

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

AB-8951

File: 20-373629 Reg: 06064436

7-ELEVEN, INC., and MALLDIV & ASSOCIATES, dba 7-Eleven # 2136-26165
5583 Reseda Boulevard, Tarzana, CA 91356,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: November 4, 2010
Los Angeles, CA

ISSUED DECEMBER 7, 2010

7-Eleven, Inc., and Malldiv & Associates, doing business as 7-Eleven # 2136-26165 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, with 5 days stayed pending completion of a one-year probationary period, 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., and Malldiv & Associates, appearing through their counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated September 19, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on March 12, 2001. On November 30, 2006, the Department filed an accusation against appellants charging that, on September 26, 2006, appellants' clerk sold an alcoholic beverage to 19-year-old Mariana Olvera Reyes. Although not noted in the accusation, Reyes was working as a minor decoy for the Los Angeles Police Department at the time.

At the administrative hearing held on August 8, 2008, documentary evidence was received and testimony concerning the sale was presented by Reyes (the decoy) and by Dennis Mesa, a Los Angeles police officer. Ali Amjad, the manager at the premises, also testified.

Prior to the hearing, appellants had served the Department's District Administrator with a subpoena, but he did not appear at the hearing. Appellants requested a continuance to have the District Administrator present at the hearing, and the Department moved to quash the subpoena. The administrative law judge (ALJ) granted the Department's motion. A discussion of the facts pertaining to the violation is not necessary for resolution of this appeal.

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 that the ALJ prevented them from presenting evidence that the Department used a prohibited underground regulation in determining the penalty in this case. Appellants do not dispute that the violation occurred as charged.

DISCUSSION

Appellants contend that they were prevented from presenting evidence regarding the Department's use of an underground regulation in determining the penalty because

the ALJ granted the Department's motion to quash a subpoena served on District Administrator Salao.

The Board has addressed and rejected this argument before. (See, e.g., *Yummy Foods LLC* (2010) AB-8950; *Randhawa* (2010) AB-8973; *Chevron Stations, Inc.* (2010) AB-8974; *7-Eleven, Inc./ Wong* (2010) AB-8991; *7-Eleven, Inc./ Solanki* (2010) AB-9019.) Even if the District Administrator testified as the offer of proof said he would, that testimony would not establish that an underground regulation existed. This would be a valid reason for quashing the subpoena.

In this case, there is an additional reason the ALJ was correct in quashing the subpoena. The subpoena was served on District Administrator Salao, but he was not the District Administrator at the time the accusation was issued and the penalty recommendation was developed. Therefore, his testimony would not be relevant. This is reason enough, by itself, to quash the subpoena. The ALJ did not err by quashing the subpoena.

ORDER

The decision of the Department is affirmed.²

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

²This 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.