

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

AB-9663

File: 20-548860 Reg: 17085264

7-ELEVEN, INC. and HK & D ENTERPRISES, INC.,
dba 7-Eleven Store #34449A
1256 Orange Street,
Redlands, CA 92374,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: June 7, 2018
Los Angeles, CA

ISSUED JULY 16, 2018

Appearances: *Appellants:* Donna J. Hooper, of Solomon Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and HK & D Enterprises, Inc., doing business as 7-Eleven Store #34449A.
Respondent: Matthew S. Gaughan as counsel for the Department of Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and HK & D Enterprises, Inc., doing business as 7-Eleven Store #34449A (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ 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 July 25, 2017, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on November 24, 2014. On January 17, 2017, the Department filed an accusation charging that appellants' clerk, Simranjit Kaur (the clerk), sold an alcoholic beverage to 18-year-old Bryceson Coleman on October 14, 2016. Although not noted in the accusation, Coleman was working as a minor decoy for the Redlands Police Department at the time.

At the administrative hearing held on May 23, 2017, documentary evidence was received and testimony concerning the sale was presented by Coleman (the decoy), and by Officer David Frisch and Detective Michael Merriman of the Redlands Police Department. Appellants presented no witnesses.

Testimony established that on the date of the operation, the decoy entered the licensed premises, and shortly thereafter Officer David Frisch entered. The decoy went to the back of the store to the refrigerator and selected a 12-pack of Bud Light beer, an alcoholic beverage. The decoy brought the 12-pack of beer to the front sales counter for purchase. He did not have to wait in line.

At the counter the decoy set down the 12-pack of Bud Light beer. The clerk asked the decoy for his identification. The decoy handed his valid California driver's license to the clerk, who took possession of it and looked at it for three to five seconds. The decoy's California driver's license has a vertical orientation, shows his correct date of birth, and includes a red stripe that reads "Age 21 in 2019." The clerk then handed the identification back to the decoy. The clerk proceeded with the sale of alcohol to the decoy. The decoy paid for the beer and exited the store carrying the 12-pack of Bud Light beer. The clerk did not ask the decoy his age, any age-related questions, or

questions about the identification. Officer Frisch was inside the store and witnessed these events. Officer Frisch exited the store three seconds after the decoy exited.

The decoy reentered the licensed premises with Officer Frisch and Detective Michael Merriman. Detective Merriman approached the clerk, who was behind the cash register. He identified himself as a police officer and explained the violation to the clerk. He asked if there were other employees in the store. The clerk responded that she was the only employee in the store.

The decoy was standing next to Detective Merriman. Both of them were on the customer side of the counter, with the clerk across from them, standing on the employee side of the counter. Detective Merriman asked the decoy to identify who sold him the beer. The decoy, while looking at the clerk, pointed at her and said, "She is the one who sold me the 12-pack of Bud Light." The decoy and the clerk were standing approximately five to eight feet apart, facing and looking at each other at the time of this identification. A photo of the clerk and the decoy was taken after the face-to-face identification, with the decoy holding the 12-pack of beer and his identification while standing next to the clerk.

After the hearing, the Department issued a decision determining that the violation charged was proved and no defense was established.

Appellants then filed this appeal contending the ALJ abused her discretion and failed to proceed in the manner required by law when she failed to articulate why she disregarded appellants' mitigating evidence.

DISCUSSION

Appellants contend the ALJ abused her discretion and failed to proceed in the manner required by law when she failed to articulate her reasons for disregarding appellants' mitigating evidence. (App.Br., at p. 5.) Citing *Topanga*, they argue the ALJ was required to explain her reasoning by setting forth findings to "bridge the analytical gap" between the evidence and the penalty imposed. (App.Br., at p. 7, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506-515 [113 Cal.Rptr. 836].) According to appellants, the ALJ's failure to articulate her reasoning leaves them "completely in the dark" and wondering "what, if any, mitigating evidence will move the ALJ to deviate" from the standard 15-day penalty. (App.Br., at pp. 7-8.)

Appellants, however, do not request reconsideration of the penalty, but instead seek reversal of the decision in its entirety. (App.Br., at p. 8.)

This Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Unless some statute requires it, an administrative agency's decision need not include findings with regard to mitigation. (*Vienna v. Cal. Horse Racing Bd.* (1982) 133 Cal.App.3d 387, 400 [184 Cal.Rptr. 64]; *Otash v. Bureau of Private Investigators* (1964)

230 Cal.App.2d 568, 574-575 [41 Cal.Rptr. 263].) Appellants have not pointed out a statute with such requirements. Findings regarding the penalty imposed are not necessary as long as specific findings are made that support the decision to impose disciplinary action. (*Williamson v. Bd. of Med. Quality Assurance* (1990) 217 Cal.App.3d 1343, 1346-1347 [266 Cal.Rptr. 520].)

The Board has repeatedly rejected the very same gloss on *Topanga* appellants advocate here. (See, e.g., *Hawara* (2015) AB-9512 at pp. 9-13; *Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2013) AB-9236, at pp. 3-4.) With regard to factual findings supporting the actual charges—*not* the penalty imposed—this Board has recently clarified our position:

If this Board observes that the evidence appears to contradict the findings of fact, it will review the ALJ's analysis—assuming some reasoning is provided—to determine whether the ALJ's findings were nevertheless proper. Should this Board be faced with evidence clearly at odds with the findings and no explanation from the ALJ as to how he or she reached those findings, this Board will not hesitate to reverse. . . . While an ALJ may better shield himself against reversal by thoroughly explaining his reasoning, he is not required to do so. The omission of analysis alone is not grounds for reversal, provided findings have been made.

(*Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2015) AB-9514, at pp. 6-7.)

We emphasize that the above language does *not* extend to the penalty. No "analytical bridge" of any sort is required in imposing a penalty. Provided the penalty is reasonable, this Board will have no cause to retrace the ALJ's reasoning. As we have written time and again, "[t]his Board's review of a penalty looks only to see whether it can be considered reasonable, not what considerations or reasons led to it. If it is reasonable, our inquiry ends there." (*Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2013) AB-9236, at p. 4; *7-Eleven, Inc. v. Ghuman & Sons, Inc.* (2011) AB-8997, at p. 4.)

In this case, the ALJ imposed a penalty of fifteen days' suspension "in light of the short length of licensure." (Penalty.) While the ALJ acknowledged appellants presented evidence that they were "successful in three other decoy operations within the short span of time of licensure," she chose not to mitigate the penalty. (See *ibid.*) The penalty, although greater than appellants hoped, was reasonable. (See Code Regs., tit. 4, § 144, Penalty Guidelines.) We see no cause to reconsider the penalty, let alone reverse the entire decision.

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.