

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

AB-8836

File: 20-318244 Reg: 07066077

7-ELEVEN, INC., SHASHI KANT KAMBOJ, and VEENA KAMBOJ, dba 7-Eleven No.
2133-16834
525 West Columbus Street, Bakersfield, CA 93301
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: May 7, 2009
Los Angeles, CA

ISSUED AUGUST 18, 2009

7-Eleven, Inc., Shashi Kant Kamboj, and Veena Kamboj, doing business as 7-Eleven No. 2133-16834 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their off-sale beer and wine license for 10 days, all conditionally stayed for one year, for their clerk, Harjinder Singh, having sold a six-pack of Bud Light beer, an alcoholic beverage, to Skylar Holmes, an 18-year-old police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Shashi Kant Kamboj, and Veena Kamboj, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control,

¹The decision of the Department, dated February 20, 2008, is set forth in the appendix.

appearing through its counsel, Jennifer Casey.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 23, 1996. Thereafter, on June 18, 2007, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor on April 17, 2007. Although not stated in the accusation, the minor was participating in a decoy operation conducted by the Bakersfield Police Department.

Documentary evidence was received and testimony concerning the violation charged was presented at an administrative hearing held on December 20, 2007. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and that no defense had been established under Business and Professions Code section 25660 or under Department Rule 141 (4 Cal. Code Regs., §141.)

Appellants filed a timely notice of appeal in which they contend that the decision must be reversed because the Department certified two completely different administrative records to the Appeals Board.

DISCUSSION

I

Appellants contend that the decision must be reversed because the Department certified two completely different administrative records to the Appeals Board. Appellants list 12 documents accompanying a December 4, 2008, certification and three documents accompanying a January 21, 2009, certification. The contents of the two are mutually exclusive.

The problem involving the omission from the initial certified administrative record

relates to documents concerning an unsuccessful motion by appellants to compel discovery. The information sought through discovery related to the appearance of decoys in cases other than the case involving appellants.

The issue in this case is identical with that in a large number of cases heard previously by the Board where there have been two certified records. The Board has treated the issue as one involving a procedural error which seldom justifies reversal. (*Garfield Beach LLC (2009) AB-8767.*) This is particularly true where, as here, appellants have not been able to identify any prejudice flowing from the faulty initial certification.

None of appellants' appeal issues relate to the discovery motion, which sought information about decoys in other cases. It was only these documents which were omitted from the original certification. It is unreasonable to think these documents, whether or not part of what the decision maker reviewed, would have had any bearing on the issues on the merits. Their omission from the record furnished to the Appeals Board was, at most, a clerical oversight.

In any event, the not-so-labeled, but equivalent, supplemental certification supplying the missing documents was filed by the Department almost two months prior to the filing of appellant's opening brief. Appellant has not claimed any other documents were omitted from the record, and offers only speculation that documents not properly part of the record were included with the documents available to the decision maker.

It is obvious from the two certifications, when read together, that the second certification was intended to supplement the original certification, so what exists is little more than a clerical oversight in identifying a supplemental filing.

This case is nothing like *Circle K Stores, Inc.* (2007) AB-8597, where documents were included in the certified record that clearly should not have, documents that might well have had an adverse impact upon the appellant in that case.

ORDER

The decision of the Department is affirmed.²

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

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.