

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

AB-8741

File: 20-214420 Reg: 07065265

7-ELEVEN, INC., TERENCE KELLY, and DONNA KELLY, dba 7-Eleven 19667
6701 Santa Monica Boulevard, Los Angeles, CA 90038,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 3, 2009
Los Angeles, CA

ISSUED: DECEMBER 22, 2009

7-Eleven, Inc., and Terence and Donna Kelly, doing business as 7-Eleven 19667 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for their clerk having sold a 24-ounce can of Bud Light beer to Randi Holmes, a 16-year-old Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Terence Kelly, and Donna Kelly, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Michael Akopyan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer Casey.

¹The decision of the Department, dated August 22, 1007, is set forth in the appendix.

PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 1, 1988. On March 13, 2007, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor.

An administrative hearing was held on June 20, 2007, at which time documentary evidence was received and testimony concerning the violation charged was presented. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged, and that no affirmative defense had been established.

Appellants filed a timely notice of appeal in which they contend that the Department engaged in ex parte communications in violation of the Administrative Procedure Act (Gov. Code §11430.10).

DISCUSSION

The administrative hearing in this case took place on June 20, 2007, prior to the adoption by the Department of General Order No. 2007-09 on August 10, 2007. Appellants contend that the corrective measures reflected in the General Order have no application in this case, and, therefore, the case is subject to 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] (*Quintanar*).

The Department states in its reply brief that, while not conceding any of the issues raised in appellants' opening brief, a review of the file indicates that the matter should be remanded to the Department for disposition pursuant to *Quintanar, supra*. There being no opposition, we will grant the Department's request.

ORDER

This matter is remanded to the Department for disposition. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [50 Cal.Rptr.3d 585] ("*Quintanar*".) ²

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

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.