

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

AB-8661

File: 20-214461 Reg: 05061490

7-ELEVEN, INC., KYUNG J. HUH, and YU B. HUH, dba 7-Eleven Store 2172-29003
9502 Hamilton, Huntington Beach, CA 92646,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: November 6, 2008
Los Angeles, CA

ISSUED FEBRUARY 27, 2009

7-Eleven, Inc., Kyung J. Huh, and Yu B. Huh, doing business as 7-Eleven Store 2172-29003 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 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., Kyung J. Huh, and Yu B. Huh, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Lori W. Brogin, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated November 14, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 1, 1988.

Thereafter, the Department instituted an accusation against appellants charging that, on August 25, 2005, appellants' clerk, Jung Soon Han (the clerk), sold a six-pack of Budweiser beer, an alcoholic beverage, to 19-year-old Matthew Clauss. Although not noted in the accusation, Clauss was working as a minor decoy for the Department at the time.

An administrative hearing was held on September 15, 2006, at which time documentary evidence was received, and testimony concerning the sale was presented by Clauss (the decoy) and by Nicole Riegel, a Department investigator.

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 filed an appeal contending that the Department communicated on an ex parte basis with its decision maker, in violation of the Administrative Procedure Act. Appellant has also filed a motion to augment the record by the addition of any ABC Form 104, if any, included in the file, as well as any report of hearing in the file.

DISCUSSION

Appellants contend in their brief that the Department communicated with its decision maker on an ex parte basis, in violation of the Administrative Procedure Act.

The Department has filed a one-paragraph reply brief in which it states:

The Department of Alcoholic Beverage Control does not concede any of the issues raised in appellant's opening brief. However, a review of the file indicates that the matter should be remanded to the Department for disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Quintanar)* (2006) 40 Cal.4th 1.

There being no objection from appellants' counsel, we will honor the Department's request.

ORDER

This matter is remanded to the Department for disposition, as the Department has requested.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.