

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

AB-9580

File: 20-517865; Reg: 15052818

7-ELEVEN, INC., RAMESH SHARMA, and SEEMA SHARMA,
dba 7-Eleven Store #34898
1901 North Oxnard Boulevard, Oxnard, CA 93036-2904,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: August 3, 2017
Los Angeles, CA

ISSUED AUGUST 17, 2017

Appearances: *Appellants:* Donna J. Hooper, of Solomon, Saltsman & Jamieson,
as counsel for 7-Eleven, Inc., Ramesh Sharma, and Seema
Sharma,

Respondent: Jonathan V. Nguyen, as counsel for Department of
Alcoholic Beverage Control.

OPINION

7-Eleven, Inc., Ramesh Sharma, and Seema Sharma, doing business as 7-Eleven Store #34898, appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 15 days because their clerk sold an alcoholic beverage to a Department minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

¹The decision of the Department, dated March 17, 2016, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on February 22, 2012. On July 27, 2015, the Department filed an accusation against appellants charging that, on June 17, 2015, appellants' clerk, Jaggi Singh (the clerk), sold an alcoholic beverage to 19-year-old Megan Soller. Although not noted in the accusation, Soller was working as a minor decoy for the Department of Alcoholic Beverage Control at the time.

On August 10, 2015, appellants filed and served on the Department a Special Notice of Defense pursuant to Government Code section 11506, as well as a Request for Discovery pursuant to Government Code section 11507.6, demanding, inter alia, the names and addresses of all witnesses. (Exh. 1.) Appellants received the Department's response on August 24, 2015, providing the address and phone number of the Department's Ventura District Office in lieu of the decoy's personal contact information. The Department also provided a copy of the decoy's California driver's license—with the address redacted. (*Ibid.*)

On September 2, 2015, appellants sent a meet and confer letter to the Department. (*Ibid.*) Appellants then filed a Motion to Compel Discovery on September 8, 2015, and the Department filed its opposition to the motion on September 14, 2015. The motion was denied on September 30, 2015. (*Ibid.*)

An administrative hearing was originally scheduled for October 22, 2015, but was continued to December 23, 2015 because the decoy was unavailable on the original date. At the hearing, documentary evidence was received and testimony concerning the sale was presented by Soller (the decoy) and by ABC Agent Brian Parsons.

Testimony established that on June 17, 2015, the decoy entered the licensed premises followed a few moments later by Agent Parsons. The decoy went to the

beverage aisle, selected a six-pack of Budweiser beer, and took it to the sales counter. The clerk asked the decoy for her identification and she handed him her California drivers license, which contained her true date of birth—showing her to be 19 years of age—and a red stripe indicating “AGE 21 IN 2017.” (Exh. 3.) The clerk looked at the license for a few seconds, then completed the sale without asking any age-related questions. The decoy and Agent Parsons exited the premises, then re-entered to conduct a face-to-face identification of the selling clerk. The clerk was later cited.

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

Appellants then filed a timely appeal contending the administrative law judge (ALJ) abused his discretion by denying appellants' motion to compel the address of the decoy to the extent known by the Department.

DISCUSSION

Appellants contend that the ALJ abused his discretion by denying appellants' motion to compel disclosure of the decoy's personal contact information. (App.Op.Br. at pp. 4-6.) Appellants also contend the Department failed to comply with Government Code section 11507.6 when it provided only the address of the Department's Ventura District Office when it was in possession of the decoy's home address. (*Ibid.*)

This identical issue has been raised and argued in innumerable cases before this Board. As the Board held in 1999:

Government Code §11507.6 entitles a party to an address for a witness. The statute does not say it must be a residential address. . . . We think any requirement that a decoy's home address be disclosed must be conditioned upon a showing that the address itself has a material connection to the issues, and not simply as a means of contacting the decoy.

(*In re Mauri* (1999) AB-7276, at p. 8.) The Board's position on this issue has not changed in 18 years, yet counsel for appellants continues to raise this tired argument.

Last year, in *7-Eleven, Inc./Joe* (2016) AB-9544² the Board held that the decoy's personal address is protected under section 832.7 of the Penal Code. (*Id.* at pp. 6-10.) We follow our *Joe* decision here—referring the parties to that case for an in-depth discussion—and concur with the ALJ's statement in his Order Denying Appellants' Motion to Compel that our holding in *Mauri, supra*, is on point.

In the *Joe* case, the Board laid out its position on establishing whether the decoy had actually been unreachable at the address provided by the Department: "We note, however, that in order to comply with section 11507.6, the Department must supply *an address at which the decoy may actually be reached.*" (*Joe, supra* at p. 11, emphasis added.) In footnote six of that decision, the Board was quite specific in its instruction on how to establish that the decoy had actually been unreachable at the address provided:

The burden of proving the Department's failure to comply with section 11507.6 falls with the licensee demanding the decoy's address. (See Gov. Code, § 11507.7(a) [a party's motion to compel "shall state facts showing the respondent party failed or refused to comply with Section 11507.6"].) *We suggest licensees facing discipline under section 25658(a) attempt to contact the decoy in writing, and preserve both the original communication and any response indicating a law enforcement agency's unwillingness or inability to contact the decoy. This would be sufficient to show that the decoy was indeed unreachable at the address provided.*

(*Id.* at fn. 6, emphasis added.)

Nothing in the record demonstrates any attempt to reach the decoy at the address provided by the Department. The Board very clearly spelled out the procedure

²Cert. den., *7-Eleven, Inc. et al v. ABC Appeals Bd.* (July 6, 2016) 2nd App. Dist. B275900.

for establishing a violation of section 11507.6—first in *Joe*, and in countless cases since then—but here we are, yet again, hearing the same argument without the documentation required.

Lacking demonstrable written evidence of the law enforcement agency’s refusal to cooperate, appellants have failed to meet their burden to establish a violation of section 11507.6. (See Gov. Code, § 11507.6; also see *Joe*, *supra*, at p. 11.)

Furthermore, appellants have failed to demonstrate that the ALJ’s denial of their Motion to Compel was an abuse of discretion.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
JUAN PEDRO GAFFNEY RIVERA, 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.