

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

AB-8106

File: 20-221175 Reg: 02053727

H. AZIZIAN, INC., dba Arco AM/PM Mini Market
1985 Broadway, Vallejo, CA 94589,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Robert R. Coffman

Appeals Board Hearing: November 13, 2003
San Francisco, CA

ISSUED FEBRUARY 13, 2004

H. Azizian, Inc., doing business as Arco AM/PM Mini Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 20 days for appellant's clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant H. Azizian, Inc., appearing through its counsel, Gonzalo del Castillo, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 15, 1988. On September 12, 2002, the Department filed an accusation against appellant charging

¹The decision of the Department, dated February 13, 2003, is set forth in the appendix.

that, on April 18, 2002, appellant's clerk, Martin Moore (the clerk), sold an alcoholic beverage to 18-year-old Erin McCalmon. Although not noted in the accusation, McCalmon was working as a minor decoy for a local police Department at the time.

At the administrative hearing on December 6, 2002, Fatemeh Azizian, an owner of appellant corporation, stipulated that the violation had occurred as alleged and the decoy operation complied with the Department's rule 141 (4 Cal. Code Regs., § 141). Azizian described the store policy of checking identification of any alcoholic beverage purchaser who appeared to be under the age of 30, the chart near the register used to determine whether a person is old enough to legally purchase alcohol, and the cash register mechanism that reminds clerks to check identification. This clerk, Azizian said, disregarded all these precautionary measures and sold beer to the decoy because "She was so cute." Azizian also testified that, under its agreement with Arco, the corporation would lose its lease and would not be allowed to continue to run the business if the license were suspended.

Earl Moore, the father of the clerk who sold to the decoy, testified about his son's history of criminal activities, irresponsible behavior, and current incarceration in state prison. Azizian did not know of this background when Martin Moore was hired.

Documentary evidence was received at the hearing, including the records of two previous sale-to-minor violations, in 1997 and in December 2001. In both of these, appellant stipulated to the violations and paid fines in lieu of serving suspensions.

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

Appellant has filed an appeal in which it raises the following issue: Inadmissible evidence, prejudicial to appellant, was introduced at the hearing.

DISCUSSION

Appellant contends that copies of the stipulations and the orders granting offer and compromise in the two prior cases were improperly offered and introduced into evidence. It alleges these improperly admitted documents affected the administrative law judge's determination.

Appellant's argument is based on Evidence Code section 1153, which states:

Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or to any other crime, made by the defendant in a criminal action is inadmissible in any action or in any proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.

This provision is, on its face, inapplicable in the present circumstances. The Department's disciplinary action is not a criminal action, and appellant did not withdraw a plea of, or an offer to plead, guilty to any crime. Even if the information had been improperly admitted, we have no reason to believe that the administrative law judge was influenced by it in finding that the sale-to-minor violation occurred as charged.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.