

ISSUED APRIL 5, 2001

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

| | | |
|--------------------------|---|--------------------------|
| EQUILON ENTERPRISES, LLC |) | AB-7577 |
| dba Texaco |) | |
| 18802 Via Princessa |) | File: 20-344099 |
| Santa Clarita, CA 91351, |) | Reg: 99046600 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | Ronald M. Gruen |
| |) | |
| DEPARTMENT OF ALCOHOLIC |) | Date and Place of the |
| BEVERAGE CONTROL, |) | Appeals Board Hearing: |
| Respondent. |) | October 5, 2000 |
| |) | Los Angeles, CA |

Equilon Enterprises, LLC, doing business as Texaco (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its clerk, Norma McEvers, having sold an alcoholic beverage (a six-pack of beer) to Frances Tirado, a minor decoy, then 17 years of age, 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 January 6, 2000, is set forth in the appendix.

Appearances on appeal include appellant Equilon Enterprises, LLC, appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer Kim.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 26, 1999. Thereafter, on June 1, 1999, the Department instituted an accusation against appellant charging that its clerk made an unlawful sale of an alcoholic beverage to a minor August 11, 1998.²

An administrative hearing was held on August 11, 1999, at which time oral and documentary evidence was received.

Subsequent to the hearing, the Administrative Law Judge issued his proposed decision which determined that there had been no compliance with Rule 141(b)(5), because the police officer who conducted the identification process was not the police officer directing the decoy; specifically, the ALJ concluded that Sergeant Sonnenblick, of the Los Angeles County Sheriff's Department, was the officer directing the decoy operation **and** the officer directing the decoy, but was not the officer who asked the decoy to identify the seller.³

² The obvious discrepancy in the dates in this paragraph is unexplained in the record, and no issue has been raised by either party concerning any of the three dates there set forth. We can only assume that, whatever the explanation, neither party considers it a matter of concern. Nor shall we.

³ There is no dispute that the entire identification process was conducted by Sheriff's deputy Hudson. Appellant has not challenged the identification as inadequate, other than as to the person who conducted it.

The Department rejected the proposed decision pursuant to Government Code § 11517, subdivision (c), concluding that there is no requirement in Rule 141 that the supervisor of the decoy operation also be the person directing the decoy:

“Rule 141 (b)(5) does not contain the word ‘operation.’ There is no requirement that the supervisor of the decoy operation be the one who has the decoy make the face to face identification. Any officer present can be considered to be directing the decoy at any given time, including having the decoy make a face to face identification of the clerk. There is no requirement in Rule 141 (b)(5) that the same officer direct the decoy during the entirety of the operation. Nor is there any requirement that an officer who observes the transaction between the clerk and the decoy be the officer who has the decoy make a face to face identification. The officer with the decoy during the face to face identification, and who has the decoy make the identification, is the officer ‘directing the decoy’ during the identification process.”

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant challenges the Department’s interpretation of Rule 141 (b)(5) as it relates to the officer directing the decoy, and also contends it was denied its right to discovery and a transcript of the hearing on its motion to compel discovery.

We believe a remand of this matter to the Department is necessary, in keeping with our prior rulings on the discovery issue that appellant is entitled to the identity of any licensee who may have sold an alcoholic beverage to the decoy in question on the same day as the decoy operation in this case, but we affirm that part of the Department’s decision relating to Rule 141(b)(5).

The Department’s reasoning on the 141(b)(5) issue is in line with the general views expressed by the Board in a number of cases in the past year or two. One such case is The Southland Corporation (Gonzalez) (July 1, 2000) AB-7392, where the Board characterized as a “play on words” an argument that the deputy who

conducted the identification process was not the officer directing the decoy because he thought other officers were in charge of the decoy operation.

We believe there is full compliance with Rule 141(b)(5) when one of the officers involved in the decoy operation, who has seen or is aware that a sale to the decoy occurred, is delegated, either expressly or by implication, as the person to conduct the identification process, and does so.

ORDER

The decision of the Department is affirmed as to the issue raised under Rule 141(b)(5), and the case is remanded to the Department for such further proceedings as may be necessary or appropriate in light of our discovery ruling.⁴

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
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.