

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

AB-8676

File: 20-221571 Reg: 06063239

7-ELEVEN, INC., and EUGENE VILLAGRANA, dba 7-Eleven #2131-27771
1771 Oro Vista Road, San Diego, CA 92154,
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, CA

ISSUED: DECEMBER 3, 2008

7-Eleven, Inc., and Eugene Villagrana, doing business as 7-Eleven #2131-27771 (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 Department police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

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

1

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

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 8, 1988. The Department instituted an accusation against appellants on June 27, 2006, charging that, on May 28, 2006, appellants' clerk, Sipusi Lutu (the clerk), sold an alcoholic beverage to 18-year-old Ave Harrison. Although not noted in the accusation, Harrison was working as a minor decoy for the Department at the time.

An administrative hearing was held on November 1, 2006, at which time documentary evidence was received, and testimony concerning the sale was presented by Harrison (the decoy) and by Robert Olshaskie, 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 engaged in ex parte communications in violation of the Administrative Procedure Act.

DISCUSSION

Appellant contends that the Department engaged in ex parte communications in violation of the Administrative Procedure Act, citing 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*).

The Department has filed a one-paragraph response, stating:

The Department of Alcoholic Beverage Control does not concede any of the issues raised in appellant's [sic] 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* (Quintinar [sic] (2006) 40 Cal.4th 1.

In the absence of objection by appellants, we shall remand the case to the Department as it has suggested.

ORDER

This matter is remanded to the Department for an evidentiary hearing to be conducted on the issue of ex parte communication.²

FRED ARMENDARIZ, CHAIRMAN
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.