

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

AB-8848

File: 20-360202 Reg: 07066182

7-ELEVEN, INC., NAGRA HARMINDER SINGH, and SUNNER MANJIT KAUR, dba 7-
Eleven Store #2133-25194
620 West Ocean Avenue, Lompoc, CA 93436,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 7, 2009
Los Angeles, CA

ISSUED AUGUST 18, 2009

7-Eleven, Inc., Nagra Harminder Singh, and Sunner Manjit Kaur, doing business as 7-Eleven Store #2133-25194 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for their clerk, Kimberlie Platt, having sold a six-bottle pack of Corona Beer, an alcoholic beverage, to Jessica Chavez, an 18-year-old police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Nagra Harminder Singh, and Sunner Manjit Kaur, 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, Jennifer Casey.

¹The decision of the Department, dated February 28, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 5, 2000. On June 20, 2007, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to Jessica Chavez, an 18-year-old minor. Although not stated in the accusation, Chavez was working as a decoy for the Lompoc Police Department.

An administrative hearing was held on January 4, 2008, at which time documentary evidence was received and testimony concerning the violation charged was presented. Subsequent to the hearing, the Department issued its decision sustaining the charge of the accusation, determining that appellants had not established an affirmative defense, and imposing a 10-day suspension.

Appellants filed a timely notice of appeal in which they contend that the decision must be reversed because the Department certified two completely different administrative records to the Appeals Board.

DISCUSSION

Appellants contend that the decision must be reversed because the Department certified two completely different administrative records to the Appeals Board. Appellants refer to a December 4, 2008, certification of an administrative record, and a January 14, 2009, certification of another administrative record. Appellants state there is no duplication in the two records, and that it is not clear which of the two records the decision maker reviewed.

The problem in this case, as in many others this Board has heard, involves the omission from the initially certified administrative record of documents concerning an unsuccessful motion by appellants to compel discovery. The information sought through discovery related to the appearance of decoys in cases other than the case

involving appellants.

The Board has treated the issue as one involving a procedural error which seldom justifies reversal. (*Garfield Beach CVS LLC* (2009) AB-8767.) This is particularly true where, as here, appellants have not been able to identify any prejudice flowing from the faulty initial certification.

None of appellants' appeal issues relate to the discovery motion, which sought information about decoys in other cases. It was only these documents which were omitted from the original certification. It is unreasonable to think these documents, whether or not part of what the decision maker reviewed, would have had any bearing on the issues on the merits. Their omission from the record furnished to the Appeals Board was, at most, a clerical oversight.

In any event, a second certification supplying the missing documents was filed by the Department two months prior to the filing of appellants' opening brief. Appellants have not claimed any documents are missing from the supplemented record, and offers only speculation that documents not properly part of the record were included with the documents available to the decision maker. Our own examination of the combined certifications, and experience with the many cases like this, tells us the Department has simply furnished the Appeals Board with a complete record in two parts.

It is obvious from the two certifications, when read together, that the second certification was intended to supplement the original certification, so what exists is little more than a clerical oversight in identifying a supplemental filing.

This case is nothing like *Circle K Stores, Inc.* (2007) AB-8597, where documents were included in the certified record that clearly should not have been, documents that

might well have had an adverse impact upon the appellant in that case.

The error associated with the initial certification of the administrative record is harmless, and does not warrant the reversal appellants have sought.

ORDER

The decision of the Department is affirmed.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.