

ISSUED JULY 3, 2000

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

CIRCLE K STORES, INC.	)	AB-7108a
dba Circle K Store #8688)	
10520 Camino Ruiz	)	File: 20-307685
San Diego, CA 92126	)	Reg: 97040874
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.	)	March 2, 2000
	)	Los Angeles, CA

Circle K Stores, Inc., doing business as Circle K Store #8688 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control Decision Following Appeals Board Decision¹ which remanded to Administrative Law Judge Rodolfo Echeverria for findings and decision which he deems appropriate, based upon the record, a matter in which the Appeals Board had reversed an earlier Department decision that appellant had committed a violation of Business and Professions Code §25658, subdivision (a).

¹The Decision Following Appeals Board Decision, dated July 16, 1999, is set forth in the appendix.

Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued May 22, 1989. Thereafter, the Department instituted an accusation against appellant charging that it violated Business and Professions Code §25658, subdivision (a), by having sold an alcoholic beverage to a minor participating in a decoy operation conducted by the San Diego Police Department. Following an administrative hearing, the Department concluded that the violation had occurred as alleged, and ordered appellant's license suspended for 25 days.

The Appeals Board reversed the decision of the Department, concluding that the Administrative Law Judge erred in his consideration of the issue involving Rule 141(b)(2), by focusing on the decoy's physical appearance to the apparent exclusion of all other relevant factors.

Appellant now contends that the Department was without jurisdiction to enter its Decision Following Appeals Board Decision, having failed to seek review of the Appeals Board's decision by way of petition for writ of review to a Court of Appeal or to the Supreme Court. Appellant asserts that, since the Appeals Board did not order the case remanded to the Department, which was within its power to do, the Department's sole recourse from the Appeals Board's order of reversal is as provided for in Business and Professions Code §§23089 and 23090, i.e., by

petition for writ of review to a Court of Appeal or to the Supreme Court. Since the Department did not seek review as provided for in those sections of the Code, appellant contends, the Appeals Board decision is final, and the Department's order is beyond its jurisdiction.

The Board addressed this issue at considerable length in Circle K Stores, Inc. (December 27, 1999) AB-7080a, and concluded that the Department possessed the requisite jurisdiction to enter the order it did. That decision discussed the pertinent case law considering the effect of an unqualified order of reversal, and concluded that it was the equivalent of an automatic remand for further proceedings not inconsistent with the Board's decision.

We believe the same result must prevail in this case.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² 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.