

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

AB-7708

File: 20-359551 Reg: 00048836

7-ELEVEN, INC., NARINDER GARCHA, and RESHAM GARCHA
dba 7-Eleven Store #27069
11666 Olympic Blvd., Los Angeles, CA 90064,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: August 17, 2001
Los Angeles, CA

ISSUED NOVEMBER 15, 2001

7-Eleven, Inc., Narinder Garcha, and Resham Garcha, doing business as 7-Eleven Store #27069 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for appellants' clerk selling an alcoholic beverage to a minor decoy working for the Los Angeles Police Department, 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., Narinder Garcha, and Resham Garcha, appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon Logan.

¹The decision of the Department, dated September 14, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 4, 2000. Thereafter, the Department instituted an accusation against appellants charging the unlawful sale of a can of Budweiser beer by appellants' clerk, Madan Sharma ("the clerk"), to 19-year-old Cindy Lepe.

An administrative hearing was held on August 10, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Los Angeles Police Department officer Juan Santa, by Lepe ("the decoy"), and by co-licensee Resham Garcha.

Subsequent to the hearing, the Department issued its decision which determined that the unlawful sale had occurred as charged in the accusation and that no defense had been established.

Appellants thereafter filed a timely appeal in which they contend that Rule 141(b)(2) (4 Cal.Code Regs. §141, subd. (b)(2)) was violated.

DISCUSSION

Appellants contend Rule 141(b)(2) was violated because the ALJ did not properly analyze the decoy's apparent age when he failed to discuss the impact of the decoy's occupation as a security officer for Bloomingdale's department store.

The ALJ made the following finding with regard to the decoy's appearance (Finding VI):

"A. On February 5, 2000, the decoy was 5' 6" tall and weighed 120 pounds. Her hair was dark brown. She had a ring on each hand, but did not have on any make-up. She wore a black T-shirt and blue jeans. A photograph taken of the decoy that day showed that she displayed the physical appearance which could generally be expected of a person under twenty-one years old. Therefore, it follows that the decoy displayed the physical appearance which could generally be expected of a person under 21 years of age, under the actual circumstances

presented to [appellants'] clerk at the time of the sale of the beer.

"B. The decoy's height and weight were the same on the day of the hearing as on February 5.

"C. At the hearing, the Administrative Law Judge observed the decoy's poise, demeanor, maturity, and mannerism. The decoy sat erect, with her hands at her side. She occasionally giggled. However, this was not a sign of nervousness, as the decoy stated that she was not nervous. She also stated that she was not nervous while purchasing the beer from [appellants'] clerk. While testifying, the decoy displayed the nonphysical appearance which could generally be expected of a person under 21 years of age. Therefore, it follows that her nonphysical appearance to the clerk was similar to that at the hearing. Accordingly, the Administrative Law Judge concludes that the decoy displayed the nonphysical appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to Respondents' clerk at the time of the sale of the beer."

Appellants argue that the ALJ has engaged in "intentional albeit subtle non-compliance with the Rule as the Rule has been explained by this Board." This allegation is apparently based on the supposed failure of the ALJ to "review a spectrum [of] indicia of age."

While the ALJ did not go into extensive detail regarding the indicia he relied on, he did point out factors he observed in the decoy's physical and non-physical appearance. He certainly provided enough to satisfy this Board that he applied the correct standard in evaluating the decoy's apparent age for purposes of Rule 141(b)(2).

As for the decoy's work experience, appellants speculate that her position as a department store security officer "is a fairly high level adult occupation requiring a myriad of adult attributes," and without discussing the decoy's "professional career," appellants assert that an analysis of the decoy's age could not be complete.

The Board has addressed this contention several times recently. In 7-Eleven, Inc., and Azzam (4/26/01) AB-7631, the Board said:

"Nothing in Rule 141(b)(2) prohibits using an experienced decoy. A decoy's experience is not, by itself, relevant to a determination of the decoy's

apparent age; it is only the *observable effect* of that experience that can be considered by the trier of fact. While extensive experience as a decoy or working in some other capacity for law enforcement (or any other employer, for that matter) may sometimes make a young person appear older because of his or her demeanor or mannerisms or poise, that is not always the case, and even where there is an observable effect, it will not manifest itself the same way in each instance. There is no justification for contending that the mere fact of the decoy's experience violates Rule 141(b)(2), without evidence that the experience actually resulted in the decoy displaying the appearance of a person 21 years old or older."

Work experience may or may not affect the decoy's appearance, but it is not an indicia of age, and the failure of the ALJ to refer to it is irrelevant.

ORDER

The decision of the Department is affirmed.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 §23088, and shall become effective 30 days following the date of the filing of this order as provided by §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 §23090 et seq.