

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

AB-7552a

File: 20-218787 Reg: 99047004

CHEVRON STATIONS, INC., dba Chevron #1492
40635 Winchester Road, Temecula, CA 92390,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: August 15, 2002
Los Angeles, CA

ISSUED SEPTEMBER 16, 2002

Chevron Stations, Inc., doing business as Chevron #1492 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control after remand¹ which suspended its license for 25 days for appellant's clerk selling an alcoholic beverage to a minor decoy, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, section 22, arising from a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Chevron Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

¹The decision of the Department, dated October 4, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Board affirmed the decision of the Department on all issues except one. The Board concluded that appellant was entitled to discovery of the identities of any other licensees who themselves, or through their employees, had on the same night sold alcoholic beverages to the decoy who made the purchase in this case, and ordered the case remanded to the Department for further proceedings consistent with its order.

The Department, accordingly, remanded the matter to the Administrative Law Judge to take evidence and argument, through affidavit and briefing only, regarding what new evidence the licensee intended to offer at any further hearing. Quite obviously, such new evidence would be that stemming from the discovery information regarding other sellers.

The record indicates that the Department informed the Administrative Law Judge (ALJ) and appellant that there was no such information in its possession. The record also reveals that appellant already knew, at least as of the administrative hearing, that there were no other sales to this decoy on this night. During re-direct examination, Department counsel asked the police officer in this case how many of the 23 licensed premises visited that night sold to this decoy. Appellant's counsel objected on the basis of relevance. However, the ALJ allowed the testimony after some discussion about the purpose of such testimony, the ALJ's observation that appellant had requested this information during discovery, and acknowledgment by Department counsel that the Department was now being required to provide this information. The officer then testified that appellant's was the only licensed premises that sold to this decoy on this night. [RT 80, 94-97.]

In his Proposed Decision After Remand, the ALJ concluded that, since no discoverable information existed, there was no additional evidence for him to consider. His proposed ruling, which the Department adopted, affirmed the original decision in all respects.

Appellant has now filed a brief with the Appeals Board which is premised upon the proposition that there was another sale, that the identity of that licensee was disclosed, and that the ALJ improperly prevented appellant from calling newly discovered witnesses and conducting further cross-examination of the decoy based upon such discovery. The brief attacks at length the procedure followed by the Department in other cases where the identities of other sellers had been provided to the licensees, arguing that it was improper to require an offer of proof with respect to new evidence gained as a result of the Department's discovery response.

It is apparent that appellant has pursued a mistaken premise. The Department's discovery response in this case, confirming the officer's testimony at the hearing, stated there was no information regarding any other sale. Appellant appears to challenge the verity of that response, but provides nothing to support its apparent claim that the Department identified another seller. We can only conclude there were no other sellers. Consequently, there was no basis for reconsideration of any of the findings and conclusions of the Department, and it was entitled to reaffirm its original decision.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This 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.