

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

AB-7498a

File: 20-113622 Reg: 99045637

CIRCLE K STORES, INC., dba Circle K Store #522
19570 Temescal Canyon Road, Corona, CA 91719,
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 21, 2003

Circle K Stores, Inc., doing business as Circle K Store #522 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ after remand which suspended its license for 15 days for appellant's clerk selling an alcoholic beverage to a person under the age of 21, 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 B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Board reversed the decision of the Department on the issue of discovery. The Board

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

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 (ALJ) for the taking, by way of affidavit and briefing only, such new evidence the licensee intended to offer at any further hearing. 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 one other licensee who sold alcoholic beverages 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 "fails to establish the actual existence of any new and relevant evidence to support its request for further proceedings and there is no new evidence for the Administrative Law Judge to consider. Furthermore, the [appellant] did have an opportunity to conduct a full and fair cross-examination of both the decoy and the police officer." The decision concluded that no further proceedings were appropriate or necessary and again ordered the license 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 reversal of the Department's decision.

ORDER

Pursuant to the stipulation of Department counsel, the decision of the Department is reversed and the matter is remanded to the Department for such further proceedings as may be appropriate.²

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

²This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.