

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

AB-7505a

File: 20-335569 Reg: 99046341

THE SOUTHLAND CORPORATION and GLENN T. CUNNINGHAM
dba 7-Eleven Store # 26190
1749 South Coast Highway, Oceanside, CA 92054,
Appellants/Licensees

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

The Southland Corporation and Glenn T. Cunningham, doing business as 7-Eleven Store # 26190, appeal from a decision of the Department of Alcoholic Beverage Control¹ which found that appellants, through their clerk, had sold an alcoholic beverage to a minor in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants The Southland Corporation and Glenn T. Cunningham, 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.

FACTS AND PROCEDURAL HISTORY

¹The decision of the Department, dated October 4, 2001, is set forth in the appendix.

This is the second appeal in this matter. The first appeal was taken from the Department's order suspending appellants' off-sale beer and wine license for 15 days for a sale-to-minor violation. The Appeals Board affirmed the decision of the Department in all respects except in regard to discovery, and remanded the matter to the Department "for such further proceedings as may be appropriate."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 [appellants intend] 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 Department identified one other licensee (the Circle K store located at 3350 College Boulevard, Oceanside, California) which sold an alcoholic beverage to the same decoy on the same night that appellants' clerk did.

Appellants filed an offer of proof requesting further proceedings and the Department filed an opposition. The ALJ's decision, adopted by the Department, found appellants' offer of proof inadequate because it was too general and "failed to establish the actual existence of any new and relevant evidence to support their request for further proceedings." The decision concluded that no further proceedings were appropriate or necessary, and again ordered the license suspended.

² The *Southland Corporation/Cunningham* (April 11, 2001) AB-7505.

Appellants filed a timely appeal from the Department's decision in which they argued that the Department's actions denied them a full and fair opportunity to cross-examine the Department's witnesses. At oral argument before the Appeals Board, counsel for appellants stipulated to an order affirming the decision of the Department.

ORDER

Pursuant to stipulation, the decision of the Department is affirmed.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.