

ISSUED OCTOBER 31, 2000

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

THE SOUTHLAND CORPORATION	)	AB-7464
and RIGA and TAWAB AMIR)	
dba 7-Eleven Store #2011-21795	)	File: 20-284495
1595 East Vista Way	)	Reg: 99045891
Vista, CA 92084,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Sonny Lo
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 7, 2000
Respondent.	)	Los Angeles, CA
)	

The Southland Corporation and Riga and Tawab Amir, doing business as 7-Eleven Store #2011-21795 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for appellants' employee selling an alcoholic beverage to person under the age of 21, being 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 July 29, 1999, is set forth in the appendix.

Appearances on appeal include appellant The Southland Corporation and Riga and Tawab Amir, appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on June 2, 1991. Thereafter, the Department instituted an accusation against appellants charging that, on November 20, 1998, appellant's clerk, Jennifer Kinney, sold an alcoholic beverage, beer, to Yadira Diaz, who was then 19 years old. Diaz was working as a police decoy at the time.

An administrative hearing was held on June 24, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented by James O'Brien, a deputy sheriff with the San Diego County Sheriff's Department; Diaz ("the decoy"); Kinney ("the clerk"); and by appellant Tawab Amir.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been proved.

Appellants thereafter filed a timely notice of appeal. In their appeal, appellants raised the following issues: (1) Rule 141(b)(2) was violated, and (2) the decoy operation was conducted during "rush hour," thereby violating a guideline of the Department.

At the hearing before the Appeals Board, counsels for the Department and for appellants reached a stipulated agreement that disposes of the issues in this appeal. The Department stipulated that the ALJ in this matter failed to address the issue of the decoy's appearance and appellants stipulated, for purposes of this appeal only, that the

court in Provigo Corp. v. Alcoholic Beverage Control Appeals Board (1994) 7 Cal.4th 561 [28 Cal.Rptr.2d 638] held the Department guidelines invalid.²

ORDER

Based on the stipulations of the parties, the decision of the Department is reversed and remanded to the Department for such further proceedings as are necessary and appropriate with regard to the issue of the decoy's appearance.³

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

²In accepting this stipulation, the Board makes no determination as to what Provigo held with regard to this issue.

³This 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 order as provided by §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 §23090 et seq.