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

AB-9126
File: 20-450064 Reg: 09072275

LA CAMPANA MARKET, INC., dba AA Market
8422 State Street, South Gate, CA 90280,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: June 2, 2011
Los Angeles, CA

ISSUED JULY 19, 2011

La Campana Market, Inc., doing business as AA Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] 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 La Campana Market, Inc., appearing through its counsel, Autumn Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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[1]The decision of the Department, dated August 3, 2010, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on April 11, 2007. The Department filed an accusation charging that appellant's clerk sold an alcoholic beverage to 19-year-old Arlene Guerra on August 12, 2009. Although not noted in the accusation, Guerra was working as a minor decoy for the South Gate Police Department at the time.

At the administrative hearing held on June 16, 2010, documentary evidence was received, and testimony concerning the sale was presented by Guerra (the decoy) and by Ricardo Navarro, a South Gate 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 has filed an appeal contending that rule 141(b)(2)[2] was violated and the administrative law judge (ALJ) did not properly analyze the evidence in reaching his conclusion that the rule was not violated.

DISCUSSION

Department rule 141(b)(2) provides that "[t]he 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." Appellant contends the decoy violated this rule because she had participated in four previous decoy operations and she had been a police Explorer, during which time she received physical training and was taught self-defense and CPR.

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[2]References 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.

As this Board has said on many occasions, the ALJ is the trier of fact, and had the opportunity, which this Board has not, of observing the decoy as she testified and determining whether her appearance met the requirement of Rule 141. The ALJ noted her experience, but still concluded that her appearance complied with the rule. "There is no justification for contending that the mere fact of the decoy's experience violates Rule 141(b)(2), without evidence that the experience actually resulted in the decoy displaying the appearance of a person 21 years old or older." (*Azzam* (2001) AB-7631.)

Appellant also contends that the ALJ "must set forth the reasoning, grounds, and patterns of thought" causing him to determine that the decoy's appearance complied with rule 141(b)(2), citing *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 [113 Cal.Rptr. 836].

This Board has addressed, and rejected, this contention numerous times before. For example, in *7-Eleven, Inc./Cheema* (2004) AB-8181, the Board said: "Appellants misapprehend *Topanga*. It does not hold that findings must be explained, only that findings must be made." (Accord, *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241, 258-259 [242 Cal.Rptr. 760]; *Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374, 389 [137 Cal.Rptr. 909].) As this Board has also explained many times, the Department is not required to explain its reasoning.

> [I]n a quasi-judicial proceeding in California, the administrative board should state findings. If it does, the rule of *United States v. Morgan* [(1941)] 313 U.S. 409, 422 [85 L.Ed. 1429, 1435 [61 S.Ct. 999]] precludes inquiry outside the administrative record to determine what evidence was considered, and reasoning employed, by the administrators.

(*Fairfield v. Superior Court of Solano County* (1975) 14 Cal.3d 768, 779 [122 Cal.Rptr. 543].)

Appellant also contends that the ALJ improperly focused on the decoy's appearance at the time of the hearing rather than at the time of the violation because he stated in the decision that "The decoy actually looked younger in person than in her photographs." (Find. of Fact II-D, ¶ 2.) The reasonable inference to be drawn from that statement is that she probably would have looked even younger in person at the time of the decoy operation than she did in the photographs taken of her that day. It does not demonstrate that the ALJ's conclusion about rule 141(b)(2) was improperly based on the decoy's appearance at the hearing.

Appellant has not provided any reason for this Board to question the ALJ's determination that the decoy's appearance complied with rule 141(b)(2).

ORDER

The decision of the Department is affirmed.[3]

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

[3]This 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.