

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

AB-8745

File: 21-318044 Reg: 07064725

LUCKYLAND COMPANY, LLC, dba Village Liquor
12527 Alondra Boulevard, Norwalk, CA 90650,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 1, 2008
Los Angeles, CA

ISSUED: JULY 23, 2008

Luckyland Company, LLC, doing business as Village Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 25 days for its clerk selling an alcoholic beverage to a Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Luckyland Company, LLC, appearing through its counsel, Rick A. Blake, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated August 22, 2007, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on April 22, 1996. On January 2, 2007, the Department filed an accusation against appellant charging that, on November 30, 2006, appellant's manager and corporate officer, Samuel Chai, sold an alcoholic beverage to 18-year-old Miguel Camacho. Although not noted in the accusation, Camacho was working as a minor decoy for the Department at the time.

At the administrative hearing held on June 26, 2007, documentary evidence was received and testimony concerning the sale was presented by Camacho (the decoy), by Department investigator Jeannine Peregrina, and by Chai.

The testimony established that the decoy entered the premises, picked out a can of Tecate beer, and took it to the counter, where Chai was acting as clerk. Chai asked for the decoy's identification and the decoy gave Chai his valid California driver's license. On the license were a blue stripe stating in white letters that the decoy's license was "PROVISIONAL UNTIL AGE 18 IN 2006" and a red stripe with white letters saying he would be "AGE 21 IN 2009." Chai looked at the license, handed it back to the decoy, and completed the sale. Investigator Peregrina, who entered the premises just after the decoy, observed the sale from a position behind the decoy and a little to the side, about two or three feet away from him.

Chai testified that when he looked at the license, he noticed the month and day of the decoy's birthday, September 3, and commented that the decoy had "just passed [his] birthday." [RT 37.] The decoy, Chai said, made no comment. Neither the decoy nor Peregrina remembered Chai saying anything to the decoy other than asking him for his identification.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established. Appellant has filed an appeal contending that "the spirit of Rule 141(b)(4)"² was violated.

DISCUSSION

Rule 141(b)(4) requires a decoy to "answer truthfully any questions about his or her age." Appellant contends that by not responding to Chai's comment about a recent birthday, the decoy implicitly confirmed Chai's miscalculation of the decoy's age, thus violating rule 141(b)(4). Appellant reasons thus: Chai took all the steps expected of a responsible clerk in checking the decoy's identification; Chai miscalculated the decoy's age; the decoy could have corrected Chai's miscalculation by responding to Chai's comment; and "[not] doing so does not fall within the spirit of Rule 141[(b)](4)." (App. Br. at p. 4.)

Appellant is trying to fit a square peg in a round hole. A decoy is only required to answer a question about his age, and Chai's comment about the decoy recently having a birthday simply cannot be contorted into a question about age. It is not a question, or even a statement, about age; it simply does not involve the decoy's age.

The decoy could not have confirmed or corrected Chai's miscalculation of his age because he did not know if Chai miscalculated. The statement about the decoy's birthday did not reveal a miscalculation, it was merely an observation by Chai.

We might be compelled to look at the spirit or intention of the rule if there were some ambiguity in applying its terms to this transaction. That simply is not the case. The rule requires a question about the decoy's age, and Chai did not ask a question, or

²References to Rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

anything resembling a question, about the decoy's age. There was no violation of rule 141(b)(4).

ORDER

The decision of the Department is affirmed.³

TINA FRANK, ACTING CHAIRPERSON
SOPHIE C. WONG, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

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