

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

AB-9267

File: 20-448544 Reg: 11075604

7-ELEVEN, INC., & HARVINDER SINGH SIDHU, dba 7-Eleven 2136-22666
13700 Vanowen Street, Van Nuys, CA 91405-4117,
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 13, 2013

7-Eleven, Inc., and Harvinder Singh Sidhu, doing business as 7-Eleven 2136-22666 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for five 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 Harvinder Singh Sidhu, appearing through their counsel, Ralph Barat Saltsman and Autumn M. Renshaw, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated May 3, 2012, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 17, 2007. Thereafter, the Department instituted an accusation against appellants charging that, on May 20, 2011, appellants' clerk, Nalin Hewage (the clerk), sold an alcoholic beverage to 19-year-old Nelson Alegria, Jr. Although not noted in the accusation, Alegria was working as a minor decoy for the Los Angeles Police Department at the time.

An administrative hearing was held on February 23, 2012, at which time documentary evidence was received, and testimony concerning the sale was presented by Alegria (the decoy) and by Stephen Moore and Felipe Benavidez, Los Angeles police officers. Co-licensee Harvinder Singh Sidhu testified concerning mitigation factors.

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

DISCUSSION

Appellants have now filed an appeal contending 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 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.²

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

²This 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.