

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

AB-8997

File: 20-393351 Reg: 08067967

7-ELEVEN, INC., and GHUMAN & SONS, INC., dba 7-Eleven Store 2172 20607C
16475 Harbor Boulevard, Fountain Valley, CA 92708,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

Appeals Board Hearing: December 2, 2010
Los Angeles, CA

ISSUED FEBRUARY 8, 2011

7-Eleven, Inc., and Ghuman & Sons, Inc., doing business as 7-Eleven Store 2172 20607C (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, with 10 of those days conditionally stayed, 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 Ghuman & Sons, Inc., appearing through their counsel, Ralph B. Saltsman, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated January 13, 2009, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 15, 2003. On February 19, 2008, the Department filed an accusation against appellants charging that appellants' clerk sold an alcoholic beverage to 19-year-old Joshua Sobelman on April 6, 2007. Although not noted in the accusation, Sobelman was working as a minor decoy for the Fountain Valley Police Department at the time.

At the administrative hearing held on June 27 and November 7, 2008, documentary evidence was received and testimony concerning the sale was presented by Sobelman (the decoy) and by Shawn Walker, a Fountain Valley police officer. Mohinderbal Ghuman testified about policies and training at the licensed premises regarding alcoholic beverage sales.

The Department's decision determined that the violation charged was proved and no defense to the charge was established. Appellants then filed an appeal contending that (1) the administrative law judge erroneously prevented appellants from presenting evidence of mitigating factors, and (2) the Department ignored mitigating evidence in determining the penalty.

DISCUSSION

I

Appellants contend that the administrative law judge (ALJ) erred when he sustained the Department's objections to questions about Mr. Ghuman's cooperation during police investigations and his community involvement. According to appellants, these are mitigating factors which the Department is required to consider in determining the penalty.

The questions, objections, and offers of proof regarding these matters are as follows [RT 39-40]:

Q [MR. AKOPYAN]: Thank you. Mr. Ghuman, have the police ever asked for you to cooperate in any investigation at the store?

MS. WINTERS: Objection. Vague; irrelevant.

THE COURT: I'll hear an offer of proof, Mr. Akopyan.

MR. AKOPYAN: Mr. Ghuman, if allowed to testify, will testify that at this particular store he has assisted law enforcement in several investigations by providing them statements, by providing video footage, surveillance footage, and answering their questions, which is a factor of mitigation pursuant to Rule 144.

THE COURT: All right. Objection sustained.

Q [MR. AKOPYAN]: Mr. Ghuman, are you otherwise involved in the community with regard to this particular store, within the community within which it's situated?

A: Yes.

Q: Tell us a little bit about your involvement in the community.

MS. WINTERS: Objection. Irrelevant.

THE COURT: Again, offer of proof, Mr. Akopyan?

MR. AKOPYAN: If Mr. Ghuman were permitted to testify, he would testify that he sponsors a program which is called "Every 15 Minutes Program." It's a program aimed at educating kids not to drink and drive. He also contributes to the City of Fountain Valley financially; he supports the police department. And he would also testify that he has sent the troops in Iraq sundry items such as food and drink and whatnot. And that would support the fact of mitigation.

THE COURT: Objection sustained.

While the penalty guidelines do list "[c]ooperation by licensee in investigation" as a possible mitigating factor, we would not find it unreasonable for the ALJ consider it as mitigation only when the cooperation is with regard to investigation of the violation giving rise to the penalty to be mitigated. In this case, the question about "any investigation" and the offer of proof that he would testify about how he "assisted . . . in several investigations" indicate the cooperation was unrelated to the violation at issue.

As to the "community involvement," appellants admit that is not a factor included in the Department's guidelines, but assert that a licensee's "positive involvement in the community should be a central consideration" in determining a penalty. (App. Opening

Br. at p. 7.) This type of conduct, while highly commendable, has nothing to do with the violation that occurred. Since the ALJ sustained the Department's objection, he must have concluded that this testimony would be irrelevant. We cannot say it was an unreasonable conclusion.

The trier of fact is accorded broad discretion in ruling on the admissibility of evidence, and the ruling will be reversed only if there is a clear showing of an abuse of discretion. (*Aguayo v. Crompton & Knowles Corp.* (1986) 183 Cal.App.3d 1032, 1038 [228 Cal.Rptr. 768].) It was not clearly unreasonable for the ALJ to exclude the testimony, and we cannot say he abused his discretion in doing so.

II

Appellants contend that the Department's decision must be reversed because the ALJ did not take into consideration as a mitigating factor the "subsequent remedial measure" of firing the clerk who made the illegal sale. They assert that the "proper penalty" in this matter would be a 10-day, all stayed, suspension.

Whether or not the decision includes a discussion of all possible mitigating factors presented is irrelevant. We are not aware of anything in the law that requires such a discussion, nor do appellants refer us to any such authority. This 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.

The ALJ devoted a full paragraph to a discussion of mitigating factors presented and considered. He concluded that mitigation was warranted and his penalty recommendation of 15 days' suspension, with 10 days conditionally stayed, was adopted by the Department. This clearly was a reasonable penalty and appellants have no basis for complaint.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, 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.