

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

AB-8841

File: 20-214374 Reg: 07065210

7-ELEVEN, INC., and JACK and KATHLEEN FULLER, dba 7-Eleven Store 2237 14113
3040 West Benjamin Holt, Stockton, CA 95219,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: October 1, 2009
San Francisco, CA

ISSUED JANUARY 6, 2010

7-Eleven, Inc., Jack Fuller, and Kathleen Fuller, doing business as 7-Eleven Store 2237 14113 (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 Jack and Kathleen Fuller, 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, Dean R. Lueders.

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

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 1, 1988. On March 8, 2007, the Department filed an accusation against appellants charging that, on December 28, 2006, their clerk sold an alcoholic beverage to 19-year-old Jasmine Duran. Although not noted in the accusation, Duran was working as a minor decoy for the Department at the time.

At the administrative hearing held on November 6, 2007, documentary evidence was received and testimony concerning the sale was presented. 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 abused its discretion by imposing a standard penalty when appellant was entitled to mitigation of the penalty; (2) the Department failed to provide a complete record on appeal; and (3) the Department violated its own General Order No. 2007-09. Appellants also filed a Motion to Augment Record, asking the Board to order the Department to provide numerous documents, including: General Order No. 2007-09 and related documents; Request for Comments/Arguments from the Department's Hearing and Legal Unit and responses to the Request; all communications to and from the Hearing and Legal Unit, the Department prosecutor, and the Director regarding the penalty recommended in the 309 Form and the proposed penalty; and the 309 Forms, the Proposed Decisions, and the Orders Concerning Proposed Decision for Comments/Argument in three other Department disciplinary cases.

DISCUSSION

The Department has asked the Board to remand this case to it. After remand, the Department plans to "dismiss the case" (presumably meaning that it will dismiss the accusation). In its letter to the Board dated September 29, 2009, two days before the scheduled oral argument in this matter, the Department stated that, while not admitting any wrongdoing, it wanted to "alleviate any possible appearance of impropriety."

ORDER

In accordance with the request of the Department, this matter is remanded to the Department for dismissal.

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