

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

AB-7734

File: 21-273913 Reg: 99047840

BHAJAN SINGH and JASBIR SINGH dba The Convenience Comer
412 South Burnett, Tipton, CA 93272,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Jeevan S. Ahuja

Appeals Board Hearing: October 11, 2001
San Francisco, CA

ISSUED DECEMBER 13, 2001

Bhajan Singh and Jasbir Singh, doing business as The Convenience Corner (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 30 days, with 10 days stayed for a probationary period of one year, for appellants' clerk selling or furnishing an alcoholic beverage to a minor decoy, 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 Bhajan Singh and Jasbir Singh, appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

¹The decision of the Department, dated November 2, 2000, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on August 3, 1992. Thereafter, the Department instituted an accusation charging that, on March 30, 1999, appellants' clerk, Elma Rodriguez ("the clerk"), sold or furnished a 32-ounce bottle of Bud Light beer to 17-year-old Michelle Villalobos. Villalobos was working as a minor decoy for the Tulare County Sheriff's Department at the time of the sale.

An administrative hearing was held on April 12 and August 16, 2000, at which time oral and documentary evidence was received. At that hearing, testimony concerning the transaction was presented by Villalobos and by Tulare County Sheriff's Deputy Lance Heiden.

The Administrative Law Judge (ALJ) summarized the testimony about the sale as follows (Finding IV):

"When Ms. Villalobos reached the counter, there was a male individual at the counter making a purchase. At some point, he stepped aside and Ms. Villalobos stepped to the counter with the 32-oz bottle of Bud Light beer. The clerk, subsequently identified as Ms. Elma Jisela Rodriguez, asked Ms. Villalobos for her ID. Ms. Villalobos stated she did not have any ID. The clerk again asked Ms. Villalobos for her ID, and Ms. Villalobos again responded that she did not have any ID. The clerk then advised Ms. Villalobos that she could not sell her the beer without ID. Ms. Villalobos then moved to leave the store; she took a half turn when the clerk and the male individual, who had stepped aside, began conversing in Spanish. Ms. Villalobos did not understand what they were saying, but she stopped because they were looking at her and talking. A few seconds later, the clerk advised Ms. Villalobos that she should give the male gentleman the money and he would purchase the beer for her. Ms. Villalobos handed the male gentleman the pre-identified (by serial number) \$20 bill given to her to make the purchase. The clerk placed the \$20 bill into the cash register and gave change to the male gentleman; the 32-oz bottle of Bud Light beer was placed in a bag. When he started to hand the change to Ms. Villalobos, the clerk stopped him and said, "Give it to her outside"; she then handed him the beer. Ms. Villalobos and the gentleman walked outside and, just outside the door to the premises, he handed her the beer. Ms. Villalobos then walked to an unmarked car in which Detective Lance Heiden of the Tulare County Sheriff's Department

was seated. She handed him the beer and summarized for him what had transpired inside the premises."

The ALJ did not mention that Villalobos was accompanied by another decoy, Paula Padilla, throughout the time she was in the premises. [RT 29.] Padilla did not speak at any time while they were in the premises, but later helped Villalobos with her report about the decoy operation by translating for her from Spanish the conversation between the male individual and the clerk. [RT 35, 49-50.]

Subsequent to the hearing, the Department issued its decision which determined that the violation had been proven, and no defense had been established.

Appellants thereafter filed a timely appeal in which they raise the following issues: (1) the Department did not prove that appellants' agent sold or furnished an alcoholic beverage to the minor decoy, and (2) the appearance of the minor decoy violated Rule 141(b)(2) (4 Cal. Code Regs. §141, subd. (b)(2)).

DISCUSSION

I

Appellants contend there is not substantial evidence to sustain a finding that their clerk sold or furnished an alcoholic beverage to the decoy. They argue that the finding that the clerk "caused the beer to end up in the possession of Villalobos," is based solely on the testimony of Villalobos. However, they continue, since she did not understand Spanish, her "belief that there was a sales transaction to her involving the adult male with the knowledge and permission of [the clerk]" must depend upon what Padilla told her about the conversation in Spanish between the male and the clerk. Therefore, they conclude, the reliability of Villalobos's testimony depends upon the

ability of Padilla to interpret Spanish to English, and, since we do not know what Padilla's qualifications were with respect to such translation, the testimony of Villalobos is not admissible under Government Code §11513, subdivision (c), because it cannot be considered to be "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."

Appellants "reasoning" is based on the false premise that we must know what the unidentified male and the clerk said to each other in order to know whether the clerk was involved in furnishing the beer to the minor. However, it is not necessary to know what the clerk and the male said to each other. Regardless of what they said, the clerk's subsequent actions are more than sufficient to support a finding that she furnished the beer to the minor. It is enough that the clerk told Villalobos to give her money to the unidentified male and he would purchase the beer for her. Villalobos complied, the male bought the beer, carried it outside, and gave it and the change to Villalobos there, after being advised by the clerk not to give Villalobos the change while inside the premises.

This decoy obtained an alcoholic beverage in this case with the complicity, if not at the instigation, of the clerk. The clerk, while clearly unwilling to sell an alcoholic beverage directly to a young person without an ID, was just as clearly willing, moments later, to sell an alcoholic beverage to that same person indirectly, through the transparent subterfuge of a third-party purchase. Under these facts, all of which are ascertainable without knowing what the unidentified male and the clerk said to each other in Spanish, the finding that the clerk sold or furnished the beer to the minor is clearly supported by substantial evidence.

II

Appellants contend that, even though the clerk refused to sell directly to this decoy, the decoy was "of such large size and stature" that she violated this Board's pronouncements criticizing the use of "overly large decoys." The decoy was 5'6" tall and weighed 160 pounds.

The ALJ discussed the decoy's physical and nonphysical appearance and concluded that it complied with the requirement of Rule 141(b)(2) that the decoy display the appearance that could generally be expected of a person under the age of 21 under the actual circumstances presented to the clerk. Appellants' bare allegation to the contrary does not persuade us to question the ALJ's finding. The Board is not in a position, even if it were so inclined, to second guess the ALJ, who had the opportunity, which this Board has not, of observing the decoy in person.

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.