

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

| | | |
|---------------------------|---|--------------------------|
| THE SOUTHLAND CORPORATION |) | AB-7407 |
| dba 7-Eleven |) | |
| 6015 East Kings Canyon, |) | File: 20-325008 |
| Fresno, CA 93727, |) | Reg: 98044173 |
| Appellant/Licensee, |) | |
| |) | Administrative Law Judge |
| v. |) | at the Dept. Hearing: |
| |) | Jeevan S. Ahuja |
| DEPARTMENT OF ALCOHOLIC |) | |
| BEVERAGE CONTROL, |) | Date and Place of the |
| Respondent. |) | Appeals Board Hearing: |
| |) | September 22, 2000 |
| |) | San Francisco, CA |

The Southland Corporation, doing business as 7 Eleven (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its off-sale beer and wine license for 15 days for its clerk selling an alcoholic beverage to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivisions (a) and (b), arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant The Southland Corporation, appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel,

¹The decision of the Department dated April 22, 1999, is set forth in the appendix.

Robert Wieworka.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on October 29, 1996. Thereafter, the Department instituted an accusation dated June 30, 1998, against appellant charging that its clerk had sold an alcoholic beverage to a person under the age of 21 years (minor).

An administrative hearing was held on January 21, 1999, at which time oral and documentary evidence was received. Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred and suspended appellant's license for 15 days.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant raises the following issues: (1) the Department's Rule 141(b)(2) was violated; and (2) appellant's discovery rights were violated.

DISCUSSION

I

Appellant contends the Department's Rule 141(b)(2) was violated.

The Administrative Law Judge (ALJ) stated:

"[The minor] is a male person whose physical appearance, although husky, is such as to be considered under twenty-one years of age."

The Board has visited this issue on numerous occasions. It has uniformly ruled that, where the ALJ limits his analysis to the minor's physical appearance,

and fails to indicate that he has considered other important indicia of age such as demeanor, poise, presence, or level of maturity, to name some, the decision must be reversed. This case is no exception.

II

Appellant contends its discovery rights were violated, arguing that the Department failed to provide a court reporter at the time of the hearing on discovery. Appellant claims it was prejudiced in its ability to defend against the accusation by the Department's refusal and failure to provide it discovery with respect to the identities of other licensees alleged to have sold, through employees, representative or agents, alcoholic beverages to the minor involved in this case, during the 30 days preceding and following the sale in this case. Appellant also claims error in the Department's failure to provide a court reporter for the hearing on its motion to compel discovery. Appellant cites Government Code §11512, subdivision (d), which provides, in pertinent part, that "the proceedings at the hearing shall be reported by a stenographic reporter."

The Board has issued a number of decisions directly addressing these issues, (See, e.g., The Circle K Corporation (2000) AB-7031; The Southland Corporation and Mouannes (2000) AB-7077a; Circle K Stores, Inc., (2000) AB-7091a; Prestige Stations, Inc. (2000) AB-7248; and The Southland Corporation and Pooni (2000) AB-7264.)

In these cases, and many others, the Board reviewed the discovery

provisions of the Civil Discovery Act (Code of Civ. Proc., §§2016-2036) and the Administrative Procedure Act (Gov. Code §§11507.5-1150-7.7). The Board determined that the appellants were limited to the discovery provided in Government Code §11506.6.

The Board also held in the cases mentioned above that a court reporter was not required for the hearing on the discovery motion. We continue to adhere to that position.

ORDER

The decision of the Department is affirmed as to the issue of the demand for a court reporter, but reversed as to the issues of conformity to 4 California Code of Regulations §141(b)(2) concerning the appearance of the minor purchaser, and the need to provide reasonable discovery.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., 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.