

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

AB-8875

File: 47-378127 Reg: 07067099

QUINCEY AMUSEMENTS, INC., dba The Bridge Cinema Deluxe
6081 Center Drive, Suite 201, Los Angeles, CA 90045,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

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

ISSUED AUGUST 19, 2009

Quincey Amusements, Inc., doing business as The Bridge Cinema Deluxe (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for its bartender, Richard Kapple, having sold a glass of Bud Light beer, an alcoholic beverage, to Krystyne Galvan, an 18-year-old police/Department minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Quincey Amusements, 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, Jennifer Casey.

¹The decision of the Department, dated April 15, 2008, is set forth in the appendix.

PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on October 5, 2001. Thereafter, on or about August 31, 2007, the Department instituted an accusation against appellant charging the sale of an alcoholic beverage to a minor. Although not stated in the accusation, the minor was participating in a decoy operation conducted jointly by the Department and the Los Angeles Police Department.

Documentary evidence was received and testimony concerning the violation charged was presented at an administrative hearing held on February 6, 2008. Subsequent to the hearing, the Department issued its decision which determined that the charge of the accusation had been established and appellant had not established a defense under Rule 141(b)(2) (4 Cal.Code Regs., §141(b)(2)).

Appellant filed a timely notice of appeal in which it raises the following issues: (1) the Department lacked appropriate screening mechanisms to ensure the non-appearance of bias; (2) the Department engaged in ex parte communications; and (3) the decision must be reversed because the Department certified an incomplete record. Appellant has also filed a motion to augment the record by adding General Order No.2007-9 and related documents.

DISCUSSION

I and II

Appellant, in related contentions, asserts that the Department lacked appropriate screening mechanisms to prevent the appearance of bias, and that it engaged in ex parte communications. Both contentions must fail, in light of the California Supreme Court's decision in *Morongo Band of Mission Indians v. State Water Resources Control Board* (February 9, 2009 (45 Cal.4th 731 [194 P.3d 1141, 88 Cal.Rptr.3d 610), and the

Department's adoption of General Order No. 2007-09 on August 10, 2007.

The administrative hearing in this matter was held on February 6, 2008, and the proposed decision, written February 26, 2008, was adopted by the Department on April 15, 2008, all well after the adoption and implementation of General Order No. 2007-09.

The Appeals Board has made it clear that the Department, by its adoption and implementation of General Order No. 2007-09, has effectively eliminated any basis for claims its prosecutors communicated *ex parte* with its decision maker. The Board's views, and its assessment of the General Order, can be seen in a number of recent decisions of the Board. (See, e.g., *7-Eleven, Inc./Gonzalez* (March 19, 2009) AB-8779; *Garfield Beach CVS, LLC* (March 18, 2009) AB-8784; *Garfield Beach CVS, LLC* (February 23, 2009) AB-8768.)

The decision in *Morongo Band of Mission Indians, supra*, also proves fatal to appellant's claims that the Department lacked appropriate screening mechanisms, claims this Board had already found unpersuasive when measured against the terms of the General Order. In *Morongo Band of Mission Indians*, the Supreme Court held that the separation of prosecutorial and advisory functions may be made on a case-by-case basis.

Appellant's bare allegations of inadequate screening and *ex parte* communication are unsupported by any evidence, and must be rejected.

III

Appellant contends that the decision must be reversed because the Department certified an incomplete administrative record to the Appeals Board. Missing from the record, appellant says, are a motion to compel discovery, points and authorities in support of and against the motion, and the order denying the motion.

This issue has also been addressed by the Appeals Board, and has been uniformly rejected. The Board has treated the issue as one involving a procedural error which seldom justifies reversal. (*Garfield Beach CVS, LLC* (2009) AB-8767). This is particularly true where, as here, appellant has not been able to identify any prejudice flowing from the faulty initial certification.

None of appellant's appeal issues relate to the discovery motion, which sought information about decoys in other cases.

In any event, a supplemental certification was filed by the Department two months prior to the filing of appellant's opening brief, adding the overlooked documents to the administrative record before the Board. Appellant has not specified any other documents claimed to have been omitted from the record, and offers only speculation that documents not properly part of the record were included with the documents available to the decision maker.

ORDER

The decision of the Department is affirmed.²

FRED ARMENDARIZ, CHAIRMAN
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.