

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

AB-7476a

File: 20-112266 Reg: 99046094

CIRCLE K STORES, INC. dba Circle K
14527 Slover Street, Fontana, CA 92335,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: April 3, 2003
Los Angeles, CA

ISSUED MAY 22, 2003

Circle K Stores, Inc., doing business as Circle K (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its clerk, Earlene Windle, having sold an alcoholic beverage to Jose Cervantes, a 16-year-old minor decoy, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, section 22, arising from a violation of Business and Professions Code section 25658, subdivision (a).

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, John W. Lewis.

¹The decision of the Department, dated October 11, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter.

In the original appeal, the Appeals Board affirmed the findings of the Department that an alcoholic beverage had been sold to a minor, acting as a police decoy, but ordered the matter remanded to the Department to permit the appellant's discovery of the identities of other licensees who may have made sales to the decoy in question on the same day as the sale by appellant's clerk.²

In its Amended Decision Following Appeals Board Decision, the Department remanded the matter to Administrative Law Judge (ALJ) Rodolfo Echeverria for compliance with the discovery request as directed by the Board, and to "take further evidence and argument, by way of affidavit and briefing only, as to what new evidence [appellant intends] to offer at any further hearing on this matter and how such evidence is relevant to the proceeding." Thereafter, the ALJ was to "hold any further proceedings as he determines are necessary and appropriate, in his exclusive discretion."

The ALJ directed the Department to provide to appellant the discovery ordered by the Appeals Board. The Department identified two other licensees which sold an alcoholic beverage to the same decoy on the same night that appellant's clerk did.

Appellant filed an offer of proof requesting further proceedings and the Department filed a reply. The ALJ's decision, adopted by the Department, found appellant's offer of proof inadequate because it was too general and failed to "establish the actual existence of any new and relevant evidence to support its request for further

² In *The Circle K Corporation* (2000) AB-7031a, the Board ruled that a licensee charged with having sold an alcoholic beverage to a minor decoy was entitled to discovery of the names and addresses of other licensees, if any, who sold to the same decoy in the course of the same decoy operation.

proceedings." The license was again ordered suspended for 15 days.

Appellant filed a timely appeal from the Department's decision in which it argued that the Department violated the Order of the Appeals Board by first requiring, and then rejecting, appellant's offer of proof and, in doing so, denied appellant its right to cross examination.

At oral argument before the Appeals Board, counsel for the Department stipulated to the reversal of the Department's decision.

ORDER

Pursuant to stipulation, the decision of the Department is reversed. This matter is remanded to the Department for such further proceedings as may be appropriate.³

TED HUNT, CHAIRMAN
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.