

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

AB-8751

File: 20-279679 Reg: 07065189

7-ELEVEN, INC., and VAN HIEN NGUYEN, dba 7-Eleven Store 2233 14301
691 First Street, Gilroy, CA 95020,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: April 2, 2009
San Francisco, CA

ISSUED JULY 30, 2009

7-Eleven, Inc., and Van Hien Nguyen, doing business as 7-Eleven Store 2233 14301 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days, all conditionally stayed for one year, for their clerk having sold a can of Bud Light beer to Ashkan Malek, a 19-year-old sheriff's minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Van Hien Nguyen, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

¹The decision of the Department, dated September 5, 2007, is set forth in the appendix.

PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 25, 1993. On March 5, 2007, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor on December 29, 2006.

An administrative hearing was held on July 12, 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 in the accusation, and no affirmative defense had been established.

Appellants filed a timely notice of appeal, and an opening brief in which they contend that the Department prosecutor communicated with the Director or his advisors on an ex parte basis in violation of section 11430.10 of the Administrative Procedure Act.

The Department's reply brief states:

The Appellant does not raise a single issue relating to the findings contained in the Proposed Decision. As such, it is presumed that the Appellant concedes that a violation of the Alcoholic Beverage Control act occurred and that the penalty is appropriate.

The Appellant does raise issues regarding an alleged ex parte contact (*Quintanar* issue) and the Department requests that this case be remanded to the Department for consideration of this issue.

This case was heard by the Department prior to its adoption of General Order No. 2007-09. In such cases we have ordered a remand to the Department for an evidentiary hearing on the ex parte issue. We shall do so in this case as well.

ORDER

This matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing discussion.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
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.