

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

GUAN LIANG SZETO & GUANQIONG	)	AB-7012
ZHENG)	
dba Wee Ming Restaurant	)	File: 41-311924
4720 Soquel Drive	)	Reg: 97039155
Soquel, CA 95073,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Michael B. Dorais
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 2, 1998
Respondent.	)	San Francisco, CA
	)	Re-Submitted:
	)	January 6, 1999

Guan Liang Szeto and Guanqiong Zheng, doing business as Wee Ming Restaurant (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their on-sale beer and wine eating place license for 15 days for permitting the sale of an alcoholic beverage, a beer, to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivision (a), arising from a violation of Business and Professions Code §25658, subdivision (a).

¹The decision of the Department, dated December 31, 1997, is set forth in the appendix.

Appearances on appeal include appellants Guan Liang Szeto and Guanqiong Zheng, appearing through their advocate, Patrick Lee; and the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer and wine eating place license was issued on October 21, 1995. Thereafter, the Department instituted an accusation against appellants charging an illegal sale of an alcoholic beverage to a person under 21 years.

An administrative hearing was held on November 5, 1997, at which time oral and documentary evidence was received.

Subsequent to the hearing, the Department issued its decision which determined that the facts as alleged in the accusation were true. Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raise the issue that the decision is not supported by substantial evidence.

DISCUSSION

Appellants essentially contend the decision of the Department is not supported by substantial evidence, arguing that the decoy operation occurred at a busy time, the server of the beer was not an employee and did not speak English, and the written statements of witnesses describing the conduct of the decoy were disregarded by the Administrative Law Judge (ALJ).

Jose Garcia, a person under the age of 21 years, was working in a decoy operation conducted by the Santa Cruz County sheriff's department. Garcia entered the premises and sat at a table. He was approached by a female who he apparently thought was a waitress, and ordered a beer from the menu. The female left the decoy's

table and returned with a bottle of beer, from which she poured some of the contents into a glass [RT 13-16, 38]. Robert McKinley, a Santa Cruz deputy sheriff, then entered the premises prior to Garcia paying for the beer. Garcia then left the premises [RT 16].

McKinley had watched the service of the beer from his vantage point outside the premises. His testimony essentially corroborated Garcia's testimony [RT 21]. McKinley obtained the identification of Garcia, and with a Department investigator, "went back [apparently to the rear or service portion of the premises] and contacted the waitress that had served the beer." The officer testified that the waitress did not speak English. The officer issued a citation to the waitress [RT 22]. The waitress was the sister of one of the licensees. The waitress had just come from China for a visit with her sister, a licensee [RT 8, 27, 31].

The Department's Rule 141(b)(5), states in pertinent part:

"Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverages." (4 Cal. Code Regs., §141, subdivision (b)(5).)

In the recent case of Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board (1998) 67 Cal.App.4th 575 [79 Cal.Rptr.2d 126], the court stated that "rule 141 (b)(5) means what it says," i.e., strict compliance with the face to face identification provision is required.

We have searched the record and find no evidence of a face to face identification by Garcia.

ORDER

The decision of the Department is reversed, and remanded to the Department

for further proceedings, if any, conducted in accordance with the ruling in Acapulco.²

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order 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 order as provided by §23090.7 of said code.

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