

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

AB-8674

File: 20-66051 Reg: 06062334

CIRCLE K STORES, INC., dba Circle K Store #1156
1263 Franklin Road, Yuba City, CA 95991,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: October 2, 2008
San Francisco, CA

ISSUED JANUARY 8, 2009

Circle K Stores, Inc., doing business as Circle K Store #1156 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for appellant's clerk, Ricky Singleton, selling a six-pack of Coors Light beer, an alcoholic beverage, to Brian Baker, a 19-year-old Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 1, 1976. On

¹The decision of the Department, dated December 7, 2006, is set forth in the appendix.

March 23, 2006, the Department filed an accusation against appellant charging that, on February 15, 2006, appellant's clerk, Ricky Singleton (the clerk), sold an alcoholic beverage to 19-year-old Brian Baker. Although not noted in the accusation, Baker was working as a minor decoy for the Department at the time.

At the administrative hearing held on November 1, 2006, documentary evidence was received, and testimony concerning the sale was presented by Brian Baker (the decoy). Laurie Jones, appellant's District Manager, testified concerning appellant's training programs and sales policies relating to the sale of alcoholic beverages. Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellant has filed an appeal, contending that the Department communicated with its decision maker on an ex parte basis. Appellant has also filed a motion to augment the record by the addition of any Form 104 or report of hearing which may be in the file, as well as any documents available for review in the decision consideration process.

DISCUSSION

The Department has requested, in the interest of judicial economy, that this matter be returned to the Department for further hearing on the issue of ex parte communication, without prejudice to its right to argue the facts and evidence as to any other issue should the matter return to the Board after such hearing.

Based upon our review of the record, the Department's request appears to be reasonable and appropriate. There being no objection from appellant's counsel, we will remand this matter to the Department for an evidentiary hearing on the ex parte communication issue, without prejudice to the Department's right to argue the facts and

evidence as to any other issue should the matter return to the Board after such hearing.

ORDER

This 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.