

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

AB-9037

File: 20-367923 Reg: 08069684

7-ELEVEN, INC., and SUKHVINDERJEET SINGH SANDHU,
dba 7-Eleven 2237 20680B
9110 Thornton Road, Stockton, CA 95209,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: January 6, 2011
San Francisco, CA

JANUARY 26, 2011

7-Eleven, Inc., and Sukhvinderjeet Singh Sandhu, doing business as 7-Eleven 2237 20680B (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, with 5 days thereof conditionally stayed, for their clerk selling an alcoholic beverage to Patrick Krebbs, a 19-year-old police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Sukhvinderjeet Singh Sandhu, appearing through their counsel, Ralph B. Saltsman and Ryan Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Heather

¹The decision of the Department, dated April 29, 2008, is set forth in the appendix.

Hoganson.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 19, 2000. On August 25, 2008, the Department instituted an accusation against appellants charging the sale by appellants' clerk on August 18, 2008, of an alcoholic beverage to Patrick Krebs, a person under the age of 21. Although not noted in the accusation, Krebs was working as a minor decoy for the Stockton Police Department at the time.

An administrative hearing was held on March 18, 2009, at which time documentary evidence was received and testimony concerning the sale was presented by Krebs (the decoy) and by Wesley Grinder, a Stockton police officer.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved, and no defense had been established.

Appellants filed a timely appeal contending the decoy operation did not comply with the fairness standard of rule 141² because the decoy did not display the appearance generally to be expected of a person under the age of 21.

DISCUSSION

Appellants contend that the decoy's appearance violated rule 141(b)(2), because he did not "display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense." They also assert that the decoy operation

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.

did not comply with the requirement of rule 141(a) that it be conducted "in a fashion that promotes fairness," because the decoy was almost 20 years old and had received extensive training at a police academy, giving him what appellants describe as "an unusual degree of confidence." (App. Opening Br. at p. 5.) They speculate that "[i]t is very likely that a clerk could be led to believe that a man with [the decoy's] training, demeanor, and confidence was older than he appeared to be." (*Ibid.*) They also imply that the goal of this decoy operation was to trick licensees into selling alcoholic beverages to minors.

The administrative law judge (ALJ) addressed this argument in Determination of Issues II of the proposed decision:

Respondents argued that the decoy's lack of nervousness at their store, as well as his consideration that the decoy operation had become "fun," made him appear at least twenty-one years old, in violation of the Department's Rule 141(b)(2). This argument is rejected. Respondents did not show a connection between the facts about the decoy and their (Respondents') conclusion. Moreover, without testimony from the clerk, there is no evidence that the decoy appeared at least twenty-one years old to her "under the actual circumstances presented to (her)."

The Appeals Board has rejected the "experienced decoy" argument many times before. As the Board said in *Azzam* (2001) AB-7631:

A decoy's experience is not, by itself, relevant to a determination of the decoy's apparent age; it is only the *observable effect* of that experience that can be considered by the trier of fact. . . . There is no justification for contending that the mere fact of the decoy's experience violates Rule 141(b)(2), without evidence that the experience actually resulted in the decoy displaying the appearance of a person 21 years old or older.

Appellants have provided no valid basis for the Board to question the ALJ's determination that the decoy complied with rule 141.

ORDER

The decision of the Department is affirmed.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
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.