

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

AB-9055

File: 20-369959 Reg: 08069999

7-ELEVEN, INC., and GURMEET and HARJINDER WARAICH,
dba 7-Eleven # 2133-16769
804 West Cook Street, Santa Maria, CA 93458,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: August 5, 2010
Los Angeles, CA

ISSUED SEPTEMBER 22, 2010

7-Eleven, Inc., and Gurmeet and Harjinder Waraich, doing business as 7-Eleven # 2133-16769 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, with 5 days stayed on the condition that they successfully complete 1 year of probation, for their clerk selling an alcoholic beverage to a person under the age of 21, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Gurmeet and Harjinder Waraich, appearing through their counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated July 13, 2009, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on October 23, 2000. On November 18, 2008, the Department filed an accusation charging that appellants' clerk sold an alcoholic beverage to 20-year-old Matthew Lundien on October 16, 2008.

At the administrative hearing held on June 9, 2009, documentary evidence was received and testimony concerning the sale was presented by Lundien (the "minor") and by Department investigator Nicholas Sartuche. Appellants' store manager, Arwinder Chahel, testified about what the clerk told him after the sale to the minor. The clerk did not testify.

The Department's decision determined that the violation charged was proved and no affirmative defense was established.

Appellants then filed an appeal contending that (1) the ALJ erred in finding they had not established a defense under Business and Professions Code 25660 and (2) the penalty is excessive.

DISCUSSION

I

Appellants contend that the ALJ should not have believed the minor's testimony that he had not shown or possessed false identification because he was drunk at the time of the transaction and his testimony was "conflicting." Instead, the ALJ should have believed the manager's testimony that the clerk said he had checked the minor's identification previously and it showed that he was 22.

To establish a defense under section 25660, a licensee must establish that an identification which reasonably purported to be issued by a government agency had been displayed and that the clerk's reliance on that identification was reasonable.

(Dept. of Alcoholic Bev. Control v. Alcoholic Beverage Control Appeals Bd. (2004) 118 Cal.App.4th 1429 [13 Cal.Rptr.3d 826] (Masani).) The burden in such a case is on the party asserting the defense.

The identification purportedly relied on by the clerk was not produced at the hearing. The Board has repeatedly rejected a section 25660 defense under these circumstances, as explained in *Circle K Stores, Inc. (2003) AB-8116*:

Even if the minor had admitted that he possessed false identification, the absence of any evidence of what it might have been dooms appellant's section 25660 defense. With no opportunity to view the supposed false identification, neither the ALJ nor this Board could make any assessment whatsoever as to whether a clerk may have reasonably relied upon it.

(Accord, Fulton & Fulton, Inc. (2008) AB-8638.)

Because the clerk did not testify and the purported identification was not produced, appellants have failed to prove either that the clerk was shown identification previously or, if shown, that it was reasonable for the clerk to rely on the identification. Appellants have not carried their burden of establishing a section 25660 defense.

II

Appellants contend that they were entitled to less than the standard 15-day penalty because no prior disciplinary record was established and other mitigating factors were shown.

Appellants have no basis for their complaint. The ALJ acknowledged that mitigation was appropriate and conditionally stayed 5 days of the 15-day penalty. They received a mitigated penalty.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
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.