

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

AB-8692

File: 20-343452 Reg: 06064052

CHEVRON STATIONS, INC., dba Chevron Station 96405
17561 MacArthur Boulevard, Irvine, CA 92614,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: February 5, 2009
Los Angeles, CA

ISSUED JUNE 12, 2009

Chevron Stations, Inc., doing business as Chevron Station 96405 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for its clerk, Ana Rose, having sold a six-pack of Bud Light beer to David Sedlacek, a 17-year-old minor participating in a decoy operation conducted by the Department of Alcoholic Beverage Control, in 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, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

¹The decision of the Department, dated March 16, 2007, is set forth in the appendix.

PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on October 27, 1998. On October 12, 2006, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to a minor on August 26, 2006.

An administrative hearing was held on January 12, 2007, at which time documentary evidence was received and testimony concerning the violation charged was presented by David Sedlacek, the minor, and Charles Sento, a Department investigator. Sedlacek testified that, when asked for his identification, he handed the clerk his California Identification Card. The card contained Sedlacek's true date of birth and carried a red stripe stating "AGE 21 IN 2010," and a blue stripe stating "AGE 18 IN 2007." The clerk went forward with the sale. Investigator Sento testified that after the sale, Sedlacek identified the clerk as the person who sold to him.

Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established.

Appellant filed a timely notice of appeal in which it raises a single issue - that the Department communicated ex parte with its decision maker.

DISCUSSION

While not conceding any of the issues raised by appellant, the Department states in its brief that this matter should be remanded to the Department for disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1 [50 Cal.Rptr.3d 585] (*Quintanar*).

There being no objection, we will do as the Department requests.

ORDER

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

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

² 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.