

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

AB-8632

File: 20-421615 Reg: 06062844

7-ELEVEN, INC., and KANDOLA, INC. dba 7-Eleven Store #21800D 2111
631 South Main Street, Fallbrook, CA 92028,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: November 1, 2007
Los Angeles, CA

ISSUED JANUARY 17, 2008

7-Eleven, Inc., and Kandola, Inc., doing business as 7-Eleven Store #21800D 2111 (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 one year of discipline-free operation, for their clerk, Roy Anguiano, having sold a six-pack of Budweiser Select beer to Grant Appleby, a 17-year-old minor decoy working with the San Diego County Sheriff's Department, a violation of Business and Professions Code section 25658, subdivision (a).

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

¹The decision of the Department, dated October 5, 2006, is set forth in the appendix.

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FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on April 30, 1998.

Thereafter, the Department instituted an accusation against appellants charging the sale of an alcoholic beverage to a minor on February 2, 2006.

An administrative hearing was held on July 19, 2006, at which time oral and documentary evidence was received. The evidence established that when the decoy took the six-pack of beer to the counter, he was asked for identification. He produced his California driver's license (Exhibit 6), which showed his true date of birth (June 30, 1988) and bore a red stripe with the words "AGE 21 IN 2009." Anguiano examined the license, and asked the decoy when he was born. The decoy replied "88." A second clerk whispered in the ear of Anguiano that the decoy was not old enough to purchase alcoholic beverages, but Anguiano nevertheless went ahead with the sale of the beer.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred as alleged, and no affirmative defense had been established.

Appellants thereafter filed a timely appeal in which they raise a single issue, contending that the Department communicated with its decision maker on an ex parte basis, in violation of the provisions of the Administrative Procedure Act.

DISCUSSION

This contention has been made many times before and has been adjudicated by the California Supreme Court 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*). This Board has followed *Quintanar* in numerous appeals, remanding

the matters to the Department for evidentiary hearings to resolve the factual issues regarding ex parte communications raised in these cases. (E.g., *Dakramanji* (2007) AB-8572; *BP West Coast Products, LLC* (2007) AB-8549; *Hong* (2007) AB-8492; *Chevron Stations, Inc.* (2007) AB-8488; *Circle K Stores, Inc.* (2006) AB-8404.) The ex parte communication contention in the present appeal is virtually identical to those made in the earlier appeals, and we decide this issue in the present appeal as we did the same issue in the earlier appeals just cited.

ORDER

The matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.²

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

²This 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.