

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

AB-9592

File: 20-424240 Reg: 15083364

7-ELEVEN, INC. and ARVEEDEE, INC.,
dba 7-Eleven Store #2174-21044B
14835 Pioneer Boulevard, Norwalk, CA 90650,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: D. Huebel

Appeals Board Hearing: June 1, 2017
Los Angeles, CA

ISSUED JUNE 29, 2017

Appearances: *Appellants:* Saranya Kalai and Donna Hooper, of Solomon Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and Arveedee, Inc.
Respondent: Jennifer M. Casey as counsel for the Department of Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Arveedee, Inc., doing business as 7-Eleven Store #2174-21044B (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 10 days because their clerk sold an alcoholic beverage to a Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 26, 2005. On November 20, 2015, the Department filed an accusation against appellants charging that, on June 20, 2015, appellants' clerks, Elinor Garcia Delarosa and Francisco Jaugan

1. The decision of the Department, dated May 20, 2016, is set forth in the appendix.

Pajulas, sold an alcoholic beverage to 19-year-old Nicholas Gabriel Delgado. Although not noted in the accusation, Delgado was working as a minor decoy for the Department of Alcoholic Beverage Control at the time.

On December 8, 2015, appellants filed and served on the Department a Request for Discovery pursuant to Government Code section 11507.6 demanding the names and addresses of all witnesses. On December 10, 2015, the Department responded by providing the address of its Lakewood District Office in lieu of the decoy's home address. On December 22, 2015, appellants sent a letter to the Department demanding it furnish the decoy's contact information by December 28, 2015. On December 23, 2015, the Department responded and asserted that the contact information for the District Office was sufficient.

On December 29, 2015, appellants filed a Motion to Compel Discovery. The same day, the Department responded and opposed the motion. On January 8, 2016, ALJ John W. Lewis issued an order denying appellant's Motion to Compel.

The administrative hearing proceeded on April 12, 2016. Documentary evidence was received and testimony concerning the sale was presented by Delgado (the decoy) and by Stephen Comp, a Department of Alcoholic Beverage Control agent. Appellants presented no witnesses.

Testimony established that on the date of the operation, Agents Comp and Holsapple entered the licensed premises. The decoy entered shortly thereafter. The decoy went to the alcoholic beverage cooler and selected a six-pack of Bud Light beer in cans. The decoy took the beer to the front sales counter for purchase and stood in line. There was one person in line in front of the decoy. There is no evidence of any

other customers standing in line. There were two clerks—a female and a male—at the counter.

At the counter, the decoy set the beer down. The female clerk, Delarosa, scanned the beer and asked the decoy for his identification. The decoy handed his valid California driver's license to the clerk, who looked at it for four seconds. The male clerk, Francisco Jaugan Pajulas, who was standing one foot to the left of clerk Delarosa, leaned over and looked, for three seconds, at the driver's license in clerk Delarosa's hand. Clerk Delarosa handed the driver's license back to the decoy. The decoy's California driver's license has a vertical orientation, shows his correct date of birth, and includes a red stripe reading "AGE 21 in 2017." Clerks Delaros and Pajulas said the number "1996" to each other. Clerk Delarosa did not enter the date of birth into the register, but pressed the visual ID override button, permitting the sale. Clerk Delarosa told the decoy the cost of the beer. The decoy paid clerk Delarosa with a \$20 bill. Clerk Pajulas grabbed a brown paper bag and asked the decoy, "are you 18?" The decoy truthfully answered "no." Clerk Delarosa said to clerk Pajulas, "he looks young." The two clerk said the number "1996." Clerk Pajulas placed the six-pack of Bud Light beer into the brown paper bag, and clerk Delarosa handed the decoy some change. Clerk Delarosa did not ask the decoy any age-related questions. The decoy then exited the store with the bagged six-pack of Bud Light beer.

Agent Comp was inside the store posing as a customer the entire time and witnessed the events with a clear unobstructed view. Agent Comp and the decoy did not acknowledge or communicate with each other while inside the licensed premises. Agent Comp exited the store soon after the decoy.

Agent Comp reentered the licensed premises with the decoy and three Department agents. Agent Comp contacted clerks Delarosa and Pajulas, who were both still at the sales counter, identified himself as an officer, and explained the violation to them. He requested that they walk around the counter to join him on the customer side of the counter, which both clerks did.

Agent Comp asked the decoy to state his age. The decoy said he was 19 years old. Agent Comp asked the decoy to identify who sold alcohol to him. The decoy pointed at both clerk Delarosa and clerk Pajulas and replied, "they sold me the alcohol." The decoy was standing five feet apart from the two clerks. Clerks Delarosa and Pajulas were facing and looking at the decoy, who was facing and looking at the clerks, at the time of the identification. A photo of the decoy with clerks Delarosa and Pajulas was taken after the face-to-face identification. Both clerks were issued a citation.

The Department's decision determined that the violation charged was proved and no defense was established, and imposed a penalty of 10 days' suspension.

Appellants then filed this appeal contending the ALJ abused her discretion by denying their motion to compel the decoy's address.

DISCUSSION

ISSUE CONCERNING DECOY'S ADDRESS

Appellants contend the Department failed to comply with section 11507.6 of the Government Code when it provided the address of its Lakewood District Office, rather than the decoy's address as listed on his California driver's license, during pre-hearing discovery. (App.Br., at pp. 5-6.) Appellants further contend the ALJ abused his discretion by denying appellants' Motion to Compel the decoy's home address. (*Id.* at p. 5.)

Appellants argue the reasoning employed by this Board in *Mauri Restaurant Group* is "fatally flawed." (*Id.* at p. 6, citing *Mauri Restaurant Group* (1999) AB-7276.) However, they also reject this Board's later, more detailed rulings, which concluded that minor decoys qualify as "peace officers" whose private information is protected under Penal Code section 832.7. (*Id.* at pp. 7-8; see also *7-Eleven, Inc./Joe* (2016) AB-9544 [holding that the minor decoy qualifies for peace officer protections by operation of Penal Code § 830.6(c)].)

This Board has recently addressed a number of cases raising this purely legal issue. In *7-Eleven, Inc./Joe*, we held that the decoy's personal address is protected under section 832.7 of the Penal Code. (*7-Eleven, Inc./Joe, supra*, at pp. 6-10.) Appellants counter the reasoning of that case by arguing that "minor decoys are never identified as peace officers in the statutory scheme that identifies the class of persons whose personnel records are made confidential." (App.Br., at p. 7.) Moreover, appellants contend Penal Code section 830.6(c) does not protect the decoy's home address because that section "does not deem a person a 'peace officer,' but instead only temporarily grants that person limited powers of a peace officer." (*Ibid.*) Appellants argue that *only* individuals who are "actually deemed peace officers . . . may enjoy the protection of their contact information from discovery pursuant to" section 832.7 of the Penal Code. (*Ibid.*)

Appellants overlook case law extending, by operation of Penal Code section 830.6(c), various peace officer protections to individuals or organizations summoned to the aid of law enforcement. In *7-Eleven, Inc./Joe*, we cited as persuasive authority the Ninth Circuit's decision in *Forro Precision, Inc.*, which held that the provision "must be understood as according a citizen immunity that derives from the officer's own

immunity." (*Forro Precision v. Intl. Business Machines Corp.* (9th Cir. 1982) 673 F.2d 1045, 1054 [interpreting Pen. Code, § 830.6(b), later renumbered as subdivision (c)].) *Forro Precision* relies on two California cases, both of which grant similar civil immunity to parties assisting law enforcement. (See *Forro Precision, supra*, at p. 1054, citing *Peterson v. Robison* (1954) 43 Cal.2d 690, 697 [277 P.2d 19] [private citizen not subject to action for false arrest when arrest made at peace officer's request] and *Sokol v. Public Utilities Com.* (1966) 65 Cal.2d 247 [53 Cal.Rptr. 673] [public utility not civilly liable for disconnecting plaintiff's phone upon notice that it was used for illegal purposes].)

Regrettably, there is no case law discussing whether the protections afforded a peace officer's *contact information* are extended to individuals summoned to the peace officer's assistance. However, immunity from civil suit is a significant protection; it effectively eliminates civil recovery for an injured plaintiff. If the courts have seen fit to extend peace officers' civil immunity to individuals summoned under section 830.6, we expect they would also extend the lesser protections of section 832.7 to those individuals as well—particularly where, as here, those protections help facilitate decoy sting operations by ensuring decoy volunteers are not subjected to unwarranted disclosure of personal information.

Finally, appellants neither establish nor allege that they attempted to contact the decoy through the Department's Lakewood District Office. We have no cause to believe the decoy was unreachable at that address. Provision of the Lakewood District Office address was therefore proper.

ORDER

The decision of the Department is affirmed.²

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
JUAN PEDRO GAFFNEY RIVERA, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

2. This 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.