

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

AB-8668

File: 20-388238 Reg: 06062556

7-ELEVEN, INC., and AAA MANAGEMENT CORPORATION, dba 7-Eleven Store No.
2111-16054
1650 West San Marcos Boulevard, San Marcos, CA 92069,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: September 4, 2008 Los
Angeles, CA

ISSUED: DECEMBER 3, 2008

7-Eleven, Inc., and AAA Management Corporation, doing business as 7-Eleven Store No. 2111-16054 (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, for their clerk selling an alcoholic beverage to a Sheriff's Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

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The decision of the Department, dated November 29, 2006, is set forth in the appendix.

Appearances on appeal include appellants 7-Eleven, Inc., and AAA Management Corporation, 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.

PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 12, 2002. On April 14, 2006, the Department instituted an accusation against appellants charging that, on January 20, 2006, appellants' clerk, Sean Crabtree (the clerk), sold an alcoholic beverage to 19-year-old Jessica Dieckmann. Although not noted in the accusation, Dieckmann was working as a minor decoy for the San Diego County Sheriff's Department at the time.

An administrative hearing was held on October 5, 2006, at which time documentary evidence was received, and testimony concerning the sale was presented by Dieckmann (the decoy) and by Todd Murphy, a Sheriff's deputy.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellants filed an appeal, contending that the Department engaged in ex parte communications in violation of the Administrative Procedure Act.

DISCUSSION

Appellants, citing *Department of Alcoholic Beverage Control v. Alcoholic*

Beverage Control Appeals Board (2006) 40 Cal.4th 1 [50 Cal.Rptr.3d 585, 145 P.3d 462] (*Quintanar*), contend that the Department engaged in ex parte communications in violation of the Administrative Procedure Act.

The Department has filed a one-paragraph response, stating:

The Department of Alcoholic Beverage Control does not concede any of the issues raised in appellant's [sic] opening brief. However, a review of the file indicates that the matter should be remanded to the Department for disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (*Quintanar* [sic] (2006) 40 Cal.4th 1.

In the absence of objection by appellants, we shall remand the case to the Department as it has suggested.

ORDER

This matter is remanded to the Department for an evidentiary hearing on the issue of ex parte communication.²

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER ALCOHOLIC
BEVERAGE CONTROL APPEALS
BOARD

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This 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.