 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.