

Legal Briefing

DAILY APPELLATE REPORT

Panel Tosses Liquor Control Department Action

By Dan Evans

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An appellate court has junked enforcement actions by the state liquor-control department, ruling that its proceedings violate licensees' due-process rights.

The court faulted the department for allowing its staff attorneys, when they seek liquor-license suspensions or revocations, to present secret reports to the agency's chief counsel, who ultimately decides the questions. The holders of the liquor licenses are not entitled to see the reports.

Ralph Saltsman represented three license holders who won back their licenses in the unanimous, published decision by the 2nd District Court of Appeal.

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"But the court decided that they didn't need to see them to make a decision," Saltsman said. "The fact they exist is enough to make the hearing unfair."

Between May and August 2002, the department accused two retailers, Richard Leun Kim and KV Mart Co., and a bar owner, Daniel Becerril Quintanar, of violating state liquor laws.

Clerks working for Kim and KV Mart allegedly sold alcohol to a 19-year-old decoy, and a bartender working for Quintanar supposedly sold beer to an

obviously intoxicated customer. But Saltsman said the panel's ruling could apply in hundreds of nearly identical cases.

Saltsman, with the Playa del Rey firm of Soloman, Saltsman & Jamieson, said he represents 70 clients in almost identical situations. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board*, 2005 DJDAR 3115 (Cal. App. 2nd Dist. March 15, 2005).

"We agree the Department's failure to separate the prosecutorial function from the adjudicative function created an unacceptable risk of bias and unfairness which violated the accused's due process rights," Justice Earl Johnson Jr. wrote for the court.

obviously intoxicated customer.

The administrative law judge in each case proposed that the charges be dismissed. But after receiving the secret report, the department's chief counsel rejected the recommendation and suspended the licenses of Kim, Quintanar and KV Mart for 15, 20 and 25 days, respectively.

The three filed appeals with the Alcoholic Beverage Control Appeals Board, which reversed the decisions, finding in a written decision that the department's methods violated the accused's right to a fair trial.

Saltsman said he believes this is the

Saltsman said that, when the Alcoholic Beverage Control Department wants to suspend someone's license, evidence is presented first to an administrative law judge.

Department attorneys then prepare a report, unseen by the defendant, and submit it to the chief counsel, the department's decision maker.

"And we won't get that report," Saltsman said. "Never."

The attorney said the appellate court demanded to see the documents, called a Report of Hearing, for the three petitioners. The department refused to turn it over, he said.

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first time the Court of Appeal has ever affirmed the appeals board.

"They only take the case if they want to reverse the decision, whether it's brought by me or the [state] attorney general," he said. "In this case, though, I think they wanted to teach everyone the law."

Saltsman said his firm works with 60 percent of the state's liquor licensees.

Deputy Attorney General Graeme Sharpe, who represented the appeals board, did not return calls requesting comment.

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