

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

AB-8614

File: 20-214948 Reg: 05061170

7-ELEVEN, INC., and FRAIDOUN PARSTABAR dba 7-Eleven Store No. 2133-23855
4410 Via Real, Carpinteria, CA 93013,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: December 6, 2007
Los Angeles, CA

ISSUED FEBRUARY 26, 2008

7-Eleven, Inc., and Fraidoun Parstabar, doing business as 7-Eleven Store No. 2133-23855 (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days, all of which were conditionally stayed subject to a one-year probationary period, for their clerk, Joaquin Dominguez, having sold a six-pack of Budweiser beer to Luis Montanez, a 19-year-old law enforcement decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., and Fraidoun Parstabar, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Julia H. Sullivan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated September 7, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 6, 1988.

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

An administrative hearing was held on June 28, 2006, 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 proved, and no affirmative defense had been established.

Appellants thereafter filed a timely appeal in which they raise the following issues: (1) the Department communicated with its decision maker on an ex parte basis, in violation of the APA; (2) appellants were denied discovery to which they were entitled; and (3) the administrative law judge (ALJ) failed to analyze the basis for his conclusions in sustaining the accusation and the penalty.

DISCUSSION

I

Appellant asserts in its brief that the ALJ improperly denied its pre-hearing motion to compel discovery. Its motion was brought in response to the Department's failure to comply with those parts of its discovery request that sought copies of any findings or decisions which determined that the present decoy's appearance was not that which could be generally expected of a person under the age of 21 and all decisions certified by the Department over a four-year period which determined that any decoy failed to comply with rule 141(b)(2). For all of the decisions specified, appellant also requested all photographs of the decoys in those decisions.

ALJ Gruen, who heard the motion, denied it because he concluded it would

cause the Department an undue burden and consumption of time and because appellant failed to show that the requested items were relevant or would lead to admissible evidence. Appellant argues that the items requested are expressly included as discoverable matters in the APA and the ALJ used erroneous standards in denying the motion.

This Board has discussed, and rejected, this argument numerous times before. Just as appellant's arguments are the same ones made before, our response is the same as before. We see no reason to once again go over our reasons for rejecting these arguments. Should appellant wish to review those reasons, it may find them fully set out in *7-Eleven, Inc./Virk* (2007) AB-8577, as well as many other Appeals Board opinions.

II

Appellant contends the Department violated the Administrative Procedure Act (APA)² by transmitting a report of hearing, prepared by the Department's advocate at the administrative hearing, to the Department's decision maker after the hearing but before the Department issued its decision. It relies on the California Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [145 P.3d 462, 50 Cal.Rptr.3d 585] (*Quintanar*) and an appellate court decision following *Quintanar*, *Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Board* (2007) 149 Cal.App.4th 116 [57 Cal.Rptr.3d 6]. It asserts that, at a minimum, this matter must be remanded to the Department for an evidentiary hearing regarding whether an ex parte communication occurred.

²Government Code sections 11340-11529.

The Department disputes appellant's allegations of ex parte communications and asks the Appeals Board to remand this matter so that the factual question of whether such a communication was made can be resolved.

We agree with appellant that transmission of a report of hearing to the Department's decision maker is a violation of the APA. This was the clear holding of the Court in *Quintanar, supra*.

Both parties agree that remand is the appropriate remedy at this juncture. We agree, and as we have done in the numerous other cases involving this issue, we will remand the matter to the Department for an evidentiary hearing.

III

Citing the decision of the California Supreme Court in *Topanga Ass'n for a Scenic Community v. Los Angeles County* (1974) 11 Cal.3d 506, 516-517 [113 Cal.Rptr. 836], appellants contend that the ALJ failed to supply the analytical bridge between the evidence and the conclusions reached on that evidence required by that case. They argue that, "[w]hile the link between the facts and the law may be clear in the ALJ's mind, oblique references to pages of recounted facts, some of which may or may not have bearing on the legal conclusions reached, fail to provide the requisite guidance and insight in the ALJ's rationale for reaching the legal conclusions in the Proposed Decision." (App. Br., p. 24.)

The decision contains seven lettered paragraphs of general findings, several of which have numbered sub-paragraphs with more specific factual findings. The findings summarize the evidence presented at the hearing. The Determination of Issues section of the decision contains the legal conclusions reached by the ALJ on the basis of the findings cited in support of those conclusions.

The *Topanga* decision upon which appellants rely requires only that “the agency which renders the challenged decision must set forth findings to bridge the analytical gap between the raw evidence and ultimate decision or order.” (*Topanga Ass’n for a Scenic Community, supra*, at 515.) The thrust of the decision is on the need for findings, and not at all with the agency’s rationale in relating the findings to the ultimate decision.

The Appeals Board put this issue to rest insofar as this Board is concerned in its decision in *Hof’s Hut Restaurants, Inc.* (2005) AB-8194, where it said:

Appellant’s demand that the ALJ explain how the conflict in testimony was resolved is little more than a demand for the reasoning process of the ALJ. The California Supreme Court made clear in *Fairfield v. Superior Court of Solano County* (1975) 14 Cal.3d 768, 778-779 [122 Cal.Rptr. 543], that, as long as findings are made, a party is not entitled to attempt to delve into the reasoning process of the administrative adjudicator:

As we stated in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836, 522 P.2d 12]: “implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.”^[Fn.]

In short, in a quasi-judicial proceeding in California, the administrative board should state findings. If it does, the rule of *United States v. Morgan* [(1941)] 313 U.S. 409, 422 [85 L.Ed. 1429, 1435 [61 S.Ct. 999]] precludes inquiry outside the administrative record to determine what evidence was considered, and reasoning employed, by the administrators.

The legal conclusions reached by the ALJ are supported by the findings, and appellants do not challenge the sufficiency of the evidence which supports the findings. Appellants’ contention must be rejected.

ORDER

The decision of the Department is affirmed as to all issues other than that

concerning the alleged ex parte communication, and the matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.³

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.