

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

AB-9265

File: 20-378899 Reg: 10073896

7-ELEVEN, INC., and MALLDIV & ASSOCIATES, dba 7-Eleven 2136 23488
20871 Lassen Street, Chatsworth, CA 91311,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 2, 2013
Los Angeles, CA

ISSUED JUNE 11, 2013

7-Eleven, Inc., and Malldiv & Associates, doing business as 7-Eleven 2136 23488 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 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 7-Eleven, Inc., and Malldiv & Associates, appearing through their counsel, Ralph Barat Saltsman and D. Andrew Quigley, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jennifer M. Casey.

¹The decision of the Department, dated April 23, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on August 14, 2001. On November 23, 2010, the Department instituted an accusation against appellants charging that, on May 19, 2010, appellants' clerk, Harpreet Bajwa (the clerk), sold an alcoholic beverage to 18-year-old Laura Sanchez.² Although not noted in the accusation, Sanchez was working as a minor decoy for the Los Angeles Police Department at the time.

An administrative hearing was held on February 22, 2012, at which time documentary evidence was received, and testimony concerning the sale was presented by Sanchez (the decoy) and by Ryan Smith and Bruce Vermaat, LAPD officers.

Following the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellants filed an appeal making the following contention: Department rule 141(b)(2)³ violates the due process clauses of the California and United States Constitutions.

DISCUSSION

Appellants contend that rule 141(b)(2) unconstitutionally violates both federal and state 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 Board has recently rejected numerous challenges to the constitutionality of

²The accusation was amended on February 2, 2012, removing references to disciplinary history [RT 6].

³References 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.

rule 141(b)(2). (See *7-Eleven Inc.* (2013) AB-9248 and *Garfield Beach* (2013) AB-9258.) As the Board noted in those cases, rule 141(b)(2) complies with both state and federal constitutional requirements, and we refer appellants to those opinions for a full discussion of the Board's position.

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 consistent "on-point" rulings.

ORDER

The decision of the Department is affirmed.⁴

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This 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.