

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

AB-8620

File: 20-401759 Reg: 06061900

7-ELEVEN, INC., and SSS ATWAL, INC. dba 7-Eleven #2174-19988F
1621 N. Placentia Avenue, Fullerton, CA,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: December 6, 2007
Los Angeles, CA

ISSUED FEBRUARY 26, 2008

7-Eleven, Inc., and SSS Atwal, Inc., doing business as 7-Eleven #2174-19988F (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk, Raj Kumar, having sold a six-pack of Bud Light beer to Kelly Mejia, a 19-year-old Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and SSS Atwal, Inc., appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 3, 2003.

¹The decision of the Department, dated September 21, 2006, is set forth in the appendix.

On February 27, 2006, the Department instituted an accusation against them charging the sale of an alcoholic beverage by Kumar to Mejia on October 18, 2005.

An administrative hearing was held on July 13, 2006, at which time oral and documentary evidence was received. The evidence at the hearing established that Kumar made the sale to Mejia after examining her driver's license and asking her to sign her name on a separate piece of paper,

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and no affirmative defense had been shown.

Appellants have filed a timely appeal in which they raise a single issue: they assert that the Department improperly communicated with its decision maker, by the submission of an ex parte report of hearing.

DISCUSSION

Appellants contend the Department violated the Administrative Procedure Act (APA)² by transmitting a report of hearing, prepared by the Department's advocate at the administrative hearing, to the Department's decision maker after the hearing but before the Department issued its decision. They rely on the California Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [145 P.3d 462, 50 Cal.Rptr.3d 585] (*Quintanar*) and an appellate court decision following *Quintanar*, *Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Board* (2007) 149 Cal.App.4th 116 [57 Cal.Rptr.3d 6]. They assert that, at a minimum, this matter must be remanded to the Department for an

²Government Code sections 11340-11529.

evidentiary hearing regarding whether an ex parte communication occurred.

The Department disputes appellants' allegations of ex parte communications and asks the Appeals Board to remand this matter so that the factual question of whether such a communication was made can be resolved.

We agree with appellants that transmission of a report of hearing to the Department's decision maker is a violation of the APA. This was the clear holding of the Court in *Quintanar, supra*.

Both parties agree that remand is the appropriate remedy at this juncture. We agree, and as we have done in the numerous other cases involving this issue, we will remand the matter to the Department for an evidentiary hearing.

ORDER

This matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.