

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

AB-8302

File: 21-314453 Reg: 03056260

DENISE HASROUN and GEORGE HASROUN dba Raul's Liquor
568 San Fernando Mission Road, San Fernando, CA 91340,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 5, 2005
Los Angeles, CA

ISSUED JULY 6, 2005

Denise Hasroun and George Hasroun, doing business as Raul's Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 14 days for their clerk having sold a six-pack of Smirnoff Ice, an alcoholic beverage, to Jessica Rodriguez, a 19-year-old police minor decoy, arising from a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Denise Hasroun and George Hasroun, appearing through their counsel, Jeffrey S. Weiss, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on March 15, 1996. On

¹The decision of the Department, dated June 24, 2004, is set forth in the appendix.

November 17, 2003, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor.

An administrative hearing was held on April 28, 2004, at which time oral and documentary evidence was received. At that hearing, testimony was presented by Jessica Rodriguez, the decoy. Appellants presented no witnesses.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established, and appellants had failed to establish any affirmative defense.

Appellants have filed a timely appeal, and raise the following issues: (1) there was no compliance with Rule 141(b)(5); (2) the administrative law judge (ALJ) did not properly explain why he was satisfied the decoy presented the appearance required by Rule 141(b)(2); and (3) the wearing of a wedding band by the decoy violated the fairness requirement of Rule 141(a).²

DISCUSSION

I

Appellants contend that there was no compliance with Rule 141(b)(5) because the police officer who conducted the face to face identification with the decoy was not the officer directing the decoy within the meaning of the rule.

Appellants argue that the decoy's identification of the clerk who sold her the alcoholic beverage was faulty because she was asked by, and responded to, a police officer who entered the store after the transaction had occurred, rather than to the undercover officer who had earlier entered the store and observed the transaction.

² References to Rule 141 and its subdivisions are to section 141 of Title 4 of the California Code of Regulations, and to the various subdivisions of that section.

This argument lacks merit.

The Board addressed this issue in *Spirit Enterprises, Inc.* (2001) AB-7604, where it said:

Appellant's contention is premised on the assumption that there can be only one police officer in charge of the decoy and that officer must be the one who conducts the identification process.

We think such an argument ignores the dynamics involved once a sale to a decoy has occurred. In some operations, only one peace officer may be involved; in such a case, that peace officer is necessarily the officer directing the decoy. In others, such as the decoy operation in this case, multiple officers may be involved.

When multiple officers are involved, a decoy must be prepared to follow the direction of any one of them, depending upon the circumstances. Thus, a decoy may be directed by one officer to attempt a purchase at a particular establishment, and, if there is a sale, directed by another officer to identify the seller.

There is nothing in Rule 141(b)(5) that locks a particular peace officer into a particular role in a decoy operation. Every decoy operation is different; unless the peace officers are afforded the flexibility to move with the situation, the potential for loss of control is enhanced. The requirement that a chain of command for a decoy operation be created as a condition of compliance with Rule 141(b)(5) is simply unrealistic.

We believe the only realistic interpretation of Rule 141(b)(5) is that the peace officer who conducts the identification process is deemed the officer directing the decoy. Any more rigid interpretation would go beyond the obvious intent of the rule - to ensure that an innocent clerk not be cited for another's violation - and well beyond even the "strict adherence" standard enunciated in *Acapulco Restaurants, Inc. v. Alcoholic Beverage Control Appeals Board* (1998) 67 Cal.App.4th 575, 581 [79 Cal.Rptr.2d 126].

For other Board rulings to the same effect, see, e.g., *Quick Stop Markets, Inc.* (2001) AB-7399, and *The Southland Corporation* (2001) AB-7482. In the former case, the Board stated:

This contention has been raised in several cases presented to the Board, with no acceptance. It does not strain 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.

II

Appellants argue that the ALJ did not properly explain why he was satisfied the decoy presented the appearance required by Rule 141(b)(2). Appellant asserts that the ALJ considered only the decoy's physical appearance, and did not consider her poise or how she conducted herself at the hearing.

The ALJ wrote as follows with respect to the decoy's appearance:

Minor Rodriguez gave the distinct overall impression of being a teenager, with a tentative youthful demeanor and mannerisms. On September 17, 2003, and at the hearing she was between 5' 1" or 2" tall and weighed 130 pounds. At the time of the violation she wore blue jeans, a yellow pullover shirt and tennis shoes. She also wore untinted prescription eyeglasses as well as a silver band on her wedding band finger and a gold necklace. She was not then married.

Her hair was its natural brown color, and she wore it pulled straight back into a small ponytail. The minor had been a police cadet with the Police Department prior to the date of the violation. At the time of the undercover operation on September 17, 2003, she was able to purchase at three licensed locations out of a total of 19 visited.

(Finding of Fact 7).

With respect to Rule 141(b)(2), the licensees argue that the evidence showing that the minor was able to purchase the malt liquor at the subject location was because the Police Department unfairly selected a minor who appeared to be over 21 years of age because of her "pulled back" hair style, and the fact that she wore eyeglasses made her look older than her age.

Further it is contended that the silver band on her wedding finger projected an image that the minor was married, thereby enhancing the possibility that the clerk believed that she was an adult.

(Conclusion of Law 7).

The argument with respect to the minor's hairstyle and eyeglasses is patently without merit based on the totality of the evidence in the record. With respect to the silver band on her finger, the undersigned observed the minor at the hearing wearing the same ring she had on September 17, 2003. It was a narrow inauspicious band without any ostentation of which anyone might not take note unless their attention was drawn to it by some circumstance.

Further there is no evidence that the clerk ever noticed the band on the minor's

finger, or that there was anything about the band that would call attention to it.

(Conclusion of Law 8).

While the ALJ may have made no specific reference to the decoy's poise, we do not think it can be said that he ignored how she conducted herself at the hearing. His reference to her overall appearance, and to her "tentative youthful " demeanor and mannerisms tell us he was considering much more than simply her physical appearance.

III

Finally, appellant argues that the ring worn by the decoy created the appearance that she was married, and, as a result, the fairness requirement of Rule 141(a) was not met.

The clerk who sold the alcoholic beverage to the decoy did not testify. Thus, we are asked to speculate that the clerk noticed the ring, assumed from its presence that the decoy was married, and next assumed that she was over the age of 21.

As noted in the ALJ's conclusion set forth above, the ring was not one likely to attract anyone's attention. And, as the Department points out, one can marry at age 18, but must still be 21 to buy an alcoholic beverage.

A similar issue was presented in *Circle K Stores, Inc.* (2001) AB-7641. The Board there said:

The crux of appellant's argument is that, by definition, a decoy wearing a wedding band violates Rule 141(b)(2). We do not agree. Jewelry of any kind worn by a decoy is just one factor to be considered. While a wedding ring may be seen as an indicator of age, it can only indicate that the person is at least 18. Can a person wearing a wedding ring display the appearance one could generally expect from a person under the age of 21? We believe the answer has to be yes. The presence of the wedding ring is only one thing to consider. It is certainly possible for someone wearing a wedding ring to have overall physical and behavioral features that clearly show he or she is under 21. The ALJ must

consider the decoy as a "whole person," and not limit consideration of appearance to any one single aspect.

Where, unlike here, an ALJ has doubt as to whether a decoy displays an appearance which could generally be expected of a person under 21 years of age, the presence of a ring on the decoy's wedding finger might be enough to tip the balance. By itself, however, it is just another element of a decoy's appearance.

ORDER

The decision of the Department is affirmed.³

SOPHIE C. WONG, MEMBER
FRED ARMENDARIZ, 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.