

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

AB-8887

File: 20-434216 Reg: 07066551

REGIONAL EXPRESSTAX SERVICES INC., dba Jefferson Street Chevron & Deli
27570 Jefferson Avenue, Temecula, CA 92590,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

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

ISSUED DECEMBER 1, 2009

Regional Expresstax Services Inc., doing business as Jefferson Street Chevron & Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its 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 appellant Regional Expresstax Services 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, Valoree Wortham.

¹The decision of the Department, dated May 2, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on March 3, 2006. On July 26, 2007, the Department filed an accusation charging that appellant's clerk sold an alcoholic beverage to 16-year-old Jonathon Siever on May 22, 2007. Although not noted in the accusation, Siever was working as a minor decoy for the Department at the time.

At the administrative hearing held on March 26, 2008, documentary evidence was received, and testimony concerning the sale was presented by Siever (the decoy) and by Department investigator Eric Burlingame. Appellant presented no witnesses.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established.

Appellant filed an appeal contending that the administrative law judge (ALJ) erred in denying the motion appellant made before the administrative hearing to compel discovery.

DISCUSSION

Appellant requested discovery from the Department in this case, including, in paragraph 12, a request

[f]or any and all investigative and/or supplemental reports, prepared by or on behalf of any and all law enforcement agencies, including but not limited to police departments, sheriff departments and the Department of Alcoholic Beverage Control, pertaining and/or relating to any violation of Business & Professions Code S. 25658 and/or any citation issued for such violation involving minor Jonathon Siever on or about May 22, 2007 at any and all locations where such violation occurred including, but not limited to any and all locations where a citation for such violation was issued.

When the Department provided other requested materials, but not those requested in paragraph 12, appellant filed a motion to compel pursuant to Government

Code section 11507.7. After a hearing and briefing from both parties, the ALJ denied the motion.

Appellant contends it was error to deny its motion because the items sought were clearly relevant, were calculated to lead to admissible evidence, and were not protected by the privacy rights of any individuals. Denial of the motion, appellant argues, prevented it from adequately preparing its defense, and the Department's decision, therefore, must be dismissed.

The Department's reply brief contends that appellant's contention is baseless because appellant's premises was the only one, out of 14 visited, that sold to the decoy during that decoy operation. A declaration of the Department's counsel asserts that, as part of the Department's discovery response, appellant was provided with a copy of the Decoy Operation Results (form ABC-338) showing this.

If this is true, the Department is correct, and appellant's contention has no merit. Appellant did not contest the Department's assertion with a closing brief or at oral argument, so we may assume that the Department is correct.

Even if we were to disregard the ABC-338 form, however, appellant's contention would be without merit. Appellant's argument repeats, in substance, arguments raised by its counsel and repeatedly rejected by this Board over the last ten years.² We see no need to reiterate what has been said so many times before. The contention lacks merit.

²Between 2000 and mid-2009, close to 100 cases have been filed by appellant's attorneys raising this issue, often repeating the arguments verbatim from earlier briefs. The Board has rejected the argument in every appeal. For representative discussions of the issue over the years, see, e.g., *Claim Jumper Restaurants, LLC* (2009) AB-8818; *Garfield Beach CVS, LLC* (2008) AB-8723; *7-Eleven, Inc./Pummay* (2007) AB-8600; *7-Eleven, Inc./Dennis* (2006) AB-8428; *Idrees* (2001) AB-7611; *Laguna Beach Brewing Company, Inc.* (2000) AB-7247.

ORDER

The decision of the Department is affirmed.³

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

³This 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.