

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

AB-8915

File: 20-280708 Reg: 06064437

7-ELEVEN, INC., HOUSHANG MOTAZEDI, and MANIJEH MOTAZEDI,
dba 7-Eleven No. 2136-18919
19259 Saticoy Street, Reseda, CA 91335,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

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

ISSUED DECEMBER 10, 2009

7-Eleven, Inc., Houshang Motazedi, and Manijeh Motazedi, doing business as 7-Eleven No. 2136-18919 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, with all 15 days stayed during a probationary period of one year, for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Houshang Motazedi, and Manijeh Motazedi, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Alicia R. Ekland, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated August 7, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on February 23, 1993. On November 30, 2006, the Department filed an accusation against appellants charging that appellants' clerk, Nanzin Akthir (the clerk), sold an alcoholic beverage to 19-year-old Mariana Olvera on September 26, 2006. Although not noted in the accusation, Olvera was working as a minor decoy for the Los Angeles Police Department (LAPD) at the time.

At the administrative hearing held on May 22, 2008, documentary evidence was received and testimony concerning the sale was presented by Olvera (the decoy) and by Dennis Mesa, an LAPD officer. Their testimony established that the decoy chose a 24-ounce can of Miller Lite beer from the cooler and took it to the counter. The clerk asked the decoy for her identification, and the decoy produced her valid California driver's license that showed her to be 19 years old. The clerk examined the driver's license, handed it back to the decoy, and completed the sale.

The decoy left the store with the beer, then returned with law enforcement officers to the counter where the clerk was working. An officer asked the decoy who sold her the beer and the decoy pointed to the clerk and said, "She did."

The Department's decision determined that the violation charged was proved and no affirmative defense was established.

Appellants then filed an appeal contending that the administrative law judge (ALJ) failed to analyze the facts supporting the finding that there was compliance with rule 141(b)(5).²

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.

DISCUSSION

Appellants contend the decision must be reversed because the ALJ did not support his finding of compliance with rule 141(b)(5)³ with an analysis of the facts.

This contention must be rejected. Appellants' argument is based entirely on what they contend the Department did not show with regard to the face-to-face identification. However, rule 141(b)(5) provides an affirmative defense and it is the appellants' responsibility to prove that the facts exist to support the defense. Appellants presented no evidence on the matter and, thus, did not meet their burden of proof. There clearly is substantial evidence to support the finding of the ALJ, and the decision, therefore, must be affirmed.

ORDER

The decision of the Department is affirmed.⁴

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

³Rule 141(b)(5) states:

Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverages.

Rule 141(c) provides that violation of any of the provisions of rule 141 shall be a defense to any sale-to-minor charge.

⁴This 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.