

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

AB-7769

File: 20-358109 Reg: 00048589

7-ELEVEN, INC., HARGUNVIR K. SINGH, and HARJINDER P. SINGH
dba 7-Eleven Store #32696
10325-27 Zelzah Avenue, Northridge, CA 91326,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: February 7, 2002
Los Angeles, CA

ISSUED APRIL 17, 2002

7-Eleven, Inc., Hargunvir K. Singh, and Harjinder P. Singh, doing business as 7-Eleven Store #32696 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk having sold an alcoholic beverage to a police 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 7-Eleven, Inc., Hargunvir K. Singh, and Harjinder P. Singh, 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.

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

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 6, 2000. Thereafter, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor on October 7, 1999. Although not stated in the accusation, the minor was acting as a police decoy for the Los Angeles Police Department.

An administrative hearing was held on July 12 and December 8, 2000, at which times oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the sale had occurred as alleged. The Department rejected, as a "transparent fiction," appellants' contention that the clerk reasonably believed the decoy to be a police officer, and, therefore, over 21 years of age, because he saw her in the company of badge-wearing, plain-clothed police officers immediately prior to the sale.

Appellants thereafter filed a timely appeal in which they renew that contention.

DISCUSSION

Appellants assert that, under the circumstances presented to the seller, i.e., the decoy having been seen in the company of police officers immediately prior to the sale, the decoy lacked the appearance of a person under the age of 21, as required by Rule 141(b)(2).

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by

substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Appeals Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

Appellants acknowledge that the decision of the Department turns on the Administrative Law Judge's rejection of the clerk's testimony. They insist, however, that the clerk's testimony "is completely consistent with the Department's witnesses' testimony" in its most crucial components.

Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (Kirby v. Alcoholic Beverage Control Appeals Board (1972) 7 Cal.3d 433, 439 [102 Cal.Rptr. 857]; Kruse v. Bank of America (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control (1968) 261 Cal.App.2d 181 [67 Cal.Rptr. 734, 737]; and Gore v. Harris (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

The credibility of a witness's testimony is determined within the reasonable discretion accorded to the trier of fact. (Brice v. Department of Alcoholic Beverage Control (1957) 153 Cal.2d 315 [314 P.2d 807, 812] and Lorimore v. State Personnel Board (1965) 232 Cal.App.2d 183 [42 Cal.Rptr. 640, 644].)

Appellants' contention that the clerk's testimony was corroborated by that of the

² California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

decoy is premised on her supposedly unequivocal statement that the car in which she arrived parked in the 7-11 parking lot. In fact, the decoy testified she could not recall where the vehicle was parked, other than in “a parking lot.” Her testimony overall indicates, at best, that the car was parked in a parking lot from which the store was visible. [RT I, 29, 34-36.]

There were several conflicts in the testimony which the ALJ had to resolve. For example, the clerk identified Los Angeles police officer Cesar Corona as one of the two men in the car with the decoy. However, Officer Corona testified that he was alone in his own car, and he and the decoy testified that she arrived in a separate car accompanied only by a driver.

Officer Corona testified that he entered the store two or three minutes before the decoy entered. The clerk, on the other hand, said he did not see anyone enter the store during the two to three minutes before the decoy entered.

The clerk claimed he saw that the two men who were in the car with the decoy were wearing badges on their belts when they emerged from the vehicle. Officer Corona, supposedly one of the two, testified that he wore his badge around his neck, under his coat.

Although a closer scrutiny of the record could expose further testimonial conflicts, we do not think it necessary. The ALJ, as the trier of fact, saw and heard the witnesses testify, and we have not been convinced that he erred in ruling as he did.

ORDER

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.