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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

7-ELEVEN, INC. et al.,

Petitioners,

v.

ALCOHOLIC BEVERAGE
CONTROL APPEALS BOARD,

Respondent.

DEPARTMENT OF
ALCOHOLIC BEVERAGE
CONTROL,

Real Party in Interest.

B277805

(Alcoholic Beverage Control
Appeals Board. No. AB-9554)

Petition for writ of review of a decision of the Department of Alcoholic Beverage Control Appeals Board. Affirmed.

Solomon, Saltsman & Jamieson, Ralph Barat Saltsman, Stephen Warren Solomon, Ryan M. Kroll, Jennifer L. Oden and Melissa H. Gelbart for Petitioners.

Xavier Becerra and Kamala D. Harris, Attorneys General, Chris A. Knudsen, Senior Assistant Attorney General, Kenneth C. Jones and Sarah M. Barnes, Deputy Attorneys General, for Respondent.

Following the suspension of their alcoholic beverage license for having sold beer to an underage police decoy, 7-Eleven, Inc. and William Hugh Holmes petitioned for review of a decision of the Alcoholic Beverage Control Appeals Board affirming the order of the Department of Alcoholic Beverage Control. Petitioners contend they were improperly denied discovery of the decoy's personal address. We need not reach the issue, however, as we conclude any error in denying discovery was not prejudicial.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Accusation

The Department of Alcoholic Beverage Control (Department) filed an accusation against petitioners, alleging they had sold alcohol in violation of Business and Professions Code¹ section 25658, subdivision (a), which makes it a misdemeanor to furnish alcohol to a person under 21 years of age. Petitioners filed a notice of defense and requested an evidentiary hearing.

¹ Statutory references are to this code, unless otherwise indicated.

2. The Disputed Discovery Ruling

Prior to the evidentiary hearing, petitioners requested discovery of the names and addresses of all known witnesses to the sting operation under Government Code section 11507.6. The Department responded with the name of the police decoy Adalton Santamaria, a copy of his California Identification Card and the address of the West Valley police station, where Santamaria volunteered as a Los Angeles police cadet and served as a decoy.

Petitioners moved to compel production of Santamaria's personal address after an apparent attempt to contact him through the police station failed and the Department refused to provide the information. The Department opposed the motion, maintaining it had complied with all statutory discovery requirements and the disclosure of Santamaria's personal address would jeopardize his safety.

After the parties submitted the matter on the moving papers, the administrative law judge (ALJ) determined the Department was not obligated to provide the personal address of a police decoy under Government Code section 11507.6 and denied the motion.

3. The Hearing Evidence and Proposed Decision

According to the evidence offered in support of the accusation, on December 31, 2014, Los Angeles police officers conducted a sting operation at a commercial establishment in Reseda (the store) from which petitioners had been licensed in July 1988 to sell wine and beer. Santamaria, then 19 years old, was assigned to assist the officers as an underage decoy in the sting operation.

Santamaria entered the store, selected a 25-ounce can of beer from the cooler and took it to the checkout counter. The store clerk Hamitashav Khanna asked Santamaria for identification. Santamaria gave Khanna his California Identification Card. The card bore Santamaria's photograph, name and date of birth. It also stated in bold print, "AGE 21 IN 2016." Khanna looked at the card for approximately 10 seconds before handing it back, telling Santamaria the price of the beer and permitting him to pay for the beer and leave the store. Jose Fernandez, an undercover officer, had preceded Santamaria into the store and watched the transaction.

Minutes later, Santamaria reentered the store with other police officers, and identified Khanna as the clerk who had sold him the beer. At the time, Khanna and Santamaria were standing three feet apart, facing each other. They were then photographed together, and Khanna was cited.

Store manager Ashwani Kumar, the sole witness for petitioners, testified other store employees had consistently refrained from selling alcohol to underage decoys in previous police sting operations.

In his proposed decision, the ALJ made factual findings in accord with the hearing testimony of Santamaria and Officer Fernandez, concluded there was good cause for suspension of petitioners' license for violating section 25658, subdivision (a), and recommended suspension of their license for five days, with five days stayed. The ALJ also rejected petitioners' claims the officers had failed to comply with the regulations for the use of underage decoys in sting operations. (Cal. Code Regs., tit. 4, § 141 (Regulation 141).)

4. *The Department's Order and Appeal to the Board*

The Department adopted the ALJ's proposed decision and imposed and stayed a five-day suspension on condition that no further violations occur for one year. Petitioners appealed the Department's decision to the Alcoholic Beverage Control Appeals Board (Board), and the Board affirmed the decision. Petitioners sought review in this court pursuant to section 23090.2. We issued the writ and granted a stay of the Board's order pending consideration of the matter.

DISCUSSION

1. *Standard of Review*

““The administration of the Alcoholic Beverage Control Act, within the scope of the purposes of that act, is initially vested in the [D]epartment. Its decisions, however, are subject to administrative review by the [B]oard and a final order of the [B]oard is, in turn, subject to judicial review.”” (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2017) 7 Cal.App.5th 628, 634.)

Judicial review, however, “is limited to a determination of whether the Department has proceeded without or in excess of its jurisdiction; whether the Department has proceeded in the manner required by law; whether the Department's decision is supported by its findings; whether those findings are supported by substantial evidence; or whether there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the Department.” (*CMPB Friends, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1250, 1254;

§ 23090.2.) Courts cannot interpose their independent judgment on the hearing evidence, and must accept the Department's findings of fact as conclusive. (*CMPB Friends, supra*, at p. 1254; see also *Kirby v. Alcoholic Bev. etc. App. Bd.* (1968) 261 Cal.App.2d 119, 122.)

2. *Petitioners' Contentions*

Petitioners contend the Board erred in affirming the Department's decision on the theory that police cadets are peace officers and the disclosure of their personal information is conditioned on compliance with certain procedural safeguards, which did not occur here. However, because we review the decision of the Department, not that of the Board, we do not consider the Board's reasons for affirming the Department's decision. (§ 23090.2; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2005) 128 Cal.App.4th 1195, 1205; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1071.)

Petitioners additionally contend they were entitled to discovery of Santamaria's personal address under Government Code section 11507.6, which allows each party in an administrative proceeding to obtain pretrial discovery of "the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing[.]" Petitioners argue by not complying with its statutory obligation, the Department acted without or in excess of its jurisdiction and contrary to law by depriving petitioners of their procedural due process rights. Determining whether reversal is compelled on these grounds

necessitates a review of the Department's decision and the "whole record" upon which it was based. (§ 23090.2; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, *supra*, 100 Cal.App.4th at p. 1072.) As we shall explain, assuming the Department's conduct violated Government Code section 11507.6, petitioners have failed to demonstrate it also resulted in prejudice justifying reversal.

3. *Failure To Comply with Government Code Section 11507.6 Was Not Prejudicial Error*

A decision by the Department should not be reversed unless the purported error resulted in prejudice. (*Reimel v. House* (1969) 268 Cal.App.2d 780, 787.) Under the California Constitution, a judgment shall be set aside only if "the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13; see *Leal v. Gourley* (2002) 100 Cal.App.4th 963, 968 [Department of Motor Vehicle's failure to provide required notice of right to interpreter was harmless error under Constitutional standard].) The burden is on the party seeking reversal of an administrative agency's decision to affirmatively show the alleged error was prejudicial, i.e. that it is reasonably probable the party would have received a more favorable result had the error not occurred. (See *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308.)

Petitioners argue in their petition, as they did before the Board, that by withholding Santamaria's personal address, the Department denied them any meaningful opportunity to interview Santamaria in advance of the hearing so they could "adequately prepare a defense." Significantly, nothing in the record suggests petitioners made any other attempt to speak to

Santamaria prior to the hearing. For example, there is no indication petitioners asked the Department to arrange for Santamaria to be interviewed at the station, which is the address they were provided.

In any event, petitioners must demonstrate reversible error. In this case, they would have to demonstrate that, had they been given another address, they would have obtained information that could have led to a more favorable outcome. They failed to do so.

Petitioners' primary defense was the Department had not followed Regulation 141 governing the use of underage decoys in sting operations.² On cross-examination petitioners' counsel

² Regulation 141 reads in part: "(a) A law enforcement agency may only use a person under the age of 21 years to attempt to purchase alcoholic beverages to apprehend licensees, or employees or agents of licensees who sell alcoholic beverages to minors . . . in a fashion that promotes fairness. [¶] (b) The following minimum standards shall apply to actions filed pursuant to Business and Professions Code section 25658 in which it is alleged that a minor decoy has purchased an alcoholic beverage: [¶] (1) At the time of the operation, the decoy shall be less than 20 years of age; [¶] (2) The decoy shall display the appearance which could generally be expected of a person under 21 years of age . . . ; [¶] (3) A decoy shall either carry his or her own identification showing the decoy's correct date of birth or shall carry no identification; a decoy who carries identification shall present it upon request to any seller of alcoholic beverages; [¶] (4) A decoy shall answer truthfully any questions about his or her age; [¶] (5) Following any completed sale . . . , the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who

elicited testimony from Santamaria that he was a registered security guard at the time and an experienced police decoy, which counsel argued made Santamaria appear older than a person under the age of 21 years, contrary to Regulation 141, subdivision (b)(2). The ALJ disagreed, based on his own observations of Santamaria during testimony and of Santamaria's photograph taken with Khanna, which depicted Santamaria with the same haircut and clothing he wore at the hearing. The ALJ expressly found Santamaria displayed the appearance and mannerisms generally expected of a person under 21 years of age.

Petitioners do not point to any aspect of Santamaria's appearance, demeanor or testimony that they could have discovered by interviewing Santamaria and which would have made it more likely they would have succeeded in their Regulation 141, subdivision (b)(2) defense or any other defense. In any event, petitioners failed to present any evidence establishing that had they been provided with Santamaria's address, Santamaria would have met with or spoken to them prior to the hearing.

Thus, in the absence of any showing of prejudice, petitioners have failed to establish any error that the Department's failure to comply with their discovery request requires reversal. (Cf. *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51-52; *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 200

purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverages.”

[noting “procedural due process violations, even if proved, are subject to a harmless error analysis.”].)

Moreover, the evidence that petitioners unlawfully furnished alcohol to an underage person in violation of section 25658 was overwhelming. (See *Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 123-124.) It was undisputed that on December 31, 2014, then 19-year-old Santamaria entered the store and purchased a can of beer from Khanna the store clerk. Prior to the sale, Santamaria presented valid identification at Khanna’s request, showing Santamaria would not turn 21 years of age for two years. Khanna reviewed the identification, but completed the sale despite the clear evidence that Santamaria was underage.

DISPOSITION

The decision of the Board is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

BENSINGER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.