

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

AB-8731

File: 20-353784 Reg: 06063501

D DEVI OIL, INC., dba Oakdale Shell
1728 Oakdale Road, Modesto, CA 95355,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

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

ISSUED JANUARY 7, 2009

D Devi Oil, Inc., doing business as Oakdale Shell (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's clerks selling alcoholic beverages to police minor decoys on two different dates, violations of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant D Devi Oil, Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Michael Akopyan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

¹The decision of the Department, dated August 16, 2007, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on June 17, 1999. On July 19, 2006, the Department filed a two-count accusation against appellant charging that appellant's clerk sold an alcoholic beverage to 19-year-old Sara Cardoso on October 27, 2005 (count 1), and appellant's clerk David Boldt sold an alcoholic beverage to 18-year-old Amandeep Puwar on May 20, 2006. Although not noted in the accusation, Cardoso and Puwar were working as minor decoys for the Modesto Police Department.

At the administrative hearing held on January 30, 2007, documentary evidence was received and testimony concerning the sale was presented by decoys Cardoso and Puwar and by Modesto police officers Jason Grogan and John Evers. Naresh Goyal, operations manager for the licensed premises, testified about employee training regarding alcoholic beverage sales.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved, and no defense was established. Appellant has filed an appeal making the following contentions: (1) The Department engaged in improper ex parte communications; (2) the Department 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 communication with the decision maker; and (3) the Department provided an incomplete record on appeal. Appellant asks that the Board withhold 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). It also filed a motion to augment the record with various documents, including any Report of Hearing, General Order No. 2007-09, and documents regarding review of proposed decisions and the structure of its legal staff.

DISCUSSION

Appellant contends the Department violated the Administrative Procedure Act (APA)² 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 this issue in accordance with *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*). Appellant has not objected to this request. Therefore, we will remand this matter for further proceedings regarding any ex parte communications.

Under the circumstances, there is no need to delay our decision to remand this case to the Department for further proceedings. Similarly, there is no need to augment the record. Appellant will have the opportunity to include any omitted documents in the record when this matter is remanded to the Department.

ORDER

The 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

²Government Code sections 11340 -11529.

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.