

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

AB-7738

File: 20-215140 Reg: 00048924

7-ELEVEN, INC., DONNA J. HOUSER, and WILLIAM L. HOUSER
dba 7-Eleven Store #22894
1030 North Broadway, Escondido, CA 92026,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: August 16, 2001
Los Angeles, CA

ISSUED OCTOBER 25, 2001

7-Eleven, Inc., Donna J. Houser, and William L. Houser, doing business as 7-Eleven Store #22894 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk, Debra A. Oliver (“Oliver”), having sold an alcoholic beverage (a six-pack of Coors Light beer) to Christopher Dickey (“Dickey”), a minor, 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 appellants 7-Eleven, Inc., Donna J. Houser, and William L. Houser, appearing through their counsel, Ralph Barat Saltsman and

¹The decision of the Department, dated November 16, 2000, is set forth in the appendix.

Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, John W. Lewis.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 8, 1982.

Thereafter, the Department instituted an accusation against appellants charging a sale of an alcoholic beverage by Oliver to Dickey on January 14, 2000. Although not stated in the accusation, Dickey was acting as a minor decoy for the Escondido Police Department.

An administrative hearing was held on September 6, 2000, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Dickey, the minor, and Escondido police officer Richard Callister in support of the charge of the accusation, and by Oliver, the clerk, on behalf of appellants.

Subsequent to the hearing, the Department issued its decision which determined that the transaction had occurred as alleged, that no defenses had been established, and that appellants should serve a 15-day suspension.

Appellants thereafter filed a timely appeal in which they contend that the Department is equitably estopped from sustaining the accusation because their clerk relied in good faith upon training provided by the Department.

DISCUSSION

Appellant's clerk, Debra Oliver, testified that at some time during the year or year and one-half preceding the date of the sale involved in this case, she attended a LEAD program presented by the Department, where, as part of the program, she was told what to look for in identifying minors in the store. She testified, mostly in response

to leading questions, that she was taught to look for certain mannerisms; how young people carried themselves; whether someone was nervous; whether someone had a youthful face, or peach fuzz, or a poor complexion; someone who would not look directly at her. She testified further that the decoy to whom she sold did not display any of the things the LEAD program had taught her to look for. The decoy acted more mature than some, was real sure of himself, not overly obnoxious or egotistical, and had the appearance and attitude of an adult. He did not giggle, look down, act nervous, or hesitate.

On cross-examination, Oliver conceded that she had been taught the list of things to look for was not all-inclusive, that the scanner for checking his identification did not function, and that she made a mistake in entering the decoy's birth date into the scanning device. She also acknowledged that she had been taught to look for the red stripe on a driver's license.

Appellant contends, on these facts, that the Department is estopped from pursuing the violation because Oliver acted in reliance upon what she had been taught at the LEAD program. The Department contends that the elements of estoppel are not present, in that the clerk did not rely on her LEAD training when she made the sale.

The parties are in general agreement with respect to the principles of estoppel as they apply to this case: the Department was apprized of the true facts because it was the Department which provided the LEAD training; the Department intended the clerk to rely upon the training; the party asserting the defense must have been ignorant of the true facts; and must have relied upon the training to its detriment. Where they part, of course, is in the application of those principles.

The Department concedes that it is apprized of the facts regarding its LEAD training, and that it intended licensees to rely upon that training. It contends however, that appellant's clerk could not have been ignorant of the true facts, i.e., that the decoy appeared to be a minor, and that she did not rely upon the LEAD training.

In our analysis of the record, we conclude that, although the clerk did rely on her LEAD training in some respects, she did not in others, and it was her carelessness that ultimately deserves the blame for the sale and requires our rejection of an estoppel defense.

In particular, her apparent failure to react to the prominently displayed red stripe on the decoy's license is by itself enough to defeat appellant's estoppel defense. Of all the identifiable characteristics a minor decoy might display, the red stripe on the driver's license is certainly the least subject to misinterpretation and ambiguity. The requirement that a decoy be less than 20 years of age at the time of the operation guarantees that the "21 in ..." legend will always be at least a year in the future.

We expect that the Department will, as it was here, be understandably hesitant in accepting an estoppel defense based upon a seller's having been misled by the Department's LEAD program. The considerations in assessing a minor purchaser's appearance are many and subtle, and draw greatly upon a seller's experience and judgment.

Lest too much be read into the Board's decision, we wish to make it clear that our emphasis on the clerk's failure to respond to the red stripe legend on the driver's license is only because of its special relevance to the estoppel defense. We do not mean to suggest any departure from what has been the Board's general view that the

content of the license is not relevant in considering the decoy's appearance against the standards of Rule 141.

ORDER

The decision of the Department is affirmed.²

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

² 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.