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

AB-9439a
File: 48-503793 Reg: 13078623

RAYMOND YIU LEE and SANCHALEE SANTHONG LEE,
dba Extreme Sports Lounge
104 Pierce Avenue, Manteca, CA 95336,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Nicholas R. Loehr

Appeals Board Hearing: July 9, 2015
San Francisco, CA

ISSUED JULY 31, 2015
AMENDED AUGUST 5, 2015

Appearances by counsel:

Dru Vincent Hunt for appellants Raymond Yiu Lee and Sanchalee Santhong Lee, dba Extreme Sports Lounge.

Kelly Vent for respondent Department of Alcoholic Beverage Control.

Opinion:

This is an appeal from a decision of the Department of Alcoholic Beverage Control[1] conditionally revoking appellants' license for permitting activity involving the

[1]The decision of the Department, dated October 1, 2014, made pursuant to Business and Professions Code section 11517, subdivision (c), is set forth in the appendix, together with the proposed decision of the administrative law judge. Section 11517, subdivision (c)(2)(E) permits the Department to reject the proposed decision, as it did here, and decide the case upon the record, including the transcript of the hearing.

sale of controlled substances on the licensed premises in violation of Business and Professions Code section 24200.5, subdivision (a), and Health and Safety Code section 11379.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general public premises license was issued on November 22, 2010. On or about February 4, 2014, the Department filed a fourteen-count, first amended accusation against appellants. Counts I, II, III, IV, VI, VIII, IX, XI, and XII charge that Riley Vinson and Steven Medina, two of appellants' agents or employees, knowingly permitted the illegal sale or negotiations for sale of cocaine and methamphetamine, in violation of Business and Professions Code section 24200.5, subdivision (a).[2] Counts V, VII, X, XII, and XIV charged that Vinson and Medina sold, furnished, or offered to sell or furnish, within the premises, methamphetamine in violation of Health and Safety Code section 11379. According to the accusation, the alleged violations occurred on eight separate dates between October, 2012 and March, 2013.

At the onset of the hearing held on February 13, 2014, documentary evidence was received and appellants, represented by counsel, stipulated to the factual allegations contained in counts I through XIV of the accusation. (See RT at pp. 7-13.) The Administrative Law Judge (ALJ) accepted the stipulation, and the Department

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[2]Subdivision (a) of section 24200.5 provides, in pertinent part, that the Department shall revoke a license:

> If a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises. Successive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission.

rested its case as a result. (RT at p. 14.) The only testimony presented was that of appellant Sanchalee Santhong Lee.

Lee testified that although she and her husband, Raymond Lee, own the licensed premises, she only works in the bar on Friday and Saturday nights, and she does not typically engage in much conversation with the customers. Lee also frequently helps out at the restaurant next door to the licensed premises, which is owned by Lee's sister-in-law. Raymond Lee, who has been ill for a long while, typically only comes into the bar in the morning, checks on things, and then leaves. Notably, Lee testified that she was at the licensed premises on more than five occasions while the undercover agents were present. (See RT at p. 43.)

As for Vinson and Medina, Lee testified they were hired as bouncers and doorpersons for the bar. She did not do any background checks on them prior to hiring them, and the only instruction they were provided was how to check patrons' ID's and watch the back door — there was no training regarding how to prevent unlawful drug sales on the premises. Lee did not have any knowledge that drug sales were occurring on the licensed premises, and there was no evidence to suggest that Raymond Lee had any such knowledge either.

Appellants' bar is equipped with four to five video cameras which are there mostly for appearance purposes and to deter bad conduct within the licensed premises. Lee testified that the camera recording devices either do not work or do not work very well, and she did not look at any recordings during the time frame when Vinson and Medina were engaged in the illegal activities.

Upon learning of the instant violations, both Vinson and Medina were terminated, and Lee has since hired a replacement who is "clean" — although, admittedly, Lee has

not drug tested him. Since the violations at issue in this case, Lee has adopted written standards of conduct and requires all employees to read and sign the Extreme Sports Lounge "Standards of Conduct Handbook." (Exhibit A.) Also, in May of 2013, Lee attended the Department's LEAD training along with all of her employees.

In light of the violations at issue in this case, at closing argument counsel for the Department recommended outright revocation of appellants' license. (RT at p. 66.) On April 7, 2014, the ALJ issued a proposed decision finding that the violations charged were proved and no defense was established. The ALJ proposed a penalty of revocation stayed for a period of 180 days to permit a person-to-person transfer. Also, the ALJ proposed that appellants' license be suspended for 45 days. On April 25, 2014, the Department adopted the ALJ's proposed decision.

Following the Department's adoption of the ALJ's proposed decision, both parties timely petitioned the Department to reconsider its decision pursuant to Government Code section 11521.[3] On June 4, 2014, the Department issued an order granting both petitions for reconsideration, and informing the parties that it now rejected the proposed decision and would decide the case itself pursuant to Government Code section 11517(c)(2)(E). On July 21, 2014, the Department invited both parties to submit further written argument.

Both parties submitted supplemental briefing to the Department. In appellants' supplemental brief, they argued that the Department failed to establish that appellants had actual knowledge of any drug activity and thus failed to meet its burden under section 24200.5. (Determination of Issues, ¶ 5.) The Department, on the other hand,

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[3]Section 11521 provides, in pertinent part, "The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party."

argued that according to section 24200.5, *supra*, outright revocation of appellants' license was mandatory, and that the Department does not have the discretion to impose any other discipline in such cases. (See Determination of Issues, ¶ 6.) On October 1, 2014, the Department entered its final decision in which it rejected the arguments in both parties' respective supplemental briefs, and otherwise adopted the Findings of Fact, Legal Basis for the Decision, and Determination of Issues from the ALJ's proposed decision. Also, the Department imposed the following penalty:

> The licensed is revoked; provided, however, said revocation shall be stayed for a period of 180 days from the effective date of this decision to permit a transfer of the license to a person or persons acceptable to the Department on the following conditions:
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> 1. The license shall be suspended for forty-five (45) days, and indefinitely thereafter until the license transfers.
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> 2. No subsequent determination be made, after notice and an opportunity to be heard or upon stipulation and waiver, that similar cause for disciplinary action occurred within 180 days from the effective date of this decision.
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> 3. Should such determination be made, the stay shall be vacated and the stayed portion of the discipline be reimposed.
>
> 4. Should an accusation be filed against respondent alleging similar conduct within 180 days from the effective date of this decision, the stay shall be extended until such time as said accusation is final.
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> 5. If the license has not been transferred as ordered herein, on or before the expiration of the stayed period, the Director may, without further notice, revoke the stay and enter an order revoking the license.

(Order.)

Appellants contend (1) they did not knowingly permit the illegal sale of controlled substances on the licensed premises and, as such, section 24200.5(a) was not

violated; and (2) the penalty of revocation is excessive and a suspension is a more reasonable penalty.

DISCUSSION

I

Appellants contend that section 24200.5 "does not apply" to this case because they did not knowingly permit the illegal sale of controlled substances, and the Department cannot show actual knowledge on appellants' part. (App.Br. at p. 3.) Appellants argue that the Department's classification of the last sentence of subdivision (a) of section 24200.5 as creating a presumption is incorrect, and that section 24200.5 requires that, absent a showing of knowing permission, the Department first prove that there were "successive sales'" over a "continuous period of time." (*Id*. at pp. 3-4.) Once the Department has done so, appellants contend, the Board must "conduct a balancing test to determine if Department's [*sic*] evidence of the successive and continuous sales without the Licensee's [*sic*] knowing permission outweighs the evidence offered by the Licensees that they did not knowingly permit their employee to sale [*sic*] or negotiate the sale of illegal drugs on their premises." (*Id*. at p. 4.) In sum, appellants argue that, while successive and continuous sales may be evidence that appellants knowingly permitted the sales, such evidence is not conclusive. If appellants can show that they did not knowingly permit the sales, they argue, then the Department has made an insufficient showing under section 24200.5. (*Ibid*.)

Finally, appellants argue that, even accepting the factual allegations of the accusation as true pursuant to the stipulation, there is no evidence that the sales were successive over a continuous period of time. (App.Br. at pp. 5-6.)

A number of general principles guide the Board's consideration of the numerous

issues raised in appellants' brief.

The scope of the Appeals Board's review is limited by the California Constitution, by statute, and by case law. In reviewing the Department's decision, the Board may not exercise its independent judgment on the effect or weight of the evidence, but is to determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings. The Board is also authorized to determine whether the Department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing. (Cal. Const., art. XX, § 22; Bus. & Prof. Code §§ 23084, 23085; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].)

"Substantial evidence" is relevant evidence which reasonable minds accept as reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [71 S.Ct. 456]; *Toyota Motor Sales U.S.A., Inc. v. Superior Ct.* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].) When findings are attacked on the ground that there is a lack of substantial evidence, the Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].) Where there are conflicts in the evidence, the Appeals Board is bound to resolve them in favor of the Department's decision, and must accept all reasonable inferences which support the Department's findings. (*Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 7 Cal.3d 433, 439 [102

Cal.Rptr. 857]; *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38 [248 Cal.Rptr. 271]; *Lacabanne Properties, Inc. v. Dept. of Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 185 [67 Cal.Rptr. 734]; *Gore v. Harris* (1964) 29 Cal.App.2d 821 [40 Cal.Rptr. 666].)

In light of the parties' stipulation in this case, there is and can be no dispute about the facts giving rise to the alleged violations — Vinson and Medina, appellants' agents or employees, knowingly engaged in the illegal sale, or negotiations for the sale, of controlled substances on the licensed premises on eight separate occasions between October of 2012 and March of 2013. The question is thus whether appellants can be held accountable for Vinson and Medina's actions.

The ALJ applied — and the Department ultimately adopted — the following reasoning to find appellants liable:

> 6. ". . . a licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations. 'There is no requirement . . . that the licensee have knowledge or notice of the facts constituting its violation.' [Citations.]" [*Reimel v. Alcoholic Bev. Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522 [60 Cal.Rptr. 641].]
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> This principle has given rise to several corollaries. A single act is sufficient to justify a suspension. (*Reimel v. Alcoholic Bev. etc. Appeals Bd.*, *supra*, 252 Cal. App. 2d at p. 523 [bartender took a bet]; *Harris v. Alcoholic Bev. etc. Appeals Bd.* (1961) 197 Cal. App. 2d 172 [17 Cal.Rptr. 315] [employee directed customer to a house of prostitution].) The act need not be a violation of the Alcoholic Beverage Control Act. [*Reimel*, *supra*, at p. 523.] Wrongful acts by employees giving rise to a suspension need not be within the scope of employment. (*Ibid*.) And, knowledge by employees of wrongful acts will be imputed to the licensee. (*Id*. at p. 522; see also *McFaddin San Diego 1130, Inc. v. Stroh* (1989) 208 Cal. App. 3d 1384, 1391 [257 Cal.Rptr. 8].)"
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> 7. A licensee is vicariously responsible for the on-premises acts of his employees. Such vicarious responsibility is well settled by case law. See *Harris v. Alcoholic Beverage Control Appeals Board* (1962) 197

> Cal.App.2d 172 [17 Cal.Rptr. 315, 320]; *Morell v. Department of Alcoholic Beverage Control* (1962) 204 Cal.App.2d 504 [22 Cal.Rptr. 405, 411]; *Mack v. Department of Alcoholic Beverage Control* (1960) 178 Cal.App.2d 149 [2 Cal.Rptr. 629, 633].

(Proposed Decision, Legal Basis for Decision, ¶¶ 6-7.)

The Board has considered each of the arguments appellants have raised challenging the Department's determination in this case and finds them to be without merit. First, we do not accept appellants' contention that the Department did not show that the illegal sales were successive over a continuous period of time. The record reflects — and, indeed, appellants stipulated to the fact — that illegal sales, or negotiations for sales, of controlled substances occurred on the licensed premises on at least eight separate dates over five consecutive months — October, 2012 through March, 2013. (Exhibit 1.) Subdivision (a) of section 24200.5 specifies neither a time line in which the sales must occur nor the requisite temporal proximity between sales that would qualify them as successive over a continuous period of time. However, the Legislature's deliberate use of the phrase "Successive sales, or negotiations for sales, over *any* continuous period of time" suggests that it did not intend the determination to be governed by strict time parameters. (Bus. & Prof. Code § 24200.5, subd. (a), emphasis added.) Also, appellants have cited no authority to support their contention that the instant sales would not qualify as successive over a continuous period of time, and we are aware of none. All in all, the Board finds no reason to disturb the Department's determination in this regard.

Next, appellants' contention that the final sentence of section 24200.5 does not create a presumption that a licensee has knowingly permitted the illegal sale of controlled substances when there have been successive sales over a continuous period

of time is patently false. Numerous cases have held just the opposite. (See *Kirchubel v. Munro* (1957) 149 Cal.App.2d 243, 245 [308 P.2d 432] ["knowledge is based upon the presumption in section 24200.5, subdivision (a): 'Successive sales over any continuous period of time shall be deemed evidence of such permission'"]; *Endo v. State Bd. of Equalization* (1956) 143 Cal.App.2d 395, 399 [300 P.3d 366] [acknowledging that the final sentence of section 24200.5(a) creates a "statutory presumption" that successive sales over any continuous period of time shall be deemed evidence of permission].)

Moreover, the mere fact that appellants provided *some* evidence that the licensees did not have actual knowledge of the drug transactions in this case is not in and of itself enough to overcome the statutory presumption. As observed by the court in *Endo*, *supra*, "a presumption is not thus dispelled by evidence produced by the opposite party." (143 Cal.App.2d at p. 400, citing *Engstrom v. Auburn Auto. Sales Corp.* (1938) 11 Cal.2d 64, 70 [77 P.2d 1059].) Indeed, a disputable statutory "presumption . . . 'is rational to its factual premise, that it materially aids the state to prima facie proof of a matter peculiarly within the knowledge of the defendant and, without the presumption, difficult for the state to establish by reason of mechanics incident to the gathering of evidence that its operation is reasonable, imposes no hardship on the defendant and deprives him of no constitutional right.'" (*Ibid.*, quoting *People v. Bigman* (1940) 38 Cal.App.2d.Supp. 773, 780 [100 P.2d 370].) Thus, the Department was entitled to weigh the statutory presumption coupled with the stipulated violations in this case against Lee's testimony that appellants had no actual knowledge, and to find that the statutory presumption prevailed. (See *Kirchubel*, *supra*, at p. 249

["Petitioners' evidence created a conflict with the presumption and the testimony of [the witnesses]. The resolving of that conflict was a matter for the Department of Alcoholic Beverage Control, whose action thereon cannot be upset . . . if there is substantial evidence to support it. [Citation.]"].)

Additionally, appellants' insistence that they had no actual knowledge of the repeated illegal actions of Vinson and Medina, even if true, is simply unavailing to their position. As noted by the ALJ in his proposed decision, it is well-settled law that a licensee has an affirmative duty to ensure the licensed premises is not used in violation of the law and that the knowledge and acts of the employees are imputed to the licensee. (*Mack v. Dept. of Alcoholic Bev. Control* (1960) 178 Cal.App.2d 149, 153-154 [2 Cal.Rptr. 629]; *Oconco, Inc*. (2000) AB-7365 at pp. 3-4.) Actual knowledge of the acts is not required. (*Morell v. Dept. of Alcoholic Bev. Control* (1962) 204 Cal.App.2d 504, 514 [22 Cal. Rptr. 405].) "This is true even for one-time acts of employees outside the scope of their employment, at least where there is some nexus between the acts and the alcoholic beverage license and the licensee has not taken 'strong steps to prevent and deter such crime.'" (*Oconco*, *supra*, at p. 4, quoting *Santa Ana Food Market, Inc. v. Alcoholic Bev. Control Appeals Bd.* (1999) 76 Cal.App.4th 570, 576 [90 Cal.Rptr.2d 523].) Such a nexus is necessary because it speaks to whether discipline of the license has a rational effect on public welfare and morals. (See *Santa Ana Food Market*, *supra*, 76 Cal.App.4th at p. 576.)

Here, the record reflects that, not only were there *numerous* violations of sections 24200.5(a) and Health and Safety Code section 11379 over five months, but appellant Lee herself was present on at least five of the dates when the undercover

agents were on the premises. Furthermore, appellants stipulated to the fact that Vinson and Medina, their employees, were knowing, active participants in each of the illegal transactions while on the licensed premises. There is therefore no doubt that a nexus exists between Vinson and Medina's crimes and appellants' license, and that discipline of said license has a rational effect on public welfare and morals. (See, *e.g.*, *Perez* (2000) AB-7402, at p. 5 ["[T]here is a definite risk to the public welfare and morals if sellers of illegal narcotics use their place of employment as a place to store narcotics in saleable quantities while they are on duty."].) As such, knowledge of Vinson and Medina's crimes can properly be imputed to appellants, regardless of appellants' actual knowledge thereof, and there is substantial evidence in the record to support the Department's decision.

Finally, it is worth reconciling this decision with a relatively recent opinion of this Board addressing the issue of imputation of knowledge to a licensee. In *Mainstreet Enterprises* (2013) AB-9323, the evidence in the record established that the licensee had a zero-tolerance policy with respect to drugs or drug transactions on the premises; that the licensee had taken extensive actions in furtherance of that policy, many of which were documented on the licensee's video surveillance equipment; and that the licensee sent its servers to the Department's LEAD training, and its security guards to guard card training, and paid each of its employees to attend their respective training sessions. (*Id*. at pp. 2-3.) Despite these efforts, however, the license was disciplined by the Department when one of the licensee's employees was found to have permitted the possession of cocaine on the licensed premises, and aided and abetted sales of cocaine over three separate dates. (*Id*. at p. 2.)

On appeal, we reversed the Department's decision. The Board found "[b]ased

on the undisputed evidence [in that case], there is no sound reason to apply the rule of imputed or constructive knowledge, especially when doing so would produce the very end [*Laube v. Stroh* (1992) 2 Cal.App.4th 364 [3 Cal.Rptr.2d 779]] countenances against: application of a rule of strict liability on the licensee for employee wrongdoing.[fn.]" (*Mainstreet*, *supra*, at p. 12.) Additionally, we observed:

> The "constructive knowledge" rule for liquor licensees apparently arose to prevent them from staying away from the premises to avoid responsibility for wrongful acts occurring there. (See *Mantzoros v. State Bd. of Equalization* (1948) 87 Cal.App.2d 140, 144 [196 P.2d. 657] [contrary rule would allow owner to avoid responsibility for alcohol sales made after closing time].) It also may exist to encourage licensees to monitor their employees and patrons and to relieve the [Department] from proof problems. And it may, as we have seen, be employed when there is evidence of "pervasive" illegal actions on the premises. But those purposes are not served where, as shown by the evidence here, the licensee was regularly on (and supervised) the premises, took great measures to deter criminal activity (particularly with respect to drugs) by employees through education and video surveillance, was unaware of the employee's wrongful act until after the fact, and, until this incident, had an unblemished record with respect to Departmental discipline. [Citation.]

(*Id.* at p. 13.)

The Board has no intention of deviating from our decision in *Mainstreet*, nor do we find the concerns expressed therein to be any less relevant today. Notwithstanding those concerns, however, we are not convinced that they apply to this case. The record here establishes that the manner in which appellants operate the licensed premises is a far cry from the operation at issue in *Mainstreet*, where the employees were comprehensively trained and supervised by the licensee, strict no-tolerance policies were implemented and enforced, and there is documented evidence of the licensee's commitment to its policies. Indeed, the respective operations from the two cases are nearly polar opposites. As such, the policy behind the creation of the constructive/imputed knowledge rule alluded to in *Mainstreet* is alive and well in this

case, and knowledge of Vinson and Medina's crimes was and is properly imputed to appellants.

II

Appellants next contend suspension, and not revocation, is the proper penalty in this case pursuant to Business and Professions Code section 24200, subdivision (a). Because the Department did not meet its burden of proving a violation of section 24200.5(a), appellants argue, its mandate that the Department revoke the license does not apply. (App.Br. at pp. 6-7.) Appellants argue that "the question of [license] continuance is about looking forward, and not looking back" and claim that the measures that they have taken since the violations merit a reduced penalty. (*Id*. at p. 7.) Appellants further claim the Department failed to prove that continuance of the license would be contrary to public welfare and morals. (*Id*. at p. 8.)

The 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]), but 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].) If the penalty imposed is reasonable, the Board must uphold it even if another penalty would be equally, or even more, reasonable. "If 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].)

Rule 144 sets forth the Department's penalty guidelines and provides that higher or lower penalties from the schedule may be recommended based on the facts of

individual cases where generally supported by aggravating or mitigating circumstances. (Cal. Code Regs., tit. 4, § 144.) Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, and documented training of the licensee and employees. (*Ibid.*)

Rule 144 itself addresses the discretion necessarily involved the Department's recognition of aggravating or mitigating evidence:

> **Penalty Policy Guidelines:**
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> The California Constitution authorizes the Department, in its discretion[,] to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

In this case, although prosecuting counsel for the Department argued for outright revocation of appellants' license, the Department, in its decision-making capacity, reasoned as follows with regard to the penalty:

> 6. Counsel for the Department takes the position that Section 24200.5 mandates revocation of the license, and thus there is no discretion to impose any discipline other than outright revocation. It is true that the Legislature has directed the Department to revoke licenses in cases such as this, recognizing the seriousness of such violations. However, Rule 144 provides that revocation includes revocation stayed for a period of time. The Order that follows recognizes the severity of violations involved while also crediting Respondent [*sic*] for taking some actions in mitigation.

(Decision, Determination of Issues, ¶ 6.) The Department thus imposed the penalty described on page 5, *ante*.

For the reasons described above (see Section I, *supra*), appellants' contention that section 24200 applies in lieu of section 24200.5 is baseless — the Department's decision that appellants are responsible for the violation of section 24200.5 is supported by substantial evidence. Therefore, section 24200.5's mandate that the license be revoked is controlling.

The record reflects that, even though its prosecuting counsel argued for outright revocation — a penalty which is supported by the binding language of section 24200.5 — the Department exercised its vast discretion pursuant to rule 144, and took into consideration appellants' mitigation efforts in imposing the penalty of revocation with a stay in order to give appellants an opportunity to transfer their license. In light of the stipulated facts and mitigating evidence in the record for this case, the Board cannot say that the penalty constitutes an abuse of discretion.

ORDER

The decision of the Department is affirmed.[4]

BAXTER RICE, CHAIRMAN
FRED HIESTAND, MEMBER
PETER J. RODDY, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[4]This final decision 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 of said code.

Any party, before this 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.