

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

AB-7635

7-ELEVEN, INC., AND MOHAMMED A. HANIFFA dba 7-Eleven Food Store #27558
8707 Lindley Avenue, Northridge, CA 91325,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 20-214337 Reg: 99047860

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

Appeals Board Hearing: May 3, 2001
Los Angeles, CA

ISSUED JUNE 21, 2001

7-Eleven, Inc., and Mohammed A. Haniffa, doing business as 7-Eleven Food Store #27558 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days for two clerks in their employ having sold an alcoholic beverage (beer) to 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).

Appearances on appeal include appellants 7-Eleven, Inc., and Mohammed A. Haniffa, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated April 27, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 1, 1998.

Thereafter, the Department instituted a two-count accusation against appellants charging that George Mahathelge ("Mahathelge") and Thusitha DeSilva ("DeSilva") each sold, furnished, or gave an alcoholic beverage (a six-pack of Budweiser beer) to Kathryn Paschal ("Paschal"), a minor. Paschal was approximately 19 years of age at the time of the alleged sales, and was acting as a minor decoy for the Los Angeles Police Department.

An administrative hearing was held on March 9, 2000. Testimony at the hearing established that a single transaction was involved, in which DeSilva operated the cash register and Mahathelge dealt with the customer. Paschal gave the money for the purchase to Mahathelge, who in turn gave it to DeSilva. DeSilva returned the change to Mahathelge, who gave it to Paschal.

Subsequent to the hearing, the Department issued its decision which determined that the transaction violated Business and Professions Code §25658, subdivision (a), that both Mahathelge and DeSilva were responsible for the sale, and that there had been no violation of Rule 141.

Appellants thereafter filed a timely appeal in which they raise the following issues: (1) Rule 141(b)(5) was violated as a result of the identification of DeSilva as a seller; and (2) Rule 141(b)(5) was violated because the record does not demonstrate that the face to face identification preceded the identification of the seller.

DISCUSSION

I

It would be difficult for this Board to improve upon the analysis employed by the Administrative Law Judge to refute appellant's contention that DeSilva was not a seller:

"2. Counsel presents a unique theory in support of his argument that there has been a violation of the face-to-face identification requirements of Rule 141(b)(2) [sic].² It is claimed that if there was a sale to the minor, clerk Thusitha DeSilva was misidentified as the seller, since as set forth Findings of Fact No. 6, DeSilva was never 'directly' involved any interaction with the minor.

"3. It is claimed that DeSilva's sole function was to work the cash register, and that he had no direct contact with the sale of the beer to the minor in taking her money, giving her change or bagging the beer. His sole duty was to ring up the sale.

"4. It is contended therefore, as DeSilva had nothing to do with the sale to the minor, except as to ring up the transaction on the cash register, he was misidentified as a seller and thus constitutes a violation of Rule 141(b)(2) [sic].³

"5. The theory is creative but does not have merit. As aptly pointed out by the Complainant, the two clerks were obviously working as a team behind the counter. Each clerk was engaged in different parts of the same transaction constituting a sale and a violation. More importantly, both clerks were present and had knowledge of the transaction while it was occurring and had a concomitant legal duty to prevent a sale to the minor, which they failed to do."

II

Appellants' contention that the record is "absolutely silent" as to when the citation was issued is simply wrong.

Officer Romero testified [RT 16] as follows:

"Q. Were either George [Mahathelge] or DeSilva ever cited?"

² We have no doubt that the ALJ intended to refer to Rule 141(b)(5).

³ See footnote 2, supra.

A. Yes, they were.

Q. They both were?

A. Yes, they were.

Q. Is that when you determined their names?

A. Yes.

Q. When was the citation issued? Before or after Ms. Paschal identified them?

A. After. “

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.