

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

AB-8867

File: 20-387721 Reg: 07064669

5 POINTS OIL CORPORATION, dba Bouquet Shell
26801 Bouquet Canyon, Santa Clarita, CA 91350,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 7, 2009
Los Angeles, CA

ISSUED AUGUST 18, 2009

5 Points Oil Corporation, doing business as Bouquet Shell (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked its off-sale beer and wine license, with revocation conditionally stayed for three years and its license suspended for 30 days, for having permitted the sale of marijuana on the licensed premises, in violation of Health and Safety Code section 11360, subdivision (a).²

Appearances on appeal include appellant 5 Points Oil Corporation, appearing

¹The decision of the Department, dated March 17, 2008, is set forth in the appendix.

² Section 11360, subdivision (a), provides, in pertinent part: " Except as otherwise provided by this section, or as authorized by law, every person who ...sells ... marijuana shall be punished by imprisonment ..."

through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Michael Akopyan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 8, 2002.

Thereafter, on November 20, 2006, the Department instituted a three-count accusation against appellant charging that it permitted its clerk and an unidentified female known only as "Ramey," to sell or furnish marijuana in the licensed premises.

Documentary evidence was received and testimony concerning the violations charged was presented at an administrative hearing held on August 10, 2007, and January 8, 2008. Subsequent to the hearing, the Department issued its decision which determined that counts 1 (Ramey) and 2 (clerk) had been established by the evidence, but dismissed count 3 because the evidence showed that the sale took place away from the licensed premises.

Appellant has filed a timely notice of appeal, and an opening brief, in which it raises the following issues: (1) the decision fails to provide an analytical bridge between the evidence and the conclusions, (2) the record on appeal lacks key documents regarding the proposed decision; and (3) the record does not establish that the licensee had actual or constructive knowledge of the drug sale on May 5, 2006.

DISCUSSION

The Department states, in its reply brief: "The Department does not concede any of the issues raised by the licensee in their opening brief. However, a review of the file indicates that the matter should be remanded to the Department for further disposition."

There being no objection from appellant, this case will be remanded to the Department for further disposition.

ORDER

This matter is remanded to the Department for such further proceedings that may be necessary or appropriate.³

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

³ 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.