

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

AB-8669

File: 20-413532 Reg: 06062703

7-ELEVEN, INC., IQBAL KAUR, and SURINDER S. VICK, dba 7-Eleven Store 552-A
California Boulevard, San Luis Obispo, CA 93405, Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 4, 2008
Los Angeles

ISSUED: DECEMBER 3, 2008

7-Eleven, Inc., Iqbal Kaur, and Surinder S. Vick, doing business as 7-Eleven Store (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk having sold or furnished a 30-can box of Natural Light beer, an 18-bottle box of Miller Genuine Draft Beer, and a 6-pack of 12-ounce bottles of Newcastle Brown ale, all alcoholic beverages, to 19-year-old Nicholas Brown and 18-year-old Bradley Freeman, both non-decoy minors, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Iqbal Kaur, and Surinder S. Vick, appearing through their counsel, Ralph B. Saltsman and Stephen W.

1

The decision of the Department, dated November 29, 2006, is set forth in the appendix.

Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 6, 2004. On May 2, 2006, the Department instituted an accusation against appellants charging the sale of alcoholic beverages to 19-year-old Nicholas Brown and 18-year-old Bradley Freeman on February 24, 2006.

At an administrative hearing held on October 17, 2006, documentary evidence was received and testimony concerning the violation charged was presented by Fresno police officer John Markle, the two minors (Nicholas Brown and Bradley Freeman), and Christian Albrecht, a District administrator of the Department.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged in the accusation, and no affirmative defense under Business and Professions Code section 25660 had been established.

Appellants have filed an appeal making the following contentions: the Department engaged in ex parte communications in violation of the Administrative Procedure Act.

DISCUSSION

Appellants contend that the Department violated the Administrative Procedure Act by engaging in ex parte communications with its decision maker. Appellants cite the decision of the California Supreme Court in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [50 Cal.Rptr.3d 585, 145 P.3d 462] (*Quintanar*) and related cases where the issues centered around ex parte communications.

The Department's brief consists of a one-paragraph response. It states:

The Department does not concede any of the issues raised by the licensee [sic] in their 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 Bd. (Quintanar)*.

In the absence of objection by appellants, we shall return this matter to the Department as it has suggested.

ORDER

This matter is remanded to the Department for an evidentiary hearing to be conducted to determine whether there was an ex parte communication of the kind alleged.²

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER ALCOHOLIC
BEVERAGE CONTROL APPEALS
BOARD

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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.