

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

SHOWBIZ PIZZA TIME, INC.	)	AB-7149a
dba Chuck E. Cheese's)	
5250 Philadelphia Street, Suite L	)	File: 41-220457
Chino, CA 91710,	)	Reg: 98043312
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	John P. McCarthy
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	December 2, 1999
	)	Los Angeles, CA

Showbiz Pizza Time, Inc., doing business as Chuck E. Cheese (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for appellant's employee selling an alcoholic beverage to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Showbiz Pizza Time, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and

¹*The decision of the Department, dated November 12, 1998, is set forth in the appendix.*

the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public eating place license was issued on April 17, 1991. Thereafter, the Department instituted an accusation against appellant charging the violation noted above.

An administrative hearing was held on September 3, 1998, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the sale by appellant's employee of an alcoholic beverage to a 19-year-old decoy working with the Chino Police Department.

Subsequent to the hearing, the Department issued its decision which determined that the illegal sale had occurred and that no defenses had been established under Business and Professions Code §25660 or Rule 141 (4 Cal. Code Regs. §141).

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raised the following issues: (1) Rule 141(b)(5) was violated; (2) appellant's right to discovery was violated; and (3) the Department violated Government Code §11512, subdivision (d), when a court reporter was not provided to record the hearing on appellant's Motion to Compel.

DISCUSSION

The Department's brief states: "After reviewing the record in this matter and in light of the Court of Appeal's decision in the case of *Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board* (1998) 67 Cal.App.4th 575 [79 Cal.Rptr.2d 126], [it] does not contest or oppose the appeal filed . . . in this matter."

No face-to-face identification of the seller by the decoy was made in this case. Pursuant to Rule 141(c), the failure of the police to comply with 141(b)(5) provides a defense to the accusation issued by the Department.

Since the Department concedes that the decoy did not make a face-to-face identification of the seller as required by Rule 141(b)(5), we need not address the remaining issues raised.

ORDER

The decision of the Department is reversed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² *This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §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 §23090 et seq.