

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

AB-8846

File: 20-358701 Reg: 07066859

7-ELEVEN, INC., and AMIR MOUSEVI, dba 7-Eleven Store No. 32326
3251 Business Park Drive, Vista, CA 92081,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: September 3, 2009
Los Angeles, CA

ISSUED MARCH 23, 2010

7-Eleven, Inc., and Amir Mousevi, doing business as 7-Eleven Store No. 32326 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, but stayed 10 days of the suspension subject to a probationary period of one year, for their clerk selling an alcoholic beverage to a law enforcement minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Amir Mousevi, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Michael Akopyan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated February 28, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on October 19, 1999. The Department filed an accusation against appellants charging that their clerk sold an alcoholic beverage to 17-year-old Meghan Post on January 31, 2007. Although not noted in the accusation, Post was working as a minor decoy for the San Diego Sheriff's Department at the time.

At the administrative hearing held on January 10, 2008, 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 the decision must be reversed because the Department failed to provide a complete certified administrative record. They also filed a Motion to Augment Record, asking the Appeals Board to augment the record with any report of hearing included in the Department file, General Order No. 2007-09 (the Order), and any documents related to the report of hearing or the Order.

DISCUSSION

Appellants contend that the decision must be reversed because the Department provided an incomplete administrative record in this appeal. We conclude that the appeal must be dismissed for lack of jurisdiction.

Appellants recited the general statutory grounds for an appeal to this Board in their notice of appeal. In their brief, however, they abandoned those grounds, limiting their argument to the single issue of the Department's failure to include certain documents in the certified administrative record. The missing documents were the

proposed decision of the administrative law judge and the Department's certification adopting the proposed decision as the Department's own.²

An incomplete certified record, however, is not a basis for an appeal. Any deficiency in the record is cured by having the record augmented, either by an informal request or a Motion to Augment. While appellants did file a Motion to Augment in the present case, they did not include the documents omitted from the record among the items requested in the motion.³

It is the appellant's responsibility to provide the reviewing tribunal with an adequate record. (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354-355 [25 Cal.Rptr.2d 852]; *Hothem v. City and County of San Francisco* (1986) 186 Cal.App.3d 702, 705 [231 Cal.Rptr. 70]; *Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 453 [190 Cal.Rptr. 893].) If the record provided by the Department is incomplete, it is the appellant's responsibility to make sure that the deficiency is cured:

[T]he burden is always upon an appellant to use reasonable diligence to perfect and prosecute his appeal. Where some step is required by the rules to be taken by an officer of the court and such officer delays unreasonably the appellant cannot sit by indefinitely and do nothing. He must exercise a reasonable amount of diligence to investigate any unwarranted delays and if necessary take steps to see that the legal duty is performed.

(*Flint v. Board of Medical Examiners* (1946) 72 Cal.App.2d 844, 846 [165 P.2d 694].)

"The existence of an appealable judgment is a jurisdictional prerequisite to an appeal." (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [32 Cal.Rptr.2d 275, 876 P.2d

²There is no dispute that these documents should have been included in the record. The Department states in its brief that once it became aware of the omission, it served a supplemental certified record containing the missing documents.

³The motion filed requests documents that have nothing to do with the issue raised on appeal. The motion is denied.

1074]; *Olson v. Cory* (1983) 35 Cal.3d 390, 398 [197 Cal.Rptr. 843, 673 P.2d 720].)

While the Department's decision was an appealable judgment, appellants did not base their appeal on that decision, but on the non-appealable procedural issue of the incomplete record. Appellants were under a duty, as soon as they received the certified record from the Department, to have the Department cure any deficiencies in the record. (Cf. Cal. Rules of Court, rule 8.155(b) [procedures for curing omissions from record].) Their failure to do so does not convert an easily curable incomplete record into the basis for pursuing an appeal. Under the circumstances, this Board does not have jurisdiction to consider this appeal and it must be dismissed.

ORDER

The appeal is dismissed.⁴

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

⁴This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

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