

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

AB-9163

File: 21-479640 Reg: 10072688

GARFIELD BEACH CVS LLC and LONGS DRUG STORES CALIFORNIA LLC,
dba CVS Pharmacy # 9792
690 East Foothill Boulevard, Upland, CA 91786,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: February 2, 2012
Los Angeles, CA

ISSUED FEBRUARY 29, 2012

Garfield Beach CVS LLC and Longs Drug Stores California LLC, doing business as CVS Pharmacy # 9792 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ 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 Garfield Beach CVS LLC and Longs Drug Stores California LLC, appearing through their counsel, Ralph B. Saltsman and Autumn Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated March 16, 2011, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on September 10, 2009. On March 11, 2010, the Department filed an accusation against appellants charging that, on October 23, 2009, appellants' clerk, Amanda Dourseau (the clerk), sold an alcoholic beverage to 19-year-old Madelyn Kozich. Although not noted in the accusation, Kozich was working as a minor decoy for the Department at the time.

At the administrative hearing held on January 19, 2011, documentary evidence was received and testimony concerning the sale was presented by Kozich (the decoy) and by Spencer Jones, a Department investigator. Appellants presented no witnesses.

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 rule 141(b)(5)² was violated.

DISCUSSION

I

Appellants contend that Department rule 141(b)(5) was violated during this decoy operation and, therefore, the decision should be reversed. Rule 141(b)(5) provides:

Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverages.

They assert that, since the decoy testified that she was 20 feet away from the clerk when the identification occurred, the clerk could not reasonably have been aware that

²References 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.

she was being identified as the seller. Appellants argue further that the ALJ did not explain how he reached the conclusion that the rule was not violated, in violation of the precepts of *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506 [113 Cal.Rptr. 836] (*Topanga*), and the requirements of Government Code section 11425.50.

Review by the Appeals Board of a Department decision is limited.

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citation.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826] (*Masani*).)

Appellants' contention is based on testimony of the minor decoy; the investigator testified that the decoy and the clerk were about three or four feet apart when the identification was made. Appellants argue that the ALJ improperly found the investigator's testimony more credible than the decoy's.

It is a fundamental precept of appellate review that it is the province of the ALJ, as trier of fact, to make determinations as to witness credibility and to resolve any conflicts in the testimony. (*Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 189 [42 Cal.Rptr. 640]; *Brice v. Dept. of Alcoholic Bev. Control* (1957) 153 Cal.App.2d 315, 323 [314 P.2d 807].) The Appeals Board will not interfere with those determinations in the absence of a clear showing of an abuse of discretion.

The ALJ's credibility determination is not an abuse of discretion simply because appellants disagree with it. The record clearly contains substantial evidence to support the determination of the ALJ and this satisfies the Board's standard of review.

Appellants' demand for an explanation of the ALJ's reasoning, relying on *Topanga, supra*, 11 Cal.3d 506, is rejected in this case, as it has been many times before. (See, e.g., *7-Eleven, Inc./Loza* (2011) AB-9135; *United El Segundo, Inc.* (2007) AB-8517; *7-Eleven, Inc./Cheema* (2004) AB-8181.) As this Board has often stated, the Department is not required to explain its reasoning. (*Fairfield v. Superior Court of Solano County* (1975) 14 Cal.3d 768, 778-779 [122 Cal.Rptr. 543].)

Likewise, the Board has consistently rejected, for many years, the argument that Government Code section 11424.50 imposes a requirement that the ALJ explain his credibility determinations. (See, e.g., *The Auld Dubliner, LLC* (2009) AB-8798; *Hong* (2007) AB-8596; *7-Eleven, Inc./Janizeh* (2005) AB-8306; *Circle K Stores, Inc.* (2003) AB-7977; *Chuenmeersi* (2002) AB-7856; *7-Eleven, Inc./Singh* (2002) AB-7792; *Oliver* (2001) AB-7424.) We reject it again here.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
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.