

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

AB-9105

File: 20-214461 Reg: 09072118

7-ELEVEN, INC., KYUNG J. HUH, and YU B. HUH, dba 7-Eleven # 2172-29003
9502 Hamilton Avenue, Huntington Beach, CA 92646,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: August 4, 2011
Los Angeles, CA

ISSUED AUGUST 29, 2011

7-Eleven, Inc., Kyung J. Huh, and Yu B. Huh, doing business as 7-Eleven # 2172-29003 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for five days, all stayed on the condition that appellants complete one year of discipline-free operation 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., Kyung J. Huh, and Yu B. Huh, appearing through their counsel, Ralph B. Saltsman and Autumn Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated March 30, 2010, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 1, 1988. On November 9, 2009, the Department filed an accusation against appellants charging that, on March 21, 2009, appellants' clerk sold an alcoholic beverage to an 18-year-old minor decoy for the Huntington Beach Police Department.

At the administrative hearing held on February 11, 2010, documentary evidence was received and testimony concerning the sale was presented by the decoy and a Huntington Beach police officer.

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

Appellants then filed an appeal contending that the administrative law judge (ALJ) erred by preventing them from introducing evidence demonstrating that the Department used an illegal underground regulation to determine the penalty. Appellants do not dispute that the violation occurred as charged.

DISCUSSION

Appellants subpoenaed the local Department District Administrator to testify and presented an offer of proof stating what they asserted would be his testimony. They contend that when the ALJ did not require the District Administrator to testify, he prevented them from presenting evidence of the Department's use of an illegal underground regulation in determining the penalty to be imposed.

The Board has addressed and rejected this argument in numerous appeals over the last couple of years. (See, e.g., *United El Segundo, Inc.* (2011) AB-9119 and AB-9110; *7-Eleven, Inc./Solanki* (2010) AB-9019; *7-Eleven, Inc./Wong* (2010) AB-8991; *Chevron Stations, Inc.* (2010) AB-8974; *Randhawa* (2010) AB-8973; *7-Eleven,*

Inc./Maldiv Associates (2010) AB-8951; *Yummy Foods LLC* (2010) AB-8950; and *Ghuman & Sons, Inc.* (2010) AB-8910.) Even if the District Administrator testified as appellants' offer of proof said he would, that testimony would not establish that an underground regulation existed. Because the proffered testimony of the District Administrator would not show that an underground regulation existed or that the Department issued, used, enforced, or attempted to enforce the alleged underground regulation in this case, the testimony was properly excluded by quashing the subpoena.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
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.