

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

AB-8781

File: 21-425687 Reg: 07065340

SHARMEENS ENTERPRISES, INC., dba Short Stop 23
15400 Nordhoff Street, Sepulveda, CA 91343,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: November 4, 2010
Los Angeles, CA

ISSUED DECEMBER 9, 2010

Sharmeens Enterprises, Inc., doing business as Short Stop 23 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its 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 Sharmeens Enterprises, Inc., appearing through its counsel, Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry Winters.

PROCEDURAL HISTORY

Appellant's off-sale general license was issued on June 13, 2005. On March 22,

¹The decision of the Department, dated November 29, 2007, is set forth in the appendix.

2007, the Department filed an accusation against appellant charging that, on December 31, 2006, appellant's clerk, Agustina Rodriguez (the clerk), sold an alcoholic beverage to 18-year-old Richard Guzman. Although not noted in the accusation, Guzman was working as a minor decoy for the Department at the time.

At the administrative hearing held on September 25, 2007, documentary evidence was received, and testimony concerning the sale was presented by Guzman (the decoy) and by Charlotte Klark, a Department investigator.

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: appellant was precluded from offering evidence that would prove that the penalty was the product of an underground regulation when the administrative law judge (ALJ) refused to hear the testimony of District Administrator Judy Matty.

DISCUSSION

Appellants contend that they were prevented from presenting evidence regarding the Department's use of an underground regulation in determining the penalty because the ALJ granted the Department's motion to quash a subpoena served on District Administrator Matty.

The Board has addressed and rejected this argument before. (See, e.g., *Yummy Foods LLC* (2010) AB-8950; *Randhawa* (2010) AB-8973; *Chevron Stations, Inc.* (2010) AB-8974; *7-Eleven, Inc./ Wong* (2010) AB-8991; *7-Eleven, Inc./ Solanki* (2010) AB-9019.) Even if the District Administrator testified as the offer of proof said she would, that testimony would not establish that an underground regulation existed. The offer of

proof is no different from those in the cited decisions, and does not warrant a different result.

The ALJ did not err by quashing the subpoena.

ORDER

The decision of the Department is affirmed.²

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

² This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.