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

AB-8899
File: 20-411385 Reg: 07067525

7-ELEVEN, INC., HARPREET KUAR SAHOTA, and RAVINDER SINGH SAHOTA,
dba 7-Eleven Store No. M2237-24462D
1201 South Mooney Boulevard, Visalia, CA 93277,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

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

ISSUED FEBRUARY 2, 2010

7-Eleven, Inc., Harpreet Kuar Sahota, and Ravinder Singh Sahota, doing business as 7-Eleven Store No. M2237-24462D (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] which suspended their license for 15 days for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Harpreet Kuar Sahota, and Ravinder Singh Sahota, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Alicia R. Ekland, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kelly Vent.

---

[1]The decision of the Department, dated June 24, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 27, 2004. On December 19, 2007, the Department filed an accusation against appellants charging that, on October 25, 2007, appellants' clerk sold an alcoholic beverage to 18-year-old Alexis Robertshaw. Although not noted in the accusation, Robertshaw was working as a minor decoy for the Visalia Police Department at the time.

At the administrative hearing held on April 17, 2008, documentary evidence was received and testimony concerning the sale was presented by Robertshaw (the decoy) and by Brian Winter, a Visalia police officer. Appellants presented no witnesses.

The testimony established that the decoy was not asked her age or for identification before purchasing a 12-pack of Bud Light beer. Appellants argued that rules 141(b)(2)[2] and 141(b)(5) were violated during the decoy operation.

The Department's decision determined that the violation charged was proved and no affirmative defense was established. Appellants then filed an appeal contending: (1) Rule 141(b)(2) was violated and (2) the administrative law judge (ALJ) did not include in the decision the analysis required by *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 [113 Cal.Rptr. 836] (*Topanga*).

DISCUSSION

I

Rule 141(b)(2) requires that "[t]he decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual

---

[2]References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

circumstances presented to the seller of alcoholic beverages at the time of the alleged offense." Rule 141(c) provides that violation of the rule is a complete defense to a sale-to-minor charge. Appellants contend the ALJ erred in finding the decoy complied with the rule because the decoy was wearing "light makeup," had a "larger body type," and was wearing clothing that was not "baggy or loose."

Whether the decoy's appearance complies with rule 141(b)(2) is a question of fact to be determined by the trier of fact. The ALJ has the benefit of seeing and hearing the decoy in person, while the Board has before it only the "cold record." This Board has repeatedly said that it may not, and will not, second guess the determination of the ALJ as to the apparent age of a decoy unless that determination is clearly unreasonable.

Appellants have not shown us any reason to doubt the ALJ's determination in this case. They merely go over the same evidence the ALJ had before him and ask this Board to reach a different conclusion. We see no basis for doing so. The ALJ determined that the decoy in this case complied with the rule and appellants have not shown that determination to be unreasonable or an abuse of discretion.

II

Appellants contend the decision must be reversed because the ALJ failed to consider evidence presented at the hearing about the decoy's experience working with the Visalia Police Department. Failing to consider this evidence, appellants assert, means that the ALJ did not "provide sufficient reasoning" to support his finding that the decoy appeared to be under the age of 21. Appellants equate this with a failure to provide the "analytical bridge" between the evidence and the conclusions that is

required by *Topanga, supra*. Appellants rely on language in *Silva & Morris* (2001) AB-7721, where the Appeals Board said that to demonstrate the analytical bridge, the decision must set out "the reasoning, grounds, and patterns of thought" the ALJ used to reach the decision.

Appellants are wrong on all counts. The ALJ does not need to provide reasoning to support his finding that the decoy appeared to be under the age of 21. The ALJ is able to observe the decoy and make the finding regarding the decoy's apparent age based on that observation; it is an inherently subjective determination. (See, e.g., *Askar & Mbarkeh* (2004) AB-8182; *GMRI, Inc*. (2004) AB-7336c; *Von's Companies, Inc.* (2003) AB-7949.) As the Board said in *O'Brien* (2001) AB-7751:

> An ALJ's task to evaluate the appearance of decoys is not an easy one, nor is it precise. To a large extent, application of such standards as the rule provides is, of necessity, subjective; all that can be required is reasonableness in the application. As long as the determinations of the ALJ's are reasonable and not arbitrary or capricious, we will uphold them.

In any case, appellants' assertion that *Topanga*, *supra*, requires some analysis or explanation to support a finding is also wrong. The Board addressed a similar contention in a prior appeal:

> Appellants misapprehend *Topanga*. It does not hold that findings must be explained, only that findings must be made. This is made clear when one reads the entire sentence that includes the phrase on which appellants rely: "We further conclude that implicit in section 1094.5 is a requirement that the agency which renders the challenged decision *must set forth findings* to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga*, *supra*, 11 Cal.3d 506, 515, italics added.)
>
> In *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241, 258-259 [242 Cal.Rptr. 760], the court quoted with approval, and added italics to, the comment regarding *Topanga* made in *Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374, 389 [137 Cal.Rptr. 909]: " 'The holding in Topanga was, thus, that *in the total absence of findings in any form on the issues supporting the existence of conditions*

> *justifying a variance*, the granting of such variance could not be sustained.' " In the present appeal, there was no "total absence of findings" that would invoke the holding in *Topanga*.

(*7-Eleven, Inc. & Cheema* (2004) AB-8181.)

The language appellants rely on from *Silva & Morris*, *supra*, was explicitly overruled by the Appeals Board in *United El Segundo* (2007) AB-8517, in footnote 3:

> Appellant also relies on the Appeals Board's decision in *Silva & Morris* (2001) AB-7721, where the Board stated that "The reasoning of the *Topanga* case demands that the Department set forth the reasoning, grounds, and patterns of thought which caused the Department to decide that the penalty levied is rational and legally sufficient." On its face, the language of *Silva & Morris* does not stand up to scrutiny, since it dealt with a penalty determination, while *Topanga* applies only to the factual findings in an administrative decision. The language quoted from *Silva & Morris* was implicitly overruled by the analysis of *7-Eleven, Inc./Cheema*, quoted in the text, and we now specifically reject and overrule that language as an erroneous statement of the law.

Appellants' contention is meritless.

ORDER

The decision of the Department is affirmed.[3]

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

---

[3]This 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.