

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

AB-9245

File: 20-232963 Reg: 11075535

7-ELEVEN, INC., HAMID REZA SHARIFINEJAD
and MINNIE JEAN SHARIFINEJAD,
dba 7-Eleven Store #2172-17923
1679 North Glassell Street, Orange, CA 92867,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 1, 2012
Los Angeles, CA

ISSUED DECEMBER 5, 2012

7-Eleven, Inc., Hamid Reza Sharifinejad and Minnie Jean Sharifinejad, doing business as 7-Eleven Store #2172-17923 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 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., Hamid Reza Sharifinejad and Minnie Jean Sharifinejad, appearing through their counsel, Ralph Barat Saltsman and D. Andrew Quigley, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated February 16, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on May 26, 1989. On July 29, 2011, the Department instituted an accusation against appellants charging that, on May 14, 2011, appellants' clerk, Jack Novikoff (the clerk), sold an alcoholic beverage to 18-year-old Sabrina Ayoub. Although not noted in the accusation, Ayoub was working as a minor decoy for the Department at the time.

An administrative hearing was held on December 8, 2011, at which time documentary evidence was received, and testimony concerning the sale was presented by Ayoub (the decoy) and by Department investigator Vic Duong. Appellants presented no witnesses.

The evidence established that the clerk asked the decoy for identification, and was handed her California driver's license which contained her correct date of birth and a red stripe with the letters "AGE 21 IN 2013." The clerk looked at the license, asked the decoy if she had graduated from high school, and went forward with the sale.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellants filed a timely appeal, contending that the ALJ did not proceed in a manner according to law in his determinations that the decoy complied with rule 141(b)(2) and that the recommended penalty was appropriate. Appellants claim the ALJ failed to bridge the analytical gap between the evidence, findings and determinations.

Appellants press a contention that this Board has addressed on a number of occasions; to what extent, if any, is an ALJ obligated to explain the reasoning behind findings he or she has made? Of course, when such findings are supported by

substantial evidence, they are binding on this Board. Appellants appear to want the Board to go behind the findings and question the reasoning process utilized by the ALJ. This reads into the decision in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 [113 Cal.Rptr. 836] a requirement later cases do not support.

The contention that the Department failed to comply with *Topanga* has been rejected by this Board numerous times. 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].)

Appellant is really demanding the Department's reasoning. As this Board has explained many times, the Department is not required to explain its reasoning.

Appellants' demand that the ALJ "explain how [the conflict in testimony] was resolved" (App. Br. at p. 2) is little more than a demand for the reasoning process of the ALJ. The California Supreme Court made clear in *Fairfield v. Superior Court of Solano County* (1975) 14 Cal.3d 768, 778-779 [122 Cal.Rptr. 543], that as long as findings are made, a party is not entitled to attempt to delve into the reasoning process of the administrative adjudicator:

As we stated in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836, 522 P.2d 12]: "implicit in [Code of Civil Procedure] 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."^[Fn.]

In short, in 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.

(*United El Segundo, Inc.* (2007) AB-8517.)

Appellant has not shown that substantial evidence was lacking nor that it is entitled to any additional analysis with respect either to the ALJ's rule 141(b)(2) assessment or his adoption of the recommended penalty.²

The ALJ considered photographs of the decoy taken on the day of the decoy operation, viewed the minor decoy as she testified, and concluded on the basis of her overall appearance when she testified and the way she conducted herself at the hearing that she displayed the appearance required by rule 141(b)(2). Unless we were willing to decide as a matter of law that the decoy lacked the appearance required by rule 141(b)(2) or that the ALJ abused his discretion with respect to the penalty, and we are not, the decision must be affirmed.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
FRED ARMENDARIZ, MEMBER
FRED HIESTAND, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² We do note that the penalty imposed by the ALJ is that set forth in the Penalty Guidelines Appendix to Department rule 144 (4 Cal. Code Regs., §144) in the case of a second sale to a minor within a 36-month period.

³ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.