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

AB-7481a
File: 20-238656 Reg: 99046274

7-ELEVEN, INC., and SHOUKAT H. ALI dba 7-Eleven # 13846
11007 Venture Boulevard, Studio City, CA 91604,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: May 9, 2002
Los Angeles, CA

ISSUED SEPTEMBER 11, 2002

7-Eleven, Inc., and Shoukat H. Ali, doing business as 7-Eleven #13846 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which suspended their license for 15 days for their clerk, Abdus Sobur Khan, having sold an alcoholic beverage to Natalie Alvarado, a minor, 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). Alvarado was acting as a police decoy.

Appearances on appeal include appellants 7-Eleven, Inc., and Shoukat H. Ali, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

---

[1]The decision of the Department, dated September 27, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Board affirmed the decision of the Department in all issues except one. The Board concluded that appellant was entitled to discovery of the identities of any other licensees who themselves or through their employees had on the same night made sales of alcoholic beverages to the decoy who made the purchase in this case, and ordered the case remanded to the Department for further proceedings consistent with its order.

The Department, accordingly, remanded the matter to the Administrative Law Judge for the taking, by way of affidavit and briefing only, such new evidence the licensee intended to offer at any further hearing. Quite obviously, such new evidence would have been that stemming from the discovery information regarding other sellers.

The record indicates that the Department informed the Administrative Law Judge (ALJ) and appellant that there was no such information in its possession. In his proposed decision, the ALJ thereafter concluded that, since no discoverable information existed, there was no additional evidence for him to consider. His proposed ruling, which the Department adopted, affirmed the original decision in all respects.

Appellants have now filed a brief with the Appeals Board which is premised upon the proposition that there was another sale, that the identity of that licensee was disclosed only through discovery,[2] and that the ALJ improperly prevented appellants from calling newly-discovered witnesses and conducting further cross-examination of the decoy based upon such discovery. The brief attacks at length the procedure

[2] Appellants say, in their brief, "the identity of the other licensee who sold to this decoy was at first withheld, even in light of the Board's ruling in this case, and then reluctantly divulged." (App.Br., at page 2.)

followed by the Department in this case and in other cases where the identities of other sellers had been provided to the licensees, arguing that it was improper to require an offer of proof with respect to new evidence gained as a result of the Department's discovery response.

DISCUSSION

We see no need for any extended discussion of the issues related to the procedure utilized by the Department in this case. Had appellants' offer of proof been more definitive, appellants still would not have demonstrated an entitlement to a further hearing. This is because a more candid offer of proof would have shown that, even before the hearing began, appellants were on notice of the very information claimed by them to be essential to a meaningful cross-examination.

The record in the appeal of *The Southland Corporation/Francisco* (AB-7477), of which this Board takes official notice, contains a certified copy of an accusation,[3] filed April 9, 1999 identifying Natalie Alvarado as the minor decoy who purchased an alcoholic beverage on January 29, 1999, from the store operated by those appellants. Natalie Alvarado is the decoy who purchased an alcoholic beverage at the store operated by the present appellants' on the same date in 1999. The record also contains a certified copy of a Special Notice of Defense Pursuant to Government Code §11506, dated April 26, 1999, in which the same law firm which represents appellants in this appeal acknowledged receipt of a copy of the accusation in that matter. The hearings in both matters were conducted on July 14, 1999. It necessarily follows that appellants' counsel were on notice at the time of the hearing of the very information

[3] This case is identified in Department records as File No. 20-215131; Registration No. 99046196.

they claim was not provided to them until after this Board's rulings on discovery.

The general rule of agency, that notice to or knowledge possessed by an agent is imputable to the principal, applies for certain purposes in the relation of attorney and client. *Freeman* v. *Superior Court* (1955) 44 Cal.2d 533 [282 P.2d 857, 860]. As explained in 2 Witkin, Summary of California Law, Agency & Employment (9th ed. 1987) §101, pp. 98-99:

> "The test of imputed notice is whether the facts *concern the subject matter* of the agency and are *within its scope*. Generally speaking, notice is imputed to the principal of any facts relating to the subject matter of the agency of which the agent acquires knowledge or notice while acting as such within the scope of his authority. It is not enough that the facts concern the business of the principal; they must be so related to the subject of the agency as to bring them within the duties of the agent." (Emphasis in original.)

We think that the knowledge acquired by the Solomon, Saltsman & Jamieson law firm in the course of its representation of both of the licensees who were sellers to the decoy in question is imputable under the rule as stated above. Evidence that that law firm represented the other licensee, and received, prior to the hearing, a copy of the accusation which identified the other licensee, the clerk, and the decoy, warrants the imputation of such knowledge. Thus, it cannot be said that appellants were prejudiced by not being provided such information through discovery. Appellants were, as a result of knowledge possessed by their attorneys, in a position to conduct a full cross-examination at the original hearing, and do not deserve a second bite at the apple.

ORDER

The decision of the Department is affirmed.[4]

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

---

[4] 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.