

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

AB-7928

File: 40-369373 Reg: 01051462

MARCIANO SANCHEZ dba Dora's Place
8220 Sunland Boulevard, Sun Valley, CA 91352,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: November 14, 2002
Los Angeles, CA

ISSUED JANUARY 28, 2003

Marciano Sanchez, doing business as Dora's Place (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended her license for 15 days for her bartender having sold an alcoholic beverage (beer) to a 19-year-old minor acting as a decoy for the Los Angeles Police Department, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Marciano Sanchez, appearing through her counsel, Armando H. Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer license was issued on July 24, 1995. Thereafter, the Department instituted an accusation against appellant charging that, on March 16,

¹The decision of the Department, dated December 27, 2001, is set forth in the appendix.

2001, appellant's bartender, Maria Cardenas, sold an alcoholic beverage (beer) to Edgar Camacho, who was then approximately 19 years of age.

An administrative hearing was held on November 13, 2001, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant contends that Rule 141(b)(5) was violated, in that the officer who conducted the identification of the alleged seller of alcoholic beverages was not the officer directing the decoy.

DISCUSSION

Rule 141(b)(5) (4 Cal. Code Regs., §141(b)(5)) provides:

Following any completed sale, but not later than the time a citation, if any, is issued, the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages to make a face to face identification of the alleged seller of the alcoholic beverages.

Appellant contends there was no compliance with the rule because the officer who asked the decoy to identify the seller was not the officer directing the decoy.

The record indicates that the decoy in this case was accompanied to appellant's premises by at least two, and probably more, Los Angeles police officers. One of them, Gabriel Ahedo, an undercover officer, had entered the bar shortly before the decoy entered. He observed the decoy enter the bar and seat himself about six feet away. Ahedo observed the decoy order a beer, from the same waitress who had served Ahedo. The waitress brought the decoy a bottle of Corona beer, the decoy gave her \$5, and she gave him change. She did not ask him for his age or for identification.

Another officer, Irma Salazar, testified that she entered the bar after Ahedo, notified the officers outside the premises that there had been a violation, and asked the decoy to identify the person who sold to him. Ahedo testified that the decoy pointed to the waitress, the same woman Ahedo had seen serve the decoy the beer, and said "She did." The waitress was escorted from the premises and photographed with the decoy.

Appellant assumes that, because the decoy was driven to the premises by Ahedo, and because Ahedo entered the bar "to monitor the minor's entry and conduct inside the location," Ahedo was the officer referred to in the rule. Thus, argues appellant, when Officer Salazar conducted the identification, there was no compliance with the rule, because she was not the officer directing the decoy .

This Board noted, in response to a similar contention in *Quik Stop Markets, Inc./Sangha* (2001) AB-7399:

This contention has been raised in several cases presented to the Board, with no acceptance. It does not strain the language of the rule in the slightest to conclude that any of the several officers engaged in the decoy operation could, with respect to each facet of the decoy's conduct, be for that activity the officer directing the decoy.

Another such case to the same effect is *The Southland Corporation/Gonzalez* (2000) AB-7392, where the Board characterized as a "play on words" an argument that the deputy who conducted the identification process was not the officer directing the decoy because he thought other officers were in charge of the decoy operation:

We believe there is full compliance with Rule 141(b)(5) when one of the officers involved in the decoy operation, who has seen or is aware that a sale to the decoy occurred, is delegated, either expressly or by implication, as the person to conduct the identification process, and does so.

There is no evidence in the record in this case that suggests that any of the

officers involved in the decoy operation was confused as to his or her role in the operation. It is obvious that Officer Ahedo's role was to observe the transaction, and to protect the decoy, if necessary. Officer Salazar's role was to have the decoy identify the seller. In that role, she was, without question, the person directing the decoy.²

ORDER

The decision of the Department is affirmed.³

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

² We have reviewed the record, and agree with the Administrative Law Judge's assessment of the decoy's testimony: "The testimony of the decoy was seriously flawed with a lack of memory of numerous salient details of the transaction of the sale or ensuing face to face identification of the bartender." However, appellant has not raised any issue where the decoy's credibility might be a critical factor. The testimony of the two police officers clearly establishes compliance with Rule 141(b)(5). Indeed, appellant does not even contend that the bartender who was identified, and cited, was not the person who sold the beer to the decoy.

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.