

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

AB-9426

File: 20-446476 Reg: 13079125

7-ELEVEN, INC. and JOHAL STORES, INC.,
dba 7-Eleven Store 2133 18819D
10660 Sepulveda Boulevard, Mission Hills, CA 91345-1919,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: February 5, 2015
Los Angeles, CA

ISSUED FEBRUARY 24, 2015

7-Eleven, Inc. and Johal Stores, Inc., doing business as 7-Eleven Store 2133 18819D (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 5 days, all conditionally stayed, because their clerk sold an alcoholic beverage to a non-decoy minor, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances include appellants 7-Eleven, Inc. and Johal Stores, Inc., through their counsel, Ralph Barat Saltsman and Jennifer L. Oden of the law firm Solomon Saltsman & Jamieson, and the Department of Alcoholic Beverage Control, through its counsel, David W. Sakamoto.

¹The decision of the Department, dated March 21, 2014, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on November 21, 2006. On August 28, 2013 the Department instituted an accusation against appellants charging that their employee, Amarjit Singh (the clerk), sold an alcoholic beverage to Nicholas Estrada, a non-decoy minor.

At the administrative hearing held on December 11, 2013, documentary evidence was received and testimony concerning the violation charged was presented by Estrada and by David Duran, a Department of Alcoholic Beverage Control agent. Appellants presented no witnesses.

Testimony established that on the date of the violation, Estrada was eighteen years old. He arrived at the licensed premises with six of his friends. His friends remained outside while he entered. Estrada walked to the coolers and selected a twelve-pack of Corona beer, which he took to the counter. The clerk asked to see Estrada's identification.

Estrada had two IDs in his possession: his own driver's license, and an expired driver's license that belonged to his older brother. He took out his brother's ID and handed it to the clerk. The clerk looked at the ID for one or two seconds, then handed it back and completed the sale. Estrada paid for the beer and exited the premises.

Outside the premises, Agent Duran contacted Estrada and determined that he was a minor. Duran asked Estrada if he had used a fake ID to purchase the alcohol. Estrada admitted he had. Duran asked to see the ID, and Estrada handed over his brother's expired driver's license.

Agent Duran asked Estrada to identify the person who had sold him the alcohol. Through the front windows of the licensed premises, Estrada pointed out the clerk.

Duran contacted the clerk and explained the violation to him. The clerk stated that he had checked Estrada's ID. Duran responded that the ID was expired. The clerk asked to see the ID. Duran handed the ID to the clerk. The clerk examined the ID, then handed it back to Duran.

Ultimately, both Estrada and the clerk were cited.

After the hearing, the Department issued its decision which determined that the violation had been proven and no defense was established. The ALJ rejected appellants' affirmative defense under Business and Professions Code section 25660, holding that the expiration date ought to have been a red flag, and that, despite some physical similarities between Estrada and his brother's photograph, there was no way Estrada could pass for his brother's age of 25 years.

In light of mitigating evidence, the ALJ assigned a reduced penalty of 5 days, all conditionally stayed for a period of one year.

Appellants have filed an appeal contending solely that the ALJ failed to make or support any finding that continuation of appellants' license would be contrary to public welfare or morals.

DISCUSSION

Appellants contend that the sale of alcohol cannot constitute good cause for suspension of a license under section 24200(a) absent substantial evidence and relevant findings. (App.Br. at pp. 6-10.) Appellants quote *Boreta Enterprises* and insist that "the effects of the alleged conduct that is against the public welfare must be 'canvassed, considered and evaluated as being harmful or undesirable' . . . before such a determination may be made." (App.Br. at p. 8, quoting *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 99-100 [84 Cal.Rptr. 113].)

Moreover, appellants contend that the ALJ was required, per *Topanga*, to make and explain any findings to that effect. Appellants direct this Board to their failed section 25660 affirmative defense and to their disciplinary history, and insist that “there is no reason to infer that the continuance of Appellants’ license is in fact contrary to the public welfare and morals.” (App.Br. at p. 8.) Notably, appellants concede the fact of the sale-to-minor violation.

This case presents nothing more than a sloppy regurgitation of an argument we rejected wholesale — and, we intended, permanently — in *7-Eleven, Inc./Lucky & Co., Inc.* (2015) AB-9431. As we noted in that case, California law, whether constitutional, statutory, or judicial, is unanimous in the conclusion that the sale of alcoholic beverages to a minor is necessarily contrary to public welfare and morals. Thus, an admitted or proven violation of Business and Professions Code section 25660 is sufficient to establish good cause for suspension under both subdivisions (a) and (b) of section 24200. Nothing further is required — neither the ALJ nor the Department must “canvass, consider and evaluate” the effects of a course of conduct already universally acknowledged to be harmful and undesirable.

Appellants concede a violation of section 25658(a). Continuation of appellants’ license is therefore contrary to public welfare and morals.

We note that appellants’ disciplinary history, though laudable, does nothing to counter the admitted violation itself, and therefore cannot negate a finding of good cause for suspension. Depending on the case, evidence of preventative or remedial measures may, as here, lead to a reduced penalty, but it cannot entirely shield a licensee from discipline. Moreover, appellants’ section 25660 defense failed at the trial level, and they do not reassert it here. It is therefore wholly irrelevant.

ORDER

The decision of the Department is affirmed.²

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, 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.