

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

AB-8615

File: 20-332850 Reg: 06062045

7-ELEVEN, INC., SANDEEP SINGH, and HARDEEP TOOR, dba 7-Eleven
420 East Bullard Avenue, Fresno, CA 93710,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: January 10, 2008
San Francisco, CA

ISSUED MARCH 25, 2008

7-Eleven, Inc., Sandeep Singh, and Hardeep Toor, doing business as 7-Eleven (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 10 days, all of which were stayed for a probationary period of one year, for their clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Sandeep Singh, and Hardeep Toor, 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, Robert Wieworka.

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 September 30, 1997. On February 27, 2006, the Department filed an accusation against appellants charging that on December 30, 2005, appellants' clerk, (the clerk), sold an alcoholic beverage to 19-year-old Jaclyn Smith. Although not noted in the accusation, Smith was working as a minor decoy for the Department and the Fresno Police Department at the time.

At the administrative hearing held on July 26, 2006, documentary evidence was received and testimony concerning the sale was presented by Smith (the decoy) and by Department investigator Lori Kohman.

The Department's decision determined that the violation charged was proved and no defense to the charge was established.

Appellants then filed an appeal contending the Department violated due process and prohibitions in the Administrative Procedure Act (APA)² against ex parte communications. Appellants also filed a motion asking the Board to augment the record with any Report of Hearing, ABC Form 104, or other related document in the Department's file for this case.³

DISCUSSION

Appellants contend the Department violated the APA 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

²Government Code sections 11340-11529.

³ Our decision on the ex parte communication issue makes augmenting the record unnecessary, and the motion is denied.

decision. They rely 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 two appellate court decisions following *Quintanar*, *Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Board* (2007) 149 Cal.App.4th 116 [57 Cal.Rptr.3d 6] and *Rondon v. Alcoholic Beverage Control Appeals Board* (2007) 151 Cal.App.4th 1274 [60 Cal.Rptr.3d 295]. They assert that the decision this matter must be reversed because of the Department's violation, but if it is not reversed, the matter must be remanded to the Department for further proceedings.

The Department disputes appellants' 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 appellants 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*.

However, we agree with the Department that remand is the appropriate remedy at this juncture. As we have done in the numerous other cases involving this issue, we will remand the matter to the Department for an evidentiary hearing.

Both parties agree that remand is the appropriate remedy at this juncture. We agree as well, 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.

ORDER

The matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.⁴

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

⁴This 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.