

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

AB-8728

File: 20-376488 Reg: 06063371

CHEVRON STATIONS, INC., dba Chevron Station
1400 Blue Oaks Boulevard, Roseville, CA 95747,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Michael B. Dorais

Appeals Board Hearing: October 2, 2008
San Francisco, CA

ISSUED FEBRUARY 19, 2009

Chevron Stations, Inc., doing business as Chevron Station (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 5 days for its 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 Chevron Stations, Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Julia H. Sullivan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

¹The decision of the Department, dated August 31, 2007, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on October 17, 2001. The Department filed an accusation against appellant charging that its clerk sold an alcoholic beverage to 19-year-old Tyler Eichler on February 22, 2006. Eichler was working as a police minor decoy at the time.

At the administrative hearing held on April 26, 2007, documentary evidence was received and testimony concerning the sale was presented by Eichler and by the manager of the licensed premises. Subsequently, the Department issued its decision which determined the violation charged was proved and no defense was established.

Appellant has filed an appeal contending the Department: (1) engaged in improper ex parte communications; (2) did not have effective screening procedures in place to prevent its attorneys from acting as both prosecutors and advisors to the decision maker or to prevent ex parte communications; (3) provided an incomplete record on appeal; and (4) did not include in its decision a discussion of the decoy's credibility. Appellant also asks the Appeals Board to delay its decision until the California Supreme Court decides *Morongo Band of Mission Indians v. State Water Resources Control Board* (rev. granted Oct. 24, 2007, S155589) (*Morongo*) and to augment the record with various documents, including any Report of Hearing and General Order No. 2007-09.

DISCUSSION

Appellant contends the Department violated the Administrative Procedure Act (Gov. Code, §§ 11340 - 11529) and due process by engaging in ex parte communication with the Department's decision maker, and by its failure to maintain

effective screening procedures within the legal staff to prohibit its prosecutors from engaging in ex parte communications with the decision maker or the advisors to the decision maker.

The Department requests that this case be remanded for consideration of the ex parte communication issue in accordance with *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 5 [145 P.3d 462, 50 Cal.Rptr.3d 585] (*Quintanar*). Appellant has not objected to the request and we will remand this matter for further proceedings by the Department.

Under the circumstances, there is no reason to delay our remand or to augment the record. The other issues raised can be addressed, if necessary, when, and if, this matter returns to the Appeals Board after remand.

ORDER

The matter is remanded to the Department for further proceedings in accordance with the foregoing opinion.²

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

²This 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.