

ISSUED APRIL 11, 2001

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

PRESTIGE STATIONS, INC.	)	AB-7089a
dba AM/PM Mini Market)	
6098 University Avenue	)	File: 20-327196
San Diego, CA 92115,	)	Reg: 98042502
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Rodolfo Echeverria
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 5, 2000
	)	Los Angeles, CA

Prestige Stations, Inc., doing business as AM/PM Mini Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its clerk having sold an alcoholic beverage (a six-pack of Budw eiser beer) to Jeffrey Spaulding, a minor, contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

¹The decision of the Department, dated December 10, 1998, is set forth in the appendix.

Appearances on appeal include appellant Prestige Stations, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 11, 1997. Thereafter, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to a minor.

An administrative hearing was held on August 19 and October 19, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Jeffrey Spaulding, the minor, who was acting as a police decoy when he made the purchase in question; by Kenneth Brown, a San Diego police detective who accompanied Spaulding at the time of the purchase; and by Noel Michael,² the clerk who made the sale.

Subsequent to the hearing, the Department issued its decision which determined that the violation had been established, and ordered appellant's license suspended.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) Rule 141(b)(2) was violated; (2) Rule 141(b)(3) was violated; and (3) appellant's right to discovery and to a transcript of the hearing on

² The decision refers to the clerk as "Noel Razouk," even though when he testified the clerk said his name was Noel Michael. Detective Brown also referred to him as Noel Michael.

its motion to compel discovery was improperly denied.

DISCUSSION

The Department has advised the Board that, in light of the Appeals Board's decision in Circle K, Inc. (1999) AB-7080, it does not contest or oppose the appeal in this matter.

The Administrative Law Judge limited his assessment of the decoy's appearance to the decoy's physical appearance. Hence, the Department's concession, based upon the Board's earlier ruling in Circle K, Inc., is well taken.

Since the case must be reversed, there is no reason to consider the other grounds raised by appellant. That being said, however, it should be noted that appellant's claim involving discovery would also appear to have merit, in light of the Board's numerous rulings on that issue.

ORDER

The decision of the Department is reversed.³

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, 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.