

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

**AB-10008**

File: 20-641460; Reg: 24094361

CK 370, INC.,  
dba VILLAGE MARKET,  
370 WEST 2ND STREET  
CLAREMONT, CA 91711-4728  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Honorable Doris Huebel

Appeals Board Hearing: February 7, 2025  
Sacramento, CA/Videoconference

**ISSUED FEBRUARY 11, 2025**

*Appearances:*     *Appellant:* Timothy Kim, President of CK 370, Inc., dba  
Village Market, for appellant;

*Respondent:* Erica M. Navarro, as counsel for the Department  
of Alcoholic Beverage Control.

**OPINION**

CK 370, Inc., doing business as Village Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> suspending appellant's license for 20 days because appellant's agent or employee sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage

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<sup>1</sup> The decision of the Department, dated October 8, 2024, is set forth in the appendix.

to an individual under the age of 21, in violation of Business and Professions Code<sup>2</sup> section 25658(a). As explained below, the Department's decision and suspension of appellant's license is affirmed.

#### FACTS AND PROCEDURAL HISTORY

The Department issued appellant's off-sale beer and wine license on December 22, 2022. There are no records of prior departmental discipline against appellant's license.

The Department filed its accusation on April 25, 2024. The administrative law judge (ALJ) received oral evidence, documentary evidence, and evidence by oral stipulation on the record at the administrative hearing on July 16, 2024.

Evidence established that Department agents Kuhn and Bermejo visited the licensed premises on September 22, 2023. The agents were in a plain-clothes and undercover capacity. The Department had received complaints that the licensed premises (which is located near a college campus) was selling alcoholic beverages to minors.

Agent Kuhn entered the licensed premises and observed a group of youthful appearing females, one of whom was later identified as Hanah Park ("Park"). Park was standing in line for the cashier and holding alcoholic beverages. To Agent Kuhn, Park and her companions had the appearance of persons under 21 years of age.

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<sup>2</sup> All statutory references are to the California Business and Professions Code unless otherwise stated.

Agent Kuhn watched Park approach the cash register and place two bottles of Soju, a Korean rice-based alcoholic beverage<sup>3</sup>, and a bottle of Stella Rosa wine on the sales counter. The clerk, Charles Ryan ("the clerk") scanned the alcoholic beverages. The clerk did not ask Park for her identification.

Appellant's corporate president, Timothy Kim ("Kim"), was standing at the sales counter and observed the sales transaction. Kim assisted with the sales transaction by placing the alcoholic beverages in a plastic bag, which he handed to Park. Kim also retrieved a second plastic bag, walked around the sales counter, and double-bagged Park's alcoholic beverages for her.

Park paid for the beverages, took the plastic bags of alcohol and walked away from the sales counter. Park stood off to the side of the store to wait for her friends who were still looking around. Eventually Park and her youthful appearing friends exited the licensed premises, and the agents stopped them in an adjacent parking lot.

The agents identified themselves and observed Park still holding the plastic bag of alcoholic beverages she had just purchased. Park confirmed to the agents that the clerk did not ask for her identification during the sales transaction. Park had a picture of her United States Passport on her phone, which she showed the agents. The passport indicated Park was 20 years old. The agents conducted a records check with the California Highway Patrol, which confirmed Park's age.

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<sup>3</sup> Appellant takes issue with the Department's classification of Soju as a distilled spirit instead of a wine. However, that distinction is immaterial to the Department's opinion as substantial evidence established that Soju is an alcoholic beverage.

The agents took several photographs of Park, the alcoholic beverages she purchased at the licensed premises, her US Passport, and her valid California Driver's License. (Exhibits 2-4, 6-7.)

The agents re-entered the licensed premises, contacted Kim, identified themselves as peace officers, and informed Kim that the clerk had sold alcohol to a minor. The clerk was not at the licensed premises; however, Kim confirmed his identity and showed them a video from surveillance footage of the sales transaction between Park and the clerk.

The ALJ issued a proposed decision on August 16, 2024, sustaining the accusation and recommending a 20-day suspension of appellant's license. The Department adopted the proposed decision on October 2, 2024, and issued a certificate of decision on October 8, 2024.

Appellant filed a timely appeal contending that the penalty is unreasonable.<sup>4</sup>

#### DISCUSSION

Appellant contends its 20-day penalty is unreasonable. (Appellant's Opening Brief ("AOB"), at p. 1.) Specifically, appellant contends the Department:

- 1) Failed to present evidence that appellant did not maintain a guide on false identifications at the point-of-sale register;
- 2) Failed to present evidence of complaints of under-age sales at the licensed premises, and;

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<sup>4</sup> Appellant's contention that the clerk confused Park with a regular customer "whom he had previously checked the identification to confirm age" is disregarded since this argument was not asserted at the administrative hearing. (Appellant's Opening Brief, at p. 1.)

3) Ignored appellant's evidence that it trains its clerks to check identification when customers purchase alcoholic beverages.

(*Ibid.*)

This Board may examine the issue of excessive penalty if it is raised by an appellant. (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183].) However, the Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) An administrative agency abuses its discretion when it "exceeds the bounds of reason." (*County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582 [90 Cal.Rptr.3d 394, 397].) However, "[i]f reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

In determining disciplinary action, the Department is required to consider the penalty guidelines incorporated in California Code of Regulations, title 4<sup>5</sup>, section 144. The standard penalty for a first-time violation of section 25658(a) is 15 days. (Cal. Code Regs., tit. 4, § 144.) Nevertheless, Rule 144 allows the Department to deviate from the standard penalty when, "in its sole discretion[, it] determines that the facts of the particular case warrant such deviation — such as where facts in aggravation or mitigation exist." (*Ibid.*, emphasis added.)

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<sup>5</sup> All references to "rules" herein are to the sections of California Code of Regulations, title 4.

Factors in aggravation include prior disciplinary history, prior warning letters, licensee involvement, premises located in high crime area, lack of cooperation by the licensee in investigation, appearance and actual age of minor, and continuing course or pattern of conduct. (Cal. Code Regs., tit. 4, § 144.) Factors in mitigation include the length of licensure at the subject premises without prior discipline or problems, positive action by the licensee to correct the problem, documented training of the licensee and the employees, and cooperation by the licensee in the investigation. However, neither list of factors is exhaustive; the Department may use its discretion to determine whether other aggravating or mitigating circumstances exist. (*Ibid.*)

Here, the standard penalty for a first-time violation of section 25658 is a 15-day suspension. The Department heard and rejected appellant's mitigation evidence, finding:

The only mitigation present is the cooperation by the licensee in the investigation. Telling employees to merely "check" the IDs of customers every time, is insufficient given the Licensed Premises is located in a college area and is bound to have minors attempting to purchase alcoholic beverages like Park. There was no evidence that Respondent has instituted any training related examining IDs, the red flags of minor's IDs and fraudulent IDs. There was no evidence the Respondent keeps at the register for its clerks any guides which display each state's valid ID to compare to potential, fraudulent IDs presented by youthful appearing persons attempting to purchase age-restricted merchandise. The Respondent should consider training its clerks on recognizing the red flags of minors IDs as well as fraudulent IDs. There is no mitigation for Mr. Kim complying with the Departments request he take the LEAD training or for the Licensed Premises passing the tobacco minor decoy operation.

(Department's Decision, at p. 7.) Further, the Department found that:

Respondent's mitigation is outweighed by the following aggravating factors: (1) Park's youthful appearance at the time of the sale, (2) the amount of alcohol Park was allowed to purchase, (3) Mr. Kim's involvement and participation in the sales transaction and his failure to prevent the sale despite Park's youthful appearance, as clerk Ryan's supervisor<sup>5</sup> and Respondent's corporate president, (4) the lack of evidence of any documented training of Respondent's employees, especially relating to sales to minors and any instruction on recognizing the red flags of minors IDs or fraudulent IDs, given the proximity of the nearby college, (5) there was no evidence how clerk Ryan was able to manipulate the point of sale (POS) cash register to allow the sale of alcohol to Park, (6) there was no positive action by the licensee to correct the problem, including but not limited to removal of any POS override button to prevent its clerks from bypassing any potential safety protocol the POS system has, and (7) only nine months after issuance of its license Respondent allowed a sale to minor violation to a youthful appearing minor wearing a college sweatshirt. It is of grave concern that Mr. Kim failed to take responsibility for his part in allowing the violation at hand. Also concerning is the manner in which Mr. Kim testified, namely the conflicting and evasive testimony evidencing a level of dishonesty.

(*Id.* at p. 7-8.)

As the Board has said many times over the years, the extent to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion. Rule 144 provides a standard 15-day suspension for a section 25658(a) violation. However, Rule 144 also allows the Department to exercise discretion to consider aggravation and mitigation.

The Department offered substantial evidence of aggravation which was supported by the testimony of the agents, photographs, and video surveillance.<sup>6</sup>

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<sup>6</sup> The Department agents also testified regarding the complaints appellant received for selling alcoholic beverages to minors, and this testimony constitutes substantial evidence. However, it is unclear from appellant's brief how this argument relates to the penalty appellant received. The Board understands this evidence to be background as to why Department agents were at the licensed premises on the day of the violation.

It was appellant's burden to offer evidence of mitigation, which it failed to do. Therefore, the Department's weighing of the aggravation evidence to add five days to the standard 15-day suspension was reasonable and not an abuse of discretion. In short, the penalty must stand.

ORDER

The decision of the Department is affirmed.<sup>7</sup>

SUSAN A. BONILLA, CHAIR  
MEGAN McGUINNESS, MEMBER  
SHARLYNE PALACIO, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>7</sup> This final order is filed in accordance with Business and Professions Code section 23088 and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

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 section 23090 *et seq.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION  
AGAINST:**

CK 370, INC.  
VILLAGE MARKET  
370 WEST 2<sup>ND</sup> STREET  
CLAREMONT, CA 91711-4728

OFF-SALE BEER AND WINE - LICENSE

Respondent(s)/Licensee(s)  
Under the Alcoholic Beverage Control Act

MONROVIA DISTRICT OFFICE

File: 20-641460

Reg: 24094361

**CERTIFICATE OF DECISION**

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on October 2, 2024. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after November 18, 2024, a representative of the Department will contact you to arrange to pick up the license certificate.



[https://abcab.ca.gov/abcab\\_resources/](https://abcab.ca.gov/abcab_resources/)

Sacramento, California

Dated: October 8, 2024

Matthew D. Botting  
General Counsel

**RECEIVED**

**OCT 08 2024**

Alcoholic Beverage Control  
Office of Legal Services

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

CK 370, Inc.	}	File: 20-641460
Db: Village Market	}	
370 West 2 <sup>nd</sup> Street	}	Reg.: 24094361
Claremont, California 91711-4728	}	
	}	License Type: 20
Respondent	}	
	}	Word Count: 9,502
	}	
	}	Kennedy Court Reporters
	}	Hanna Jenkin, Court Reporter
	}	Christopher Chain, Video Host
	}	
<u>Off-Sale Beer and Wine License</u>	}	<b><u>PROPOSED DECISION</u></b>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference on July 16, 2024.

Erica Navarro, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Timothy Kim, corporate president for Respondent, CK 370, Inc., appeared and represented Respondent.

The Department seeks to discipline the Respondent’s license on the grounds that, on or about September 22, 2023, the Respondent-Licensee’s agent or employee, Charles Ryan, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage to Hanah Park, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).<sup>1</sup> (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on July 16, 2024.

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

## FINDINGS OF FACT

1. The Department filed the accusation on or about April 25, 2024.
2. The Department issued a type 20, off-sale beer and wine license to the Respondent for the above-described location on December 22, 2022 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. The Department received complaints the Licensed Premises, which is near a college, was selling alcoholic beverages to minors.
5. On September 22, 2023, Department Agents Kuhn<sup>2</sup> and Bermejo, who were in a plain clothes capacity, went to the Licensed Premises to check for any potential violations of sales to minors. Agent Bermejo stood on the sidewalk approximately three to five feet outside of the Licensed Premises facing its interior. Agent Kuhn entered the Licensed Premises. Upon entering Agent Kuhn observed a group of youthful appearing females, one of whom was later identified as Hanah Park (hereinafter referred to as Park) and was standing in line for the cashier. Park was holding alcoholic beverages. To Agent Kuhn, Park and her companions had the appearance of persons under 21 years of age. Agent Kuhn took a position behind Park's right side, slightly offset, and stood approximately four to five feet away to observe for any violations.
6. Park approached the cash register and placed two bottles of Soju, a Korean rice-based distilled spirit, and a bottle of Stella Rosa wine on the sales counter. (Exhibits 3 and 4.) The on-duty male clerk, later identified as Charles Ryan (hereinafter referred to as clerk Ryan) assisted Park, and scanned the alcoholic beverages. Clerk Ryan did not ask Park for her identification (ID). Park paid for the alcoholic beverages. Respondent's corporate president, Timothy Kim, was standing at the sales counter and observed the sales transaction. Mr. Kim assisted with the sales transaction by placing the alcoholic beverages in a plastic bag, which he handed to Park. Mr. Kim then retrieved a second plastic bag, walked around the sales counter and double-bagged Park's alcoholic beverages for her. Park took the bag of alcohol and walked away from the sales counter and stood off to the side of the store to wait for her friends who were still looking around inside the Licensed Premises. Agent Kuhn witnessed these above-described events with a clear, unobstructed view from approximately four to five feet away.

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<sup>2</sup> At the time of the hearing Agent Kuhn had promoted to Supervising Agent, approximately two-and one-half months prior. At the time of the undercover operation, she was an agent, and therefore will be referred to herein as Agent Kuhn to be consistent with her title at the time of the investigation.

7. At some point after Park's sales transaction, Agent Bermejo entered the Licensed Premises and observed Park, who appeared to him to have a youthful appearance, as that of someone 20 years of age or under.

8. Once Park and her youthful appearing friends exited the Licensed Premises, the agents exited the store and stopped the females approximately 100 feet away in a parking lot adjacent to the Licensed Premises. The agents identified themselves as police officers to the youthful appearing females. Park was holding the plastic bag of alcoholic beverages she had just purchased. (Exhibits 3 and 4.) Park confirmed to the agents that clerk Ryan did not ask for her ID and did not check any ID of hers at any time during the sales transaction for the Soju and wine she purchased. Park had the image of her United States passport on her cellular phone, which she showed to the agents. (Exhibit 6 – color photo of the image of Park's US passport which was displayed on her cell phone.) The US passport listed Park's date of birth as August 16, 2003. The agents conducted a records check with the California Highway Patrol and were able to confirm it was Park's correct date of birth.

9. The agents thereafter confirmed Park's identity by accessing the California Department of Motor Vehicle (DMV) Cal Photo database, which is available for law enforcement. The agents determined Park was issued a California ID on March 16, 2023, which also listed Park's date of birth as August 16, 2003, confirming Park was 20 years old at the time of the sales transaction. The identifying information on Park's California ID indicated she was 5 feet 4 inches tall, weighted 125 pounds had brown eyes and black hair. (Exhibit 7 – copy of California DMV Cal Photo Image Record for Park, Hanah Han.)

10. The agents took a photograph of Park to document her appearance on the evening of the operation. (Exhibit 2 – a close-up color photo of Park, from waist-up.) Park wore a dark navy Pomona College pullover sweatshirt. Her hair was pulled back in a bun. Park had a youthful appearance in the photograph taken of her and even more so youthful in the video surveillance footage documenting the sales transaction, which footage Mr. Kim later produced that same evening. (Exhibit 5 – video.)

11. Thereafter, Agents Kuhn and Bermejo re-entered the Licensed Premises, contacted Mr. Kim, identified themselves as police officers and informed Mr. Kim that clerk Ryan had sold alcohol to a minor, Park. By that time, clerk Ryan's shift was over and he had left the Licensed Premises. Mr. Kim confirmed clerk Ryan's identity and, at the agents' request, showed the video surveillance footage of the said sales transaction between clerk Ryan and Park. (Exhibit 5.)

**(Respondent's Witness)**

12. Timothy Kim appeared and testified at the hearing. Mr. Kim described himself as the owner of Village Market and confirmed he was the corporate president of CK 370 Inc. Mr. Kim said that prior to employees taking their shift he tells employees to properly check patron's IDs. He said that if the ID of a regular customer has already been checked in the past, the clerks do not re-check that regular customer's ID. However, after the violation of September 22, 2023, Mr. Kim requires employees check all customers IDs every time.

13. Mr. Kim acknowledged that he was "there in the [sales] transaction" with clerk Ryan and Park on September 22, 2023. He said he did not notice whether clerk Ryan checked Park's ID. He said normally only one cashier takes the cash register shift because there are a lot of people in the store, as there were that evening of the violation. Mr. Kim said he was just at the sales counter helping to bag the items customers purchased to reduce the time that other customers have to wait in line. Mr. Park was adamant that he was not the person who sold alcoholic beverages to Park.

14. A few months after the violation, Mr. Kim received a letter from the Department requesting he take the Department's LEAD Alcohol Seller/Server Training. Thereafter, on January 30, 2024, Mr. Kim attended and completed the LEAD training program. (Exhibit D – copy of LEAD certificate.) There was no evidence of documented training of the Respondent's employees relating to alcohol and age-restricted merchandise sales or the LEAD training. Mr. Kim said a couple of months ago<sup>3</sup> he received a letter that the Respondent passed a minor decoy operation and was successful in preventing the sale of cigarettes to a minor decoy.

15. Clerk Ryan did not appear at the hearing.

**CONCLUSIONS OF LAW**

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.

2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.

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<sup>3</sup> Referencing a couple of months from the date of the hearing, July 16, 2024.

3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

4. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on September 22, 2023, Respondent's employee, clerk Charles Ryan, inside the Licensed Premises, sold an alcoholic beverage, to-wit: two bottles of Soju and one bottle of Stella Rosa wine, to Hanah Park, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Count 1.) (Findings of Fact ¶¶ 2, 4-11.)

5. Respondent did not contest the sale to minor violation and only claimed clerk Ryan made an unintentional mistake. Respondent's argument is rejected. Mistake does not constitute a defense. As long as Respondent was exercising the privileges of the license the Respondent was under a legal obligation not to sell alcohol to minors. "The holder of a liquor license has the affirmative duty to make sure that the licensed premises are not used in violation of the law."<sup>4</sup> Clerk Ryan as well as Mr. Kim, who was observing the said sales transaction and helped bag Park's alcoholic beverages, were both responsible for ensuring that no sales to minors took place. In this case, Respondent failed to do so.

6. In determining the credibility of a witness, as provided in section 780 of the Evidence Code, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing, including the manner in which the witness testifies, the extent of the capacity of the witness to perceive, to recollect, or to communicate any matter about which the witness testifies, a statement by the witness that is inconsistent with any part of the witness's testimony at the hearing, the extent of the opportunity of the witness to perceive any matter about which the witness testifies, the existence or nonexistence of any fact testified to by the witness, and the existence or nonexistence of a bias, interest, or other motive.

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<sup>4</sup> *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal. App. 2d 504, 514, [22 Cal. Rptr. 405, 411]; *Munro v. Alcoholic Beverage Control Appeals Board* (1960) 181 Cal.App.2d 162, 164 [5 Cal.Rptr. 527]; *Givens v. Department of Alcoholic Beverage Control*, *supra*, 176 Cal.App.2d 529, 534; *Fromberg v. Department of Alcoholic Beverage Control* (1959) 169 Cal.App.2d 230, 234 [337 P.2d 123]; *Mantzoros v. State Board of Equalization* (1948) 87 Cal.App.2d 140, 144 [196 P.2d 657]; *Swegle v. State Board of Equalization*, *supra*, 125 Cal.App.2d 432, 438; *Mercurio v. Department of Alcoholic Beverage Control*, *supra*, 144 Cal.App.2d 626, 630; *Cooper v. State Board of Equalization* (1955) 137 Cal.App.2d 672, 678 [290 P.2d 914]; *Endo v. State Board of Equalization* (1956) 143 Cal.App.2d 395, 401-402 [300 P.2d 366].

7. Mr. Kim's contention that the reason clerk Ryan did not ask Park for her ID, was because clerk Ryan allegedly mistakenly mistook Park for one of their regular customers, who is over 21, and whose ID he had checked in the past, is disbelieved. Since clerk Ryan did not appear at the hearing, any statements he made to Mr. Kim, which Mr. Kim relayed at the hearing are hearsay. Under Government Code section 11513(d), hearsay cannot be used as the basis for a finding unless supported by other evidence. There is no such evidence in this case. Nevertheless, in addressing Mr. Kim's contention, it is found Mr. Kim presented conflicting, evasive testimony and exhibited a bias in the presentation of his testimony as the corporate president of Respondent subject to discipline. Mr. Kim presented Exhibit A, a video of September 22, 2023, prior to the said sales transaction, which depicts Park standing in line behind the aforementioned "regular customer," who is wearing a yellow jacket. Park is seen speaking to the regular customer while Park is standing in line. Mr. Kim said that clerk Ryan assisted the regular customer first, prior to assisting Park at the sales counter. When asked to confirm that after the regular customer had made her purchase, then Park purchased two bottles of soju and wine, Mr. Kim then changed his testimony and claimed he was "not quite sure but it looks like it looks like" Park purchased after the regular customer purchased items. Mr. Kim's contention that clerk Ryan could confuse Park for the regular customer is inconsistent, given that clerk Ryan had just assisted the regular customer before assisting Park with her alcoholic beverage purchases on September 22, 2023. It is of grave concern that Mr. Kim, as the corporate officer for Respondent, would be dishonest in his testimony.

8. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

### **PENALTY**

The Department requested the Respondent's license be suspended for a period of 15 days, pursuant to the penalty guidelines set forth in rule 144. The Department argued the following aggravating factors: (1) Park and her companions' youthful appearances, (2) the amount of alcohol Park purchased, (3) the licensee's close proximity to the sales transaction, (4) the Licensed Premises is located in a college area, and (5) lack of mitigation. The Department argued that no mitigation should be considered for (1) Mr. Kim's LEAD training because it was done at the Department's request and not in response to the violation, or (2) Respondent's passing a subsequent minor decoy operation because it related to the sales of cigarettes rather than alcoholic beverages.

The Respondent did not recommend a penalty should the accusation be sustained. The Respondent argued the following mitigating factors: (1) After the violation the Respondent requires that its employees check customers IDs all the time, (2) Mr. Kim

completed the LEAD training on January 30, 2024, and (3) the Respondent passed a minor decoy tobacco operation.

In assessing an appropriate measure of discipline, the Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144, commonly referred to as rule 144. Under rule 144, the presumptive penalty for a first violation of selling or furnishing an alcoholic beverage to a minor in violation of section 25658 is a 15-day license suspension. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors.

The only mitigation present is the cooperation by the licensee in the investigation. Telling employees to merely "check" the IDs of customers every time, is insufficient given the Licensed Premises is located in a college area and is bound to have minors attempting to purchase alcoholic beverages like Park. There was no evidence that Respondent has instituted any training related examining IDs, the red flags of minor's IDs and fraudulent IDs. There was no evidence the Respondent keeps at the register for its clerks any guides which display each state's valid ID to compare to potential, fraudulent IDs presented by youthful appearing persons attempting to purchase age-restricted merchandise. The Respondent should consider training its clerks on recognizing the red flags of minors IDs as well as fraudulent IDs. There is no mitigation for Mr. Kim complying with the Departments request he take the LEAD training or for the Licensed Premises passing the tobacco minor decoy operation.

Respondent's mitigation is outweighed by the following aggravating factors:

(1) Park's youthful appearance at the time of the sale, (2) the amount of alcohol Park was allowed to purchase, (3) Mr. Kim's involvement and participation in the sales transaction and his failure to prevent the sale despite Park's youthful appearance, as clerk Ryan's supervisor<sup>5</sup> and Respondent's corporate president, (4) the lack of evidence of any documented training of Respondent's employees, especially relating to sales to minors and any instruction on recognizing the red flags of minors IDs or fraudulent IDs, given the proximity of the nearby college, (5) there was no evidence how clerk Ryan was able to manipulate the point of sale (POS) cash register to allow the sale of alcohol to Park, (6) there was no positive action by the licensee to correct the problem, including but not limited to removal of any POS override button to prevent its clerks from bypassing any potential safety protocol the POS system has, and (7) only nine months after issuance of its license Respondent allowed a sale to minor violation to a youthful appearing minor wearing a college sweatshirt. It is of grave concern that Mr. Kim failed to take responsibility for his part in allowing the violation at hand. Also concerning is the

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<sup>5</sup> During Mr. Kim's testimony he referred to clerk Ryan as "one of my employees," and as the corporate president of CD 370, Inc., it is reasonable to consider and refer to Mr. Kim as the supervisor of Respondent's employees.

manner in which Mr. Kim testified, namely the conflicting and evasive testimony evidencing a level of dishonesty.

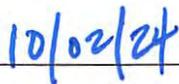
In balancing the aggravating and mitigating factors, the penalty recommended herein complies with rule 144.

**ORDER**

The Respondent's off-sale beer and wine license is hereby suspended for a period of 20 days.

Dated: August 16, 2024

  
\_\_\_\_\_  
D. Huebel  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date:  _____