

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

AB-8660

File: 20-343072 Reg: 06062764

CHEVRON STATIONS, INC., dba Chevron Station 94230
5300 Mowry Avenue, Fremont, CA 94538,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Stewart A. Judson

Appeals Board Hearing: October 2, 2008
San Francisco, CA

ISSUED JANUARY 8, 2009

Chevron Stations, Inc., doing business as Chevron Station 94230 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days, all of which were conditionally stayed, for appellant's 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 appellant Chevron Stations, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

¹The decision of the Department, dated November 14, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 8, 1998. On June 1, 2006, the Department filed an accusation against appellant charging that, on November 3, 2005, appellant's clerk sold an alcoholic beverage to 19-year-old Carmine Galotta. Although not noted in the accusation, Galotta was working as a minor decoy for the Fremont Police Department at the time.

At the administrative hearing held on September 27, 2006, documentary evidence was received, and testimony concerning the sale was presented by Galotta. Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellant has filed an appeal making the following contention: the Department communicated ex parte with its decision maker.

DISCUSSION

Appellant contends that the Department communicated ex parte with its decision maker, citing *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board/Quintanar* (2006) 40 Cal.4th 1 [50 Cal.Rptr. 585].

The Department states, in its two paragraph brief:

The Appellant does not raise a single issue relating to the finding contained in the Proposed Decision. As such, it is presumed that the Appellant concedes that a violation of the Alcoholic Beverage Control Act occurred and that the penalty is appropriate.

The Appellant does raise issues regarding an alleged ex parte contact (Quintanar issue) and the Department requests that this case be remanded to the Department for consideration of this issue.

There being no objection, the Board will remand this case to the Department for an evidentiary hearing on the ex parte communication issue, in accordance with the

Department's request. The Board expresses no opinion with respect to the comments in the first paragraph of the Department's brief.

ORDER

This 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.