

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

AB-9288

File: 20-354955 Reg: 11076109

7-ELEVEN, INC., JAGTAR SINGH SAMRA, and SANDEEP KAUR SAMRA,
dba 7-Eleven #2133-13893
20519 Roscoe Boulevard, Canoga Park, CA 91306,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: June 6, 2013
Los Angeles, CA

ISSUED JULY 29, 2013

7-Eleven, Inc., Jagtar Singh Samra, and Sandeep Kaur Samra, doing business as 7-Eleven #2133-13893 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days, all stayed provided appellant completes one year of discipline-free operation, 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., Jagtar Singh Samra, and Sandeep Kaur Samra, appearing through their counsel, Ralph Barat Saltsman, and

¹The decision of the Department, dated July 17, 2012, is set forth in the appendix.

the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 26, 1999. On November 28, 2011, the Department filed an accusation against appellants charging that, on October 17, 2011, appellants' clerk, Gill Singh (the clerk), sold an alcoholic beverage to 19-year-old Justin Soderstrom. Although not noted in the accusation, Soderstrom was working as a minor decoy for the Los Angeles Police Department (LAPD) at the time.

At the administrative hearing held on April 19, 2012, documentary evidence was received and testimony concerning the sale was presented by Soderstrom (the decoy) and by Kevin Quartas, Edgar Arca, and Micaela Farias, LAPD officers.

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

Appellants then filed a timely appeal contending that Department rule 141(b)(2)² violates the due process clauses of the California and United States Constitutions.

DISCUSSION

Appellants contend that rule 141(b)(2) violates both federal and state constitutional due process requirements by presenting a standard that is impossible for the ALJ to meet. Appellants assert that the ALJ cannot determine compliance with rule 141(b)(2) without having observed the decoy at the time of the sale. This issue was not raised at the administrative hearing.

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.

It is settled law that the failure to raise an issue or assert a defense at the administrative hearing level bars its consideration when raised or asserted for the first time on appeal. (*Hooks v. California Personnel Board* (1980) 111 Cal.App.3d 572, 577 [168 Cal.Rptr. 822]; *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 576 [146 Cal.Rptr. 653]; *Reimel v. House* (1968) 259 Cal.App.2d 511, 515 [66 Cal.Rptr. 434]; *Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 377 [55 Cal.Rptr. 23]; *Harris v. Alcoholic Beverage Control Appeals Board* (197 Cal.App.2d 1182, 187 [17 Cal.Rptr. 167].)

This extends to constitutional issues, as “[i]t is the general rule applicable in civil cases that a constitutional question must be raised at the earliest opportunity or it will be considered as waived.” (*Jenner v. City Council of Covina* (1958) 164 Cal.App.2d 490, 498 [331 P.2d 176].) Since appellants did not raise this issue at the administrative hearing, this Board is entitled to consider it waived. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §400, p. 458.)

Even though the issue was waived in this matter, we would refer appellants to a full discussion of the Board’s position on challenges to the constitutionality of rule 141(b)(2), which can be found by reading *7-Eleven, Inc.* (2013) AB-9248, *Garfield Beach* (2013) AB-9258, and, most recently, *7-Eleven, Inc.* (2013) AB-9273. These opinions make clear our unanimous view that (1) the argument is devoid of merit; and (2) continued, repeated assertion of the same contention justifies the imposition of sanctions upon counsel apparently intent on flouting the Board’s rulings.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, 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.