

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

AB-9046

File: 20-461225 Reg: 08069155

CHEVRON STATIONS, INC., dba Chevron Stations
2225 Claribel Road, Riverbank, CA 95367,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: October 7, 2010
San Francisco, CA

ISSUED NOVEMBER 23, 2010

Chevron Stations, Inc., doing business as Chevron Stations (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its 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 appellant Chevron Stations, Inc., appearing through its counsel, Ralph Barat Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

¹The decision of the Department, dated June 15, 2009, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 15, 2008. On July 10, 2008, the Department filed an accusation charging that appellant's clerk sold an alcoholic beverage to 19-year-old Ashley Kennedy on May 31, 2008. Although not noted in the accusation, Kennedy was working as a minor decoy for the Modesto Police Department at the time.

At the administrative hearing held on May 21, 2009, documentary evidence was received, and testimony concerning the sale was presented by Kennedy (the decoy) and by Jason Stewart, a City of Modesto police officer.

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: Rule 141(b)(2)² was violated because the administrative law judge failed to make adequate findings to support compliance with the rule.

DISCUSSION

Appellant contends that the administrative law judge (ALJ) failed to make adequate findings of facts to support compliance with rule 141(b)(2),³ citing the decision of the California Supreme Court in *Topanga Association for a Scenic Community v.*

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.

³California Code of Regulations, title 4, section 141, subdivision (b)(2) states: "The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense."

County of Los Angeles (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836] (*Topanga*).⁴

Appellant argues that the ALJ failed to make findings which bridge the gap between the raw evidence and the ultimate decision.

Appellant misapprehends *Topanga*. It does not hold that findings must be explained, only that findings must be made. This is made clear when one reads the entire sentence that includes the phrase on which appellant relies: "We further conclude that implicit in section 1094.5 is a requirement that the agency which renders the challenged decision *must set forth findings* to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga, supra*, 11 Cal.3d 506, 515, italics added.)

In *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241, 258-259 [242 Cal.Rptr. 760], the court quoted with approval, and added italics to, the comment regarding *Topanga* made in *Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374, 389 [137 Cal.Rptr. 909]: " 'The holding in *Topanga* was, thus, that *in the total absence of findings in any form on the issues supporting the existence of conditions justifying a variance*, the granting of such variance could not be sustained.' " In the present appeal, there was no "total absence of findings" that would invoke the holding in *Topanga*.

The ALJ encapsulated his findings in Determination of Issues II:

Respondent argued that the decoy's experience as a decoy and an explorer made her appear twenty-one years old, in violation of the

⁴We note with disapproval appellant's failure to provide pinpoint cites for this quoted language and throughout appellant's brief. This Board is not required to search through the pages of a decision to find a quotation appellant has used to support its argument. If appellant cannot properly cite the authority it uses, we may be compelled simply to ignore it.

Department's Rule 141(b)(2). This argument is rejected. Respondent did not show a connection between the decoy's experience and Respondent's conclusion. Moreover, without testimony from the clerk, there is no evidence that the decoy appeared at least twenty-one years old to the clerk "under the actual circumstances presented to (her)."

Where, as here, the ALJ's findings indicate compliance with the rule as written, the Board is not in a position to substitute its judgment for that of the trier of fact.

ORDER

The decision of the Department is affirmed.⁵

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

⁵This 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.