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

AB-9603
File: 20-511157 Reg: 16083743

7-ELEVEN, INC. and PAM AND JAS, INC.,
dba 7-Eleven Store #2112-33062
41260 Murrieta Hot Springs Road, Murrieta, CA 92562,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 7, 2017
San Diego, CA

ISSUED OCTOBER 3, 2017

Appearances: *Appellants:* Melissa H. Gelbart and Donna J. Hooper, of Solomon Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and Pam and Jas, Inc.
Respondent: Jennifer M. Casey as counsel for the Department of Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Pam and Jas, Inc., doing business as 7-Eleven Store #2112-33062 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control[1] suspending their license for 15 days because their clerk sold an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

1. The decision of the Department, dated February 23, 2017, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on August 17, 2011. On February 9, 2016, the Department filed an accusation against appellants charging that, on December 16, 2015, appellants' clerk, Sanjeev Kumar (the clerk), sold an alcoholic beverage to 18-year-old Jessi Caitlin Lovejoy. Although not noted in the accusation, Lovejoy was working as a minor decoy in a joint operation between the Murrieta Police Department and the Department of Alcoholic Beverage Control at the time.

On February 29, 2016, 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 March 29, 2016, the Department responded by providing the address of the Murrieta Police Department in lieu of the decoy's home address. On April 7, 2016, appellants sent a letter to the Department demanding it furnish the decoy's contact information by April 13, 2016. On April 14, 2016, the Department responded and asserted that the contact information for the Murrieta Police Department was sufficient.

On April 18, 2016, appellants filed a Motion to Compel Discovery, and on April 20, the Department responded and opposed the motion. On May 9, 2016, ALJ Matthew G. Ainley issued an order denying appellants' motion to compel.

The administrative hearing proceeded on June 21, 2016. Documentary evidence was received and testimony concerning the sale was presented by Lovejoy (the decoy) and by Agent Hayley Mammen of the Department of Alcoholic Beverage Control. Appellants presented no witnesses.

Testimony established that on the date of the operation, Agent Mammen entered the licensed premises. The decoy followed shortly thereafter. The decoy went to the alcoholic beverage cooler and selected a 25-ounce can of Bud Light beer. Beer is an alcoholic beverage. The decoy took the can of beer to the front sales counter for purchase. There were two male clerks working behind the register.

The decoy approached clerk Kumar without having to wait in line. The clerk nodded in greeting to the decoy, who responded "Hello." The decoy set the Bud Light beer can down on the counter. The clerk scanned the beer and asked the decoy for her identification. The decoy handed her valid California driver's license to the clerk, who looked at it for three seconds and handed it back to the decoy. The decoy's California driver's license has a vertical orientation, shows her correct date of birth, and includes a red stripe that reads "AGE 21 in 2018" as well as blue stripe that reads "AGE 18 in 2015." The clerk told the decoy the cost of the beer. The decoy paid the clerk, who then bagged the Bud Light beer can and gave the decoy some change along with the bagged beer. The clerk did not ask the decoy any age-related questions. The decoy then exited the store with the bagged Bud Light beer can and change. Agent Mammen was inside the licensed premises posing as a customer during this entire time and witnessed these events with a clear, unobstructed view. The decoy did not communicate with Agent Mammen while in the licensed premises. Agent Mammen exited the store soon after the decoy.

Agent Mammen reentered the licensed premises with Agent Rock, both of whom approached the clerk, who was standing behind the sales counter stocking cigarettes. Agent Mammen made contact with the clerk, who ceased his stocking activities. Agent

Mammen then identified herself as an agent with the Department and explained the violation to the clerk. Agent Mammen asked the clerk to step back to the register, which he did.

The decoy reentered the store with Corporal Chivington of the Murrieta Police Department Special Enforcement Team, and they joined Agent Mammen, Agent Rock, and the clerk. The decoy stood adjacent to Agent Mammen, who stood directly opposite the clerk behind the register. Agent Mammen asked the decoy who had sold her the beer. The decoy pointed at the clerk and said, "He sold it and I'm 18 years old." The decoy and the clerk were standing three feet apart, separated by the counter, facing and looking at each other at the time of this identification, with no evidence of anything in the way to obstruct their view of each other. A photo of the clerk and the decoy was taken after the face-to-face identification.

After the hearing, the ALJ issued a proposed decision, which determined the violation charged was proved and no defense was established.

On June 29, 2016, following submission of the proposed decision, the Department's Administrative Hearing Office sent a letter to appellants and to Department counsel offering both parties the opportunity to comment on the proposed decision. That letter stated:

> Administrative Records Secretary and Concerned Parties:
>
> Enclosed is the Proposed Decision resulting from the hearing before Department of Alcoholic Beverage Control, Administrative Hearing Office in the above entitled matter.
>
> All concerned parties and their attorneys of record are being sent a copy of this Proposed Decision. All concerned parties and attorneys of record are hereby informed that you may submit comments regarding this Proposed Decision to the Director for consideration prior to any action being taken by the Director. Comments to the Director regarding this

> Proposed Decision shall be mailed to the Administrative Records Secretary. Additional comments submitted for review by the Director, if any, must also be submitted to all parties and their attorneys. For the convenience of all concerned, a list of those parties and their addresses is attached.
>
> Pursuant to General Order 2016-02, the Administrative Records Secretary will hold this Proposed Decision until 14 days after the date of this letter. After that the Administrative Records Secretary will submit this Proposed Decision along with any comments received from concerned parties to the Director for consideration.

(Letter from John W. Lewis, Chief Admin. Law Judge, Dept. of Alcoholic Bev. Control, Jun. 29, 2016 [hereinafter "Comment Letter"].) As suggested in the final paragraph, the Comment Letter reflected a comment procedure adopted by the Department pursuant to its General Order 2016-02. (Dept. of Alcoholic Bev. Control, "GO-Ex Parte and Decision Review," Gen. Order 2016-02, at § 3, ¶¶ 5-6 (eff. Mar. 1, 2016) [hereinafter "General Order"].)

On July 15, 2016—sixteen days after the date of the Comment Letter—counsel for appellants submitted "Comments to the Director re Proposed Decision," which challenged the legality of the comment procedure itself. The Department submitted no comments.

Ultimately, the Department adopted the proposed decision without changes.

Appellants then filed this appeal contending (1) the ALJ abused her discretion by denying appellants' motion to compel the minor decoy's home address; (2) the Department's comment procedure constitutes an underground regulation, violates the APA, and encourages illegal ex parte communications; and (3) the ALJ erred in denying appellants' request to videotape the administrative hearing.

DISCUSSION

I

Appellants contend the Department failed to comply with section 11507.6 of the Government Code when it provided the address of the Murrieta Police Department, rather than the decoy's address as listed on her California driver's license, during pre-hearing discovery. (App.Br., at pp. 5-6.)

Appellants argue the reasoning employed by this Board in *Mauri Restaurant Group* is "fatally flawed." (*Id.* at p. 8.) 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. 9-10; 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)].)

Appellants argue instead that this case is analogous to *Reid v. Superior Court*, in which the court of appeal held the contact information of rape victims was subject to disclosure under section 1054.1 of the Penal Code. (App.Br., at pp. 6-8.)

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. 9.) 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 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 a 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

believe 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.

Appellants "respectfully disagree" with this Board's extension of section 832.7 to minor decoys aiding law enforcement, and instead argue in favor of analogous application of the court of appeal's holding in *Reid v. Superior Court*. (App.Br., at pp. 6-9.) In *Reid*, the prosecution withheld the names and addresses of rape victims in a high-profile prosecution at the victims' request. (*Reid v. Superior Ct.* (1997) 55 Cal.App.4th 1326 [64 Cal.Rptr.2d 714].) The trial court ordered conditional disclosure of the victims' information: the names and addresses would be supplied to the defense, but "the court also ordered that neither defense counsel 'nor anyone acting in [his] direction or employ contact these victims for purposes of obtaining any further statements from them or investigation by virtue of contact with them.'" (*Id.* at p. 1331.) The defense was "'free to correspond' with the victims," provided it did so only in writing and through the court or district attorney, which would "forward any correspondence to these victims." (*Ibid.*)

The court of appeal ultimately overturned the trial court, holding that "the victims' expressed wish to protect their right to privacy cannot provide the basis for a superior court order to interfere with the defendant's normally unrestricted right to contact prosecution witnesses." (*Id.* at pp. 1338-1339.) Moreover, it found no evidence of "harassment, threats, or danger to the safety of the victims" or other good cause to withhold the victims' information under the statutory exceptions outlined in section 1054 of the Penal Code. (*Id.* at p. 1339.)

Appellants overlook significant differences between *Reid* and administrative disciplinary actions. These differences establish that *Reid* is, at best, irrelevant.

First and most obviously, *Reid* was a criminal prosecution, not an administrative disciplinary proceeding. It is true that the California Supreme Court has found that "[a] disciplinary proceeding has a punitive character, for the agency can prohibit an accused from practicing his profession," and therefore, that petitioners who face the loss of their livelihood due to alleged criminal acts "should have the same opportunity as in criminal prosecutions to prepare their defense." (*Shively v. Stewart* (1966) 65 Cal.2d 475, 480 [421 P.2d 65] [addressing subpoena of documents in medical license revocation].) The two are not consistently analogous, however; they are governed by fundamentally different statutory schemes. (Compare Pen. Code, § 1054.7 [governing discovery in criminal prosecutions] with Gov. Code, § 11507.6 [governing discovery in administrative proceedings]; see also Gov. Code, § 11507.5 [section 11507.6 "provide[s] the exclusive right to and method of discovery" in any administrative proceeding].)

In *Cimarusti*, the court of appeals underscored these differences when it rejected analogous application of *Reid*: "Petitioners' analogy to criminal cases is inapt. Generally, there is no due process right to prehearing discovery in administrative hearing cases . . . . The scope of discovery in administrative hearings is governed by statute and the agency's discretion." (*Cimarusti v. Superior Ct.* (2000) 79 Cal.App.4th 799, 808 [94 Cal.Rptr.2d 336].)

One difference of relevance to appellants' case is the treatment of *Pitchess* discovery motions. In a criminal prosecution, a *Pitchess* motion allows the defendant to access, under specific limited circumstances, a peace officer's confidential personnel

information despite the protections afforded by Penal Code section 832.7(a). (See Evid. Code, §§ 1043, 1045 [codifying the California Supreme Court's ruling in *Pitchess v. Superior Ct.* (1974) 11 Cal.3d 531 [113 Cal.Rptr. 897].) In order to prevail on a *Pitchess* motion, the defendant must show that the peace officer's conduct is material to the proceedings. (See Evid. Code, § 1043.) If the defendant's showing is sufficient, the peace officer's personnel information—including home address—may be disclosed to the defendant.

In administrative proceedings, however, *Pitchess* motions are not permitted. (*Brown v. Valverde* (2010) 183 Cal.App.4th 1531, 1549 [108 Cal.Rptr.3d 429] [finding no provision for *Pitchess* motions in Gov. Code, § 11507.6, which provides the exclusive rights of discovery in administrative proceedings pursuant to § 11507.5].) There is presently no statutorily authorized means by which a licensee in a disciplinary proceeding can force disclosure of a peace officer's home address. (See *ibid.*) Section 832.7 of the Penal Code is effectively *more* protective in administrative proceedings—where it cannot be overcome, even if the peace officer's personnel information is material to the disciplinary action—than in criminal prosecutions. The reflexive analogous application of criminal case law to an administrative proceeding is therefore inappropriate—especially where it implicates disclosure of peace officer information.

Secondly, the information withheld in *Reid* belonged to victims, not peace officers or individuals summoned to their aid. As *Reid* noted, the victims' contact information could only be withheld for good cause, which in the criminal context is limited by statute to "threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law

enforcement."[2] (*Reid*, *supra*, at p. 1334, quoting Pen. Code, § 1054.7.) With regard to peace officers, however, the presumption shifts. The prosecution, by law, withholds a peace officer's contact information, and the burden falls on the criminal defendant to establish the materiality of that information through a *Pitchess* motion. (See Evid. Code, §§ 1043, 1045; see also *Brown*, *supra*, at p. 1549 [*Pitchess* motions not permitted in administrative discovery].) Contrary to appellants' insistence, the disclosure of a victim's contact information is in no way analogous to disclosure of a peace officer's contact information.

Finally, the victims' contact information was withheld in *Reid* at the victims' request, for fear of potential harassment and to avoid the embarrassment of being publicly associated with a high-profile rape case. (*Reid*, *supra*, at pp. 1338-1339.) Peace officer information, on the other hand, is withheld by statutory requirement. (Pen. Code, § 832.7(a).) Again, application of *Reid*, even by analogy, is inappropriate.

Our holding in *Joe* rests on extending the protections afforded peace officers under section 832.7(a) to minor decoys, by operation of Penal Code section 830.6(c). (See *Joe*, *supra*, at pp. 9-10.) To date, that holding has not been reviewed or overturned by a higher

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2. While Penal Code section 1054, is not relevant to the facts of this case, that statute would provide even stronger grounds for withholding minor decoys' home addresses, since routinely disclosing that information would impair the ability of law enforcement agencies to recruit minor decoys willing to participate in enforcement operations. The legislature has indicated its support for minor decoy enforcement operations, and the legality of these operations has been affirmed by the courts. (Bus. & Prof. Code, § 25658(f) [granting immunity to minors who purchase alcohol if they are "used by peace officers . . . to apprehend licensees"]; *Provigo Corp. v. Alcoholic Bev. Control Appeals Bd.* (1994) 28 Cal.Rptr.2d 638 [7 Cal.4th 561].) Disclosing decoys' home addresses would compromise not only individual investigations, but an entire investigatory scheme.

court.[3] The Department hearing was an administrative proceeding, and peace officer contact information—including, by extension, the minor decoy's—was properly withheld. *Reid* is not analogous, and in no way undermines our holding in *Joe*. Unless a higher court holds otherwise, we will continue to apply the *Joe* analysis.[4]

II

Appellants contend the Department's comment procedure, implemented pursuant to its General Order 2016-02, violates the hearing and review procedures set forth in the APA, constitutes an underground regulation prohibited by the APA, and encourages illegal ex parte communications. (App.Br., at pp. 10-33.)

We recently addressed an identical argument in *7-Eleven, Inc./Gupta* (2017) AB-9583. In that case, we concluded the Department's comment procedure, as outlined in the General Order, constitutes an unenforceable underground regulation. The comment procedure was identical in this case. We therefore reach the same legal conclusion here, and refer the parties to *Gupta* for our complete reasoning. (*Id.* at pp. 12-25.)

Furthermore, we find that the sole comment, submitted by appellant, had no effect on the outcome of the case, and therefore, that the comment procedure did not materially affect appellant's due process rights. (See *id.* at pp. 26-29.)

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3. Appellants note that the Second Appellate District has taken a writ in the case of *7-Eleven, Inc./Holmes* (2016) AB-9554. (App.Br., at p. 9, fn. 3.) The acceptance of a writ is not synonymous with a completed review, and gives us no present cause to reconsider our analysis.

4. The record discloses the appellants in this case sought to admit a declaration of Darlene Chocan, purportedly an employee at the office of appellants' counsel, to show that they attempted and failed to reach the decoy through the Murrieta Police Department. (RT at pp. 7-8.) The ALJ refused to admit the declaration. (RT at p. 9.) Appellants, however, do not raise the declaration or challenge its exclusion in their brief. (See generally App.Br.) The issue is therefore waived.

As we have noted elsewhere, however, the Department's comment procedure creates a minefield of potential due process issues. (See *id.* at p. 29 ["The Department's decision to bypass the rulemaking process deprived it of the opportunity to review public comments that might have alerted it to potential pitfalls in the comment procedure."].) We remind the parties that "we shall remain particularly vigilant in future cases, and will not hesitate to reverse where the Department's improperly adopted comment procedure materially infringes on an appellant's due process rights." (*Ibid.*)

III

Appellants contend the ALJ erred in denying their request to videotape the administrative hearing. Appellants argue that "critical elements" of the decoy's appearance "cannot be captured through a court reporter, but can be adequately preserved through videotaping an administrative hearing." (App.Br., at p. 33.) Appellants suggest the videotape should then be included in the record on appeal, because "[w]here the decision purports to include the ALJ's observations of the decoy during the hearing, the decoy's appearance *at* the hearing should be reviewed by the Appeals Board." (*Id.* at p. 34, emphasis in original.)

Appellants also argue that they have a right to record the proceedings under the Bagley-Keene Act. (App.Br., at p. 36, citing Gov. Code, § 11124.1(a).) Appellants fail to explain how the Bagley-Keene Act applies to an administrative hearing before the Department, how a purported violation of the Bagley-Keene Act might merit reversal of an administrative disciplinary action, and—perhaps most importantly—how the Bagley-Keene Act could entitle appellants to include their videorecording of the hearing in the administrative record.

Section 11512(d) of the Government Code dictates reporting procedures for administrative hearings: "The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically."

Beginning with *7-Eleven, Inc./Arman* (2016) AB-9535, this Board repeatedly resolved this issue, holding that where, as here, the opposing party objects, denial of the request is proper under section 11512(d).[5] (*7-Eleven, Inc./Arman*, *supra*, at p. 8.)

Recently, the legislature reinforced our interpretation of the law by enacting Business and Professions Code section 24301. (See Assem. Bill No. 1285, approved by Governor, Sept. 1, 2017.) That provision states: "The department shall not create a record by videographic recording. Videographic recording of a hearing shall be inadmissible in any proceeding before the Alcoholic Beverage Control Appeals Board or in any proceeding taken under Section 23090." (*Ibid.*)

We therefore consider this issue wholly resolved, and trust that it will not be raised again.

Appellants, however, contend separately that they have a right to videorecord the administrative hearing pursuant the the Bagley-Keene Act. Again, we resolved this issue in *Arman*: the Bagley-Keene Act does not apply to Department administrative hearings. We wrote,

Appellants rely on Government Code section 11124.1(a), which provides:

> Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of

5. Counsel for appellants, however, appears to have ignored our decision in *Arman* entirely—an oversight we find curious, since the same law firm represented the appellants in that case.

> a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

The term "state body" is explicitly defined by the Act:

> As used in this article, "state body" means each of the following:
>
> (a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
>
> (b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
>
> (c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or any member of the state body, and if the advisory body so created consists of three or more persons.
>
> (d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized by the state body or by a private corporation.

(Gov. Code, § 11121.) A Department administrative factfinding hearing conducted by a single ALJ cannot meet the definition of "state body" provided by the Bagley-Keene Act. It is not a board, a commission, or a committee, and it is certainly not "multimember." Because a Department hearing is not a "state body," appellants do not have the right, under section 11124.1(a), to record its proceedings.

(*Id.* at pp. 8-9.) In fact, at oral argument before this Board, counsel for appellants in *Arman* conceded the error and "admitted that the Bagley-Keene Act does not apply to administrative hearings." (*Id*. at p. 9.)

Appellants in this case are represented by the same firm that presented the untenable Bagley-Keene argument in *Arman*. (See *7-Eleven, Inc/Arman*, *supra*, at p. 1.)

We are troubled that counsel would present an argument it has acknowledged is unsound.

More troubling, perhaps, is that the Bagley-Keene argument, as presented in appellants' brief, is an undeniable copy-paste from the brief filed in *Arman.* For example, appellants contend,

> In the present matter, the ALJ made the following finding:
>
> > Decoy Plimmer appears her age, 18 years of age at the time of the decoy operation. Based on her overall appearance, *i.e.*, her physical appearance, dress, poise, demeanor, maturity, and mannerisms *shown at the hearing*, and her appearance/conduct in front of clerk Justice at the Licensed Premises on December 14, 2014, decoy Plimmer displayed the appearance that could generally be expected of a person less than 21 years of age under the actual circumstances presented to Clerk Justice. Decoy Plimmer appeared her true age. *Proposed Decision, Findings of Fact*, para. 9 (Emphasis added.)

(App.Br., at p. 34, emphasis in original.) In fact, no such finding was made in this case. (See generally Decision.) That finding is drawn instead from the Department decision reviewed by this Board in *Arman*. (See *7-Eleven, Inc./Arman*, *supra*, Decision, Findings of Fact, at ¶ 9.) A later quotation, purportedly from the hearing transcript, is in fact drawn from the transcript in *Arman*. (See App.Br., at p. 35; see also *7-Eleven, Inc./Arman*, *supra*, at p. 11.)

Counsel for appellants was evidently so inattentive to the drafting of the opening brief for this case that it not only presented the Bagley-Keene argument this Board rejected—and counsel conceded—in *Arman*, but also copy-pasted that argument from the *Arman* brief without bothering to change the facts. This is astoundingly dismal lawyering, and is especially troubling where a client's livelihood depends, to a large extent, on the competence of counsel's paid representation.

We therefore affirm the Department's decision. We expect that, in the future, attorneys who practice before this Board will hold themselves to a higher standard of diligence.

ORDER

The decision of the Department is affirmed.[6]

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

6. 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.