

ISSUED MAY 4, 2000

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

ADNAN GREER, GEORGE GREER, and	)	AB-7403
JOSEPHINE GREER)	
dba Mustang Liquor	)	File: 21-290674
21121 Sherman Way	)	Reg: 98045108
Canoga Park, CA 91303,)	
Appellant s/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Ronald M. Gruen
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	March 2, 2000
Respondent.	)	Los Angeles, CA
)	

Adnan Greer, George Greer, and Josephine Greer, doing business as Mustang Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for appellants' clerk selling an alcoholic beverage to a person under the age of 21, being contrary to the universal and generic public welfare and morals provisions of the California Constitution,

¹The decision of the Department, dated May 13, 1999, is set forth in the appendix.

article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellants Adnan Greer, George Greer, and Josephine Greer, appearing through their counsel, Jeffrey S. Weiss, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on March 30, 1994. Thereafter, the Department instituted an accusation against appellants charging that an employee sold an alcoholic beverage to a person who was obviously intoxicated (Count 1) and that an employee sold an alcoholic beverage to minor decoy (Count 2).

An administrative hearing was held on February 25, 1999, at which time oral and documentary evidence was received. At that hearing, three LAPD officers, the decoy, and the clerk charged with selling to an obviously intoxicated person, presented testimony concerning the two counts.

Subsequent to the hearing, the Department issued its decision which dismissed Count 1 but determined that Count 2 had been proven.

Appellants thereafter filed a timely notice of appeal. In their appeal, they contend that Rule 141(b)(5), which requires that the decoy make a face-to-face identification of the alleged seller before any citation is issued, was violated.

DISCUSSION

Appellants contend that Rule 141(b)(5) was violated because it was never established that the decoy was “brought up to the clerk where the clerk [had] an opportunity to look at and identify the minor.” They argue that the police officer “had no recollection whatsoever if there was a face to face identification” and note that, although the ALJ found that the decoy “was facing the clerk and the clerk had a fair opportunity to observe the minor . . . at no time was it ever brought out by any witness that the clerk was facing the minor and was observing this so-called pointing out.” (App. Opening Br. at 4th [unnumbered] page.)

The ALJ made an extensive and detailed finding regarding the face-to-face identification (Decision, p. 3):

"Outside the premises, [the minor] was met by Officer Baptiste and other officers and they all immediately re-entered the premises. At this point, Officer Baptiste had a failure of recollection as to whether the minor ever made a face-to-face identification of the seller of the beer, either by physically pointing out or verbally identifying the clerk.

"On the other hand, [the minor] clearly recollected that upon entering the premises, Officer Baptiste asked him who sold him the beer. When the question was asked, Baptiste and the minor were between three to six feet from the cash register and the location of the clerk. They continued to move toward the clerk, and within two to three feet from the cash register, the minor responded by pointing to the selling clerk and verbally stating ‘him’.

"The entire face-to-face identification process took place within a distance of six feet of the clerk and within a compact period of time. The minor was facing the clerk and clerk had a fair opportunity to observe the minor. The requirements of Department Rule 141(b)(5) have been met. [Acapulco vs. Appeals Board 79 Cal. Rptr. 2d, 126]."

The uncontroverted testimony of the decoy established that the requisite face-to-face identification was made, as found by the ALJ.

Appellant's argument turns the requirement of the rule on its head. The minor decoy must identify the seller; there is no requirement that the seller identify the minor, nor is it necessary for the clerk to be actually aware that the identification is taking place.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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

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