

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

AB-8962

File: 20-119497 Reg: 08068414

CIRCLE K STORES, INC., dba Circle K Store # 337
10597 Jurupa Road, Mira Loma, CA 91752,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: December 2, 2010
Los Angeles, CA

ISSUED FEBRUARY 4, 2011

Circle K Stores, Inc., doing business as Circle K Store # 337 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for five days, with all five days conditionally stayed, for its clerk selling an alcoholic beverage to a law enforcement minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree Wortham.

¹The decision of the Department, dated October 8, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 18, 1982. On April 15, 2008, the Department filed an accusation charging that appellant's clerk sold an alcoholic beverage to 18-year-old Andres Saldana on November 10, 2007. Although not noted in the accusation, Saldana was working as a minor decoy for the Riverside Sheriff's Department at the time.

At the administrative hearing held on September 3, 2008, documentary evidence was received, and testimony concerning the sale was presented by Saldana (the decoy) and by Jacqueline Lane, a Riverside Sheriff's deputy. The Department moved to quash the subpoena served on District Administrator Clark by appellant. Appellant stated that it had not filed a brief on the issue, but explained that the District Administrator had been subpoenaed to testify regarding Department decisions using "underground regulations," and referred the administrative law judge (ALJ) to other, unnamed, cases in which the issue was fully briefed. The ALJ quashed the subpoena, stating that the District Administrator's testimony would not be useful since the ALJ would decide what penalty to recommend based on the evidence presented at the hearing and the Department's penalty guidelines (4 Cal. Code Regs., §144 (rule 144)).

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established. Appellant then filed an appeal contending that it was erroneously prevented from presenting evidence that the penalty imposed was based on an underground regulation.

DISCUSSION

Appellant contends it was prevented from presenting evidence regarding the Department's use of an underground regulation in determining the penalty because the

ALJ granted the Department's motion to quash the subpoena served on the District Administrator.

In this case, appellant's counsel did not file a brief or an offer of proof in support of the subpoena. He also presented no argument. He referred to other cases, but did not name them. While the ALJ might have known what counsel was talking about, there is no record on appeal that allows this Board to review the issue.

Appellant's appellate brief is a duplicate of other briefs its counsel has filed many times before, and assumes that the issue was briefed and an offer of proof made at the hearing. The Board has addressed and rejected this argument before. (See, *e.g.*, *Yummy Foods LLC* (2010) AB-8950; *Randhawa* (2010) AB-8973; *Chevron Stations, Inc.* (2010) AB-8974; *7-Eleven, Inc./ Wong* (2010) AB-8991; *7-Eleven, Inc./ Solanki* (2010) AB-9019.) If the Board were to consider this issue, it would have no basis to do anything other than reject the argument again.

ORDER

The decision of the Department is affirmed.²

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

²This 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.