

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

AB-7597a

File: 20-349327 Reg: 99047441

7-ELEVEN, INC., BHOOPENDRA KAUR VIRK, and RAJBIR SINGH VIRK
dba 7-Eleven #21793
850 West Mission Avenue, Escondido, CA 92025,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: May 9, 2002
Los Angeles, CA

ISSUED SEPTEMBER 11, 2002

7-Eleven, Inc., Bhoopendra Kaur Virk, and Rajbir Singh Virk, doing business as 7-Eleven #21793 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, five days of which were conditionally stayed, for appellants' clerk having sold an alcoholic beverage to a minor, 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 appellants 7-Eleven, Inc., Bhoopendra Kaur Virk, and Rajbir Singh Virk, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated September 6, 2001, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

This is the second appeal in this matter. In the original appeal, the Appeals Board affirmed the findings of the Department that an alcoholic beverage had been sold to a minor, acting as a police decoy, but ordered the matter remanded to the Department to permit the appellants discovery of the identities of other licensees who may have made sales to the decoy in question on the same day as the sale by appellants' clerk.²

In its Amended Decision Following Appeals Board Decision, the Department remanded the matter to Administrative Law Judge (ALJ) Rodolfo Echeverria for compliance with the discovery request as directed by the Board, and to "take further evidence and argument, by way of affidavit and briefing only, as to what new evidence [appellants intend] to offer at any further hearing on this matter and how such evidence is relevant to the proceeding." Thereafter, the ALJ was to "hold any further proceedings as he determines are necessary and appropriate, in his exclusive discretion."

The ALJ directed the Department to provide to appellants the discovery ordered by the Appeals Board. The Department identified one other licensee (the 7-Eleven store located at 1334 W. Valley Parkway) which sold an alcoholic beverage to the same decoy on the same night that appellants' clerk did.

Appellants filed an offer of proof requesting further proceedings and the Department filed a reply. The ALJ's decision, adopted by the Department, found appellants' offer of proof inadequate because it was too general and failed to "establish

² In The Circle K Corporation (2000) AB-7031a, the Board ruled that a licensee charged with having sold an alcoholic beverage to a minor decoy was entitled to discovery of the names and addresses of other licensees, if any, who sold to the same decoy in the course of the same decoy operation.

the actual existence of any new and relevant evidence to support its request for further proceedings." In addition, according to the decision:

"[T]he record clearly shows that [appellants'] attorneys also represented the only other licensee whose licensed premises sold to the decoy in the instant case during the same work shift and that [appellants'] attorneys had knowledge of the other licensee as well as the identity of the other seller prior to the actual hearing in the instant matter. Therefore, the [appellants'] attorneys knew the identity of the only other seller during the same work shift and they could have produced the other seller at the hearing of January 6, 2000 if they felt that the testimony of the other seller was relevant and important in the instant case."

Thus, the decision concluded, appellants had an opportunity to conduct a full and fair cross-examination of both the decoy and the police officer, and no further proceedings were appropriate or necessary. The license was again ordered suspended for 15 days, with 5 days thereof conditionally stayed.

Appellants filed a timely appeal from the Department's decision in which they argue that the Department violated the Order of the Appeals Board by first requiring, and then rejecting, appellants' offer of proof and, in doing so, denied appellants their right to cross examination.

DISCUSSION

We see no need to address the offer of proof issues raised by appellants, because their basic position is fundamentally flawed.

Appellants' contention that they did not have all the information they needed to fully cross-examine at the initial hearing because the Department failed to provide the discovery they requested is simply untrue. Appellants' counsel had the exact information which was requested at the time of the previous hearing, yet did not use it when they then could have. There is no reason appellants should be able to have a second opportunity to put to use the information it already had.

The decoy in this matter was able to purchase an alcoholic beverage at only one other premises on the night in question: the 7-Eleven store located at 1334 W. Valley Parkway in Escondido. We take official notice of the record of the proceeding on the accusation against that 7-Eleven store, which accompanied an appeal to this Board - 7-Eleven, Inc./Azzam, AB-7631. That case was remanded to the Department for such further proceedings as might be necessary with respect to the same discovery issue as in appellants' case. 7-Eleven now has a second appeal pending before this Board in that matter - 7-Eleven/Azzam, AB-7631a. Appellants' counsel represented the licensees with regard to the accusation filed in that matter, filing a Notice of Defense on October 29, 1999. The accusation disclosed both the name of the decoy and of the person who sold to the decoy. The hearing in the present matter took place on January 6, 2000.

The general rule of agency, that notice to or knowledge possessed by an agent is imputable to the principal, applies for certain purposes in the relation of attorney and client. *Freeman v. Superior Court* (1955) 44 Cal.2d 533 [282 P.2d 857, 860]. As explained in 2 Witkin, Summary of California Law, Agency & Employment (9th ed. 1987) §101, pp. 98-99:

“The test of imputed notice is whether the facts *concern the subject matter* of the agency and are *within its scope*. Generally speaking, notice is imputed to the principal of any facts relating to the subject matter of the agency of which the agent acquires knowledge or notice while acting as such within the scope of his authority. It is not enough that the facts concern the business of the principal; they must be so related to the subject of the agency as to bring them within the duties of the agent.” (Emphasis in original.)

We think that the knowledge acquired by the Solomon, Saltsman & Jamieson law firm in the course of its representation of both of the licensees who were sellers to the decoy in question is imputable under the rule as stated above. Evidence that that

law firm represented the other licensee, and received, prior to the hearing, a copy of the accusation which identified the other licensee, the clerk, and the decoy, warrants the imputation of such knowledge. Thus, it cannot be said that appellants were prejudiced by not being provided such information through discovery. Appellants were, as a result of knowledge possessed by their attorneys, in a position to conduct a full cross-examination at the original hearing, and do not deserve a second bite at the apple.

ORDER

The decision of the Department is affirmed.³

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

³ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.