

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

AB-8989

File: 20-433039 Reg: 08069082

SHILO ENTERPRISES, INC., dba Shilo Enterprises, Inc.
7370 La Tijera Boulevard, Los Angeles, CA 90045,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

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

ISSUED JULY 22, 2010

Shilo Enterprises, Inc., doing business as Shilo Enterprises, Inc. (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 12 days 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 Shilo Enterprises, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated December 11, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on March 27, 2006. On June 28, 2008, the Department filed an accusation charging that appellant's clerk sold an alcoholic beverage to 19-year-old Nathan Atthawimol on May 6, 2008. Although not noted in the accusation, Atthawimol was working as a minor decoy for the Department and the Los Angeles Police Department at the time.

At the administrative hearing held on October 17, 2008, documentary evidence was received and testimony concerning the sale was presented by Atthawimol (the decoy) and by Department investigator Brandie Richard. Shiraz Gobani, president of the corporate licensee, testified regarding employee training.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established.

Appellant filed an appeal contending the administrative law judge (ALJ) abused his discretion when he limited inquiries by appellant's counsel.

DISCUSSION

Appellant contends the ALJ incorrectly restricted the admission of evidence and "precluded Appellant from presenting a full defense." (App. Br. at p. 2.) Appellant points out that the ALJ prevented appellant's counsel from estimating the decoy's weight, inquiring about the number and names of police officers present at the premises, and ascertaining the decoy's racial derivation. When appellant's counsel was cross-examining the investigator about the report she had written after the decoy operation and asked her repeatedly about how she had decided the order in which to list the locations visited that night, the ALJ said, "Mr. Solomon, you're boring me. What conceivable difference does it make?" [RT 58.]

Appellant asserts that it "has not yet had its day in court," and requests the Board remand the matter to the Department "for a genuine administrative proceeding."

Although the ALJ did limit some of appellant's counsel's questions, we fail to see how this could have prevented appellant from making an effective defense, nor has appellant explained this to us. The inquiries that the ALJ limited had little, if any, relevance to any defense appellant might have raised. On appeal, appellant refers us to cases and statutes about "relevant evidence" and "abuse of discretion," but has not shown how these relate to the particular facts in this case.

In any case, the admission or rejection of evidence is not ground for reversal unless there has been a denial of justice. (*McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1054 [228 Cal.Rptr. 567].) Appellant was not denied justice in this case.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, 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.