

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

AB-8644

File: 20-214959 Reg: 05061254

7-ELEVEN, INC., JAI BAKSHI, and NEENA BAKSHI, dba 7-Eleven Store # 2171-22375
66500 Eighth Street, Desert Hot Springs, CA 92240,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John P. McCarthy

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

ISSUED FEBRUARY 26, 2008

7-Eleven, Inc., Jai Bakshi, and Neena Bakshi, doing business as 7-Eleven Store # 2171-22375 (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 law enforcement minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants 7-Eleven, Inc., Jai Bakshi, and Neena Bakshi, appearing through their counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated October 17, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 6, 1988. On November 30, 2005, the Department filed an accusation against appellants charging that on November 19, 2005, their clerk, Anton Thambiraj (the clerk), sold an alcoholic beverage to 16-year-old Vanessa Decker. Although not noted in the accusation, Decker was working as a minor decoy for the Department and the Desert Hot Springs Police Department at the time.

At the administrative hearing held on August 15, 2006, documentary evidence was received and testimony concerning the sale was presented by Decker (the decoy) and by Department investigator Eric Burlingame.

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 prohibitions against ex parte communications with the decision maker.

DISCUSSION

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*). Appellant 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.

ORDER

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.