

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

AB-9262

File: 20-263902 Reg: 11075822

GUS Y. HILU and HAIFA HILU, dba Manny's Mobil
16955 San Fernando Mission Boulevard, Granada Hills, CA 91344,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: March 7, 2013
Los Angeles, CA

ISSUED APRIL 10, 2013

Gus Y. Hilu and Haifa Hilu, doing business as Manny's Mobil (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 25 days for their clerk having sold an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Gus Y. Hilu and Haifa Hilu, appearing through their counsel, Ralph Barat Saltsman and D. Andrew Quigley, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K.

¹The decision of the Department, dated April 18, 2012, is set forth in the appendix.

Winters.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 11, 1991. On September 27, 2011, the Department instituted an accusation against appellants charging that appellants' clerk, Arun Pradham, sold an alcoholic beverage (a 24-oz. can of Coors Light beer) to Alexis Briano, an 18-year-old police minor decoy.

At the administrative hearing held on February 8, 2012, documentary evidence was received and testimony concerning the violation charged was presented by Briano, and by Christopher Glassford, a Los Angeles police officer. Appellants presented no witnesses.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and no affirmative defense had been established. Because this was appellants' second violation with a period of 18 months, a 25-day suspension was imposed.

Appellants contend in this timely appeal that the Department violated Department rule 141(b)(5), in that the identification was conducted in an unduly suggestive and unfair manner.

DISCUSSION

This is an uncomplicated minor decoy case. Appellants' clerk, Arun Pradhan, sold a 24-oz. can of Coors Light beer to 18-year-old Alexis Briano, who was working as a decoy for the Los Angeles Police Department.

Appellants contend there was a violation of rule 141(b)(5) when a police officer who had not actually seen the sale to a minor decoy but had been told of it, stated to the clerk, in the presence of the decoy, that she had just sold an alcoholic beverage to

a minor, following which, the decoy identified the clerk as the seller. Appellants argue this was unduly suggestive.²

The only case appellants cite is one where the police officer escorted the clerk outside the premises, where the decoy made the face-to-face identification.

(Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2003) 109 Cal.App.4th 1687 [1 Cal.Rptr. 3d 339].) The court in that case held the face-to-face identification was not unduly suggestive, and applied the rule in a way that affords law enforcement considerable discretion in the manner and conduct of the rule 141(b)(5) identification process:

There is nothing in the language of the Regulations section 141, subdivision (b)(5), in the history of section 25658, subdivision (f), or in the arguments advanced by the Appeals Board that suggests the section was written to require any particular kind of identification procedure except that it be face-to-face. There is no suggestion the section was promulgated to correct identification procedures which resulted in a history of misidentification of sellers. Indeed, there is no suggestion that correct identification of sellers by decoys presented any problem whatsoever.

(Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd., supra, 109 Cal.App. 4th at 1697-1698.)

Nor does it in this case, where, as the decoy testified, the clerk, who was standing behind the counter when she identified him as the seller, was the only employee in the store. It seems far more likely that decoys will remember who sold an alcoholic beverage to them when the sale has taken place only moments before, and the officer's explanation to the seller does not tell the decoy anything he or she did not

²ⁿ [W]ithin 15 seconds of identifying himself to the clerk and informing the clerk of the violation -- all while standing next to the decoy -- Officer Glassford asked the decoy to identify who sold her the alcohol at which point the decoy identified the clerk Officer Glassford had just spoken to." (App. Br., p. 3.)

already know. More importantly, an officer's explanation to the clerk that he has sold alcohol to a minor is consistent with the purpose behind rule 141(b)(5), by ensuring the clerk an opportunity to view the decoy face-to-face. (*Id.*, at 1698.)

The ALJ had it right (Conclusion of Law 5, unnumbered second paragraph):

With respect to rule 141(b)(5), the Respondent argued that it was improper for Ofcr. Glassford to explain the violation to Pradhan in front of Briano since it unduly suggested that she identify him as the seller. This argument is rejected. There is nothing improper in an officer identifying himself upon first contacting a clerk and explaining the violation, either in front of the decoy or not. Any other course of conduct would deny the clerk a context in which to understand what was transpiring.

ORDER

The decision of the Department is affirmed.³

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

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.