

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

AB-8743

File: 20-385598 Reg: 07065188

7-ELEVEN, INC., and ATAMJIT SINGH DHANOA, dba 7-Eleven No. 2233 16422D
370 Leavesley Road, Gilroy, CA 95020,
Appellants/Licensees

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 15, 2009

7-Eleven, Inc., and Atamjit Singh Dhanoa, doing business as 7-Eleven No. 2233 16422D (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk selling an alcoholic beverage to a Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Atamjit Singh Dhanoa, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Wieworka.

¹The decision of the Department, dated August 22, 2007, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 9, 2002. On March 5, 2007, the Department filed an accusation against appellants charging that, on December 29, 2006, appellants' clerk sold an alcoholic beverage to 19-year-old Ashkan Malek. Although not noted in the accusation, Malek was working as a minor decoy for the Department at the time.

At the administrative hearing held on July 3, 2007, documentary evidence was received and testimony concerning the sale was presented by Malek (the decoy) and by Casey Tinloy, a Department investigator.

The Department's decision determined that the violation charged was proved and no defense to the charge was established. Appellants then filed an appeal contending: (1) The Department engaged in improper *ex parte* communications with the decision maker, and (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 and to prevent *ex parte* communications.

DISCUSSION

The Department has filed a brief in which it "requests this matter be remanded for further hearing and evidence as to the alleged *ex-parte* communication." (Dept. brief, p. 2.) It also "requests that it be reserved the right to argue the facts, and evidence, as to any other issues presented by the Appellants, should this matter return to the Board, after further hearing on the *ex-parte* communication issue." (*Ibid.*)

Based upon our review of the record, the Department's request appears to be reasonable and appropriate. There being no objection from appellants' counsel, we will remand this matter to the Department for an evidentiary hearing on the *ex parte*

communication issue, without prejudice to the Department's right to argue the facts and evidence as to any other issue should the matter return to the Board after such hearing.

ORDER

This matter is remanded to the Department for an evidentiary hearing 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.