

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

AB-8969

File: 20-456423 Reg: 07067468

7-ELEVEN, INC., and RAJ SAMRA, INC., dba 7-Eleven No. 2172-39011B
12502 Harbor Boulevard, Garden Grove, CA 92840,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 4, 2010
Los Angeles, CA

ISSUED DECEMBER 7, 2010

7-Eleven, Inc., and Raj Samra, Inc., doing business as 7-Eleven No. 2172-39011B (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their 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 appellants 7-Eleven, Inc., and Raj Samra, Inc., appearing through their counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated November 14, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants have held an off-sale beer and wine license at this location since August 1, 2007.² On December 19, 2007, the Department filed an accusation charging that appellants' clerk sold an alcoholic beverage to 19-year-old Susan Mejia on September 8, 2007. Mejia was working as a minor decoy for the Department at the time.

At the administrative hearing held on September 10, 2008, documentary evidence was received and testimony concerning the sale was presented. Appellants had served the Department's District Administrator with a subpoena, but he did not appear at the hearing. The administrative law judge (ALJ) granted the Department's motion to quash the subpoena. A discussion of the facts pertaining to the violation is not necessary for resolution of this appeal.

The Department's decision determined that the violation charged was proved and no affirmative defense to the charge was established. Appellants then filed an appeal contending that the ALJ erroneously prevented them from introducing evidence that the Department used an underground regulation when determining the penalty in this matter. Appellants do not dispute that the violation occurred as charged.

DISCUSSION

Appellants contend they were prevented from presenting evidence regarding the Department's use of an illegal underground regulation in determining the penalty because the ALJ granted the Department's motion to quash a subpoena served on District Administrator Hart.

²An interim permit was issued to appellants on August 1, 2007, and a permanent license was issued on November 13, 2007.

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.) Even if the District Administrator testified as the offer of proof said he would, that testimony would not establish that an underground regulation existed. This would be a valid reason for quashing the subpoena.

In this case, there is an additional reason the ALJ was correct in quashing the subpoena. The subpoena was served on District Administrator Hart, but he was not the District Administrator at the time the accusation was issued and the penalty recommendation was developed. Therefore, his testimony would not be relevant. This is reason enough, by itself, to quash the subpoena. The ALJ did not err by quashing the subpoena.

ORDER

The decision of the Department is affirmed.³

SOPHIE C. WONG, MEMBER
TINA FRANK, 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.