

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

AB-9703

File: 47-431273; Reg: 17086096

File: 47-301803; Reg: 17086091

HANA YOON CORPORATION,
dba Hana Japan Steakhouse
235 University Avenue,
Berkeley, CA 94710,

and

HANA YOON CORPORATION,
dba Hana Japan
7298 San Ramon Road,
Dublin, CA, CA 94568
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: David W. Sakamoto

Appeals Board Hearing: March 1, 2019
Sacramento, CA

ISSUED MARCH 5, 2019

Appearances: *Appellant:* Richard D. Warren,, as counsel for Hana Yoon Corporation,

Respondent: Matthew Gaughan, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Hana Yoon Corporation, doing business as Hana Japan Steakhouse, and doing business as Hana Japan, appeals from a decision of the Department of Alcoholic

Beverage Control¹ revoking both licenses — with the revocations stayed for 180 days to permit a person-to-person transfer of the licenses — and concurrently suspending both licenses for 20 days, (and indefinitely thereafter until the licenses transfer). Such discipline was ordered because the licensee was found to no longer possess the necessary qualifications of a licensee — in violation of California Code of Regulations, Title 4, Division 1, Section 58 — in that her spouse was convicted of a crime involving moral turpitude, to wit: Falsification of Corporate Records, in violation of Corporations Code section 6813, subdivisions (a) and (b); and Forgery with Intent to Defraud, in violation of Penal code section 470, subdivision (d). (Exh. 1.)

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general eating place license, doing business as Hana Japan in Dublin, California, was issued on January 5, 1995. Appellant previously held a beer and wine license at that location, beginning in 1984, which was replaced by an on-sale general eating place license in 1987. Hana Yoon Corporation was formed in 1995.

Appellant's other on-sale general eating place license, doing business as Hana Japan Steakhouse in Berkeley, California, was issued on January 30, 2006. There is no prior discipline against either of the licenses.

On February 6, 2018, the Department instituted two accusations against appellant — one as to each license —charging:

in count one of each accusation: that Daniel Bong Yoon, also known as Bong Yoon, an officer, director or person holding 10% or more of the corporate stock, was the subject of a public offense involving moral turpitude, to wit: Falsification of Corporate

¹The decision of the Department, dated April 23, 2018, is set forth in the appendix.

Records, in violation of Corporations Code section 6813, subdivisions (a) and (b); and Forgery with Intent to Defraud, in violation of Penal code section 470, subdivision (d); and charging:

in count two of each accusation: that the licensee, Jeenee Sim Yoon, also known as Sim Soon Yoon, no longer possessed the necessary qualifications of a licensee — in violation of California Code of Regulations, Title 4, Division 1, Section 58 — because her spouse had been convicted of a crime involving moral turpitude, to wit: Falsification of Corporate Records, in violation of Corporations Code section 6813, subdivisions (a) and (b); and Forgery with Intent to Defraud, in violation of Penal code section 470, subdivision (d).

The hearings on the two accusations were consolidated since the matters involved common questions of law and fact and involved the same individuals.

(Exh. 1.)

At the administrative hearing held on February 13, 2018, documentary evidence was received and testimony concerning the violations charged was presented by Department Agent Connie Cook, and the licensee's spouse, Daniel Bong Yoon.

Testimony established that at the time of the original license applications, Mr. Yoon was a 60 percent stockholder in Hana Yoon Corporation, with his wife, Sim Yoon, as a 40 percent stockholder. (Exh. 4.) Mr. Yoon testified that he transferred 55 percent of the ownership to his son in 2013, and only retained a 5 percent ownership in Hana Yoon Corporation. No stock transfer was ever reported to the Department. (RT at pp. 74-75.)

On June 21, 2016, a criminal information was filed against Daniel Bong Yoon, charging that he had:

(1) knowingly received property of a corporation, and, with intent to defraud, failed to make a full entry of that property in the corporate books and records, in violation of Corporation Code section 6813(a);

(2) with intent to defraud, destroyed, altered, mutilated or falsified books, papers, writings or securities of the corporation in violation of California Corporations Code section 6813(b);

(3) with intent to defraud, falsely made, altered, forged or counterfeited, uttered, published, passed or attempted to pass as genuine a Certification Page for a Statement of Information, knowing the same to be false in violation of Penal Code section 470(d); and

(4) with intent to defraud, falsely made, altered, forged, or counterfeited a Personal History of John Yoon in Support of a Loan, knowing such to be false, altered, forged or counterfeited.

(Exh. 2.) On April 18, 2017, Mr. Yoon pled nolo-contendere to all four counts in the criminal information and was sentenced to probation and fines. (Exh. 3.) As a result of these pleas, the accusations by the Department were filed on February 6, 2018.

On February 26, 2018, the administrative law judge (ALJ) issued his proposed decision, finding that the convictions involved moral turpitude. He dismissed count 1 of both accusations, since Mr. Yoon was shown to be the holder of less than a 10% interest in the corporation. Count 2 of both accusations was sustained. The ALJ recommended that both licenses be revoked — with the revocations stayed for 180 days to permit a person-to-person transfers of the licenses — and that both licenses be concurrently suspended for 20 days (and indefinitely thereafter until the licenses transfer).

Appellant then filed a timely appeal raising the following issues: (1) the ALJ erred by denying appellant the opportunity to present mitigating evidence, and (2) the ALJ improperly sustained the Department's objection to appellant's request for witness testimony related to the underlying conviction. These issues will be discussed together.

DISCUSSION

Appellant asserts it was improperly precluded by the ALJ from questioning two witnesses. In both instances, the Department objected to the witnesses' testimony on the basis that such testimony was intended as an attack on the underlying convictions of Mr. Yoon.

Appellant contends the testimony was not offered as a collateral attack on the fraud complaint or conviction, but rather, that the witnesses' testimony was offered for mitigation purposes — specifically, to show that the corporate documents alleged to have been forged would not have generated financial gain for Mr. Yoon, nor any other personal benefit. (AOB at pp. 4-5.)

The ALJ ruled that the witnesses could not be called to testify, because it would cause him to relitigate the underlying matter. (RT at p. 61.) Appellant contends it was fundamentally unfair, and an abuse of discretion, to deny it the opportunity to present mitigation evidence (AOB at p. 6) and we agree.

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].) "Abuse of discretion" in the legal sense is defined as discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered. [Citations.] (*Brown v. Gordon*, 240 Cal.App.2d 659, 666-667 (1966) [49 Cal.Rptr. 901].)

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, et seq.), and the Administrative Procedures Act (Govt. Code Sections 11400, et seq.), the Department shall consider the disciplinary guidelines entitled "Penalty Guidelines" (dated 12/17/2003) which are hereby incorporated by

reference. Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation - such as where facts in aggravation or mitigation exist.

(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, cooperation by the licensee in the investigation, and documented training of the licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

The Penalty Policy Guidelines further address the discretion necessarily involved in an ALJ's recognition of aggravating or mitigating evidence:

Penalty Policy Guidelines:

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.

(*Ibid.*)

The extent to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion — pursuant to rule 144 — and the Board may not interfere with that discretion absent a clear showing of abuse of discretion. In this

instant case, we believe it was an abuse of discretion to deny appellant an opportunity to present its evidence of mitigation.

“An administrative agency is not required to observe the strict rules of evidence enforced in the courts, and the admission or rejection of evidence is not ground for reversal unless there has been a denial of justice.” (*McCoy v. Bd. of Ret.* (1986) 183 Cal.App.3d 1044, 1054 [228 Cal.Rptr. 567].) A ruling excluding evidence . . . will be overturned on appeal only if the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice (*People v. Espinoza* (2002) 95 Cal.App.4th 1287 [116 Cal.Rptr.2d 700].)

Appellant has demonstrated to the Board that it was indeed an abuse of discretion by the ALJ to exclude the testimony it wished to present as evidence of mitigation. Exclusion of this testimony resulted in a manifest miscarriage of justice because the ALJ was clearly unable to consider evidence which was not before him, thereby calling into question the reasonableness of the penalty.

While the decision does address some factors in mitigation — such as length of licensure without discipline, cooperation by the licensee, and positive actions to address problems (see Decision, at pp. 10-11) we believe it was an abuse of discretion and a denial of justice to foreclose appellant from presenting all possible factors in mitigation — particularly in a case such as this where licensed premises have been in operation for a period of 24 and 35 years respectively without any cause for departmental discipline, where the underlying convictions resulted in relatively nominal financial penalties, and where the livelihoods of 50 employees or more are threatened.

The Board believes equity demands that appellant be given an opportunity to present evidence of all possible factors in mitigation that should be considered by the

Department in assessing the penalty — with the proviso, of course, that the underlying conviction is not to be re-litigated or attacked.

ORDER

The underlying decision of the Department, dismissing count 1 of each accusation and sustaining count 2 of each accusation, is affirmed. As to the penalty, the decision of the Department is reversed, and the matter remanded to the Department for reconsideration of the penalty after a hearing at which evidence of mitigation may be presented.²

BAXTER RICE, CHAIRMAN
MEGAN McGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.

APPENDIX

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

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

HANA YOON CORPORATION
HANA JAPAN STEAKHOUSE
235 UNIVERSITY AVENUE
BERKELEY, CA 94710

ON-SALE GENERAL EATING PLACE - LICENSE

AND

HANA YOON CORPORATION
HANA JAPAN
7298 SAN RAMON ROAD
DUBLIN, CA 94568

ON SALE GENERAL EATING PLACE- LICENSE

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

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 April 4, 2018. 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. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after June 4, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: April 23, 2018



Matthew D. Botting
General Counsel

CONCORD DISTRICT OFFICE

File: 47-431273

Reg: 17086096

RECEIVED

APR 23 2018

**Alcoholic Beverage Control
Office of Legal Services**

File: 47-301803

Reg: 17086091

CERTIFICATE OF DECISION

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

IN THE MATTER OF THE ACCUSATIONS AGAINST:

Hana Yoon Corporation
Db: Hana Japan Steakhouse
235 University Avenue
Berkeley, CA 94710

} File: 47-431273

} Reg:17086096

} License Type: 47

Under A Type-47 On Sale General Bona Fide Eating
Place License Under the Alcoholic Beverage Control
Act and State Constitution.

And

Hana Yoon Corporation
Db: Hana Japan
7298 San Ramon Road
Dublin, CA 94568

} File: 47-301803

} Reg: 17086091

} License Type: 48

Under A Type 47 On-Sale General Bona Fide Eating
Place License Under the Alcoholic Beverage Control
Act And State Constitution

} Court Reporter: Angelica Gutierrez
} Emerick and Finch Reporters
} Word Count Estimate: 13,129

} **Proposed Decision**

Administrative Law Judge David W. Sakamoto, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter in Oakland, California, on February 13, 2018.

Matthew Gaughan, Attorney, Department of Alcoholic Beverage Control, appeared and represented the Department of Alcoholic Beverage Control. (Hereafter, "the Department")

Rick Warren, Esq, represented the licensee, Hana Yoon Corporation, as to each captioned action above. (Hereafter "Respondent")

By way of a First Amended Accusation under Registration #17086096, the Department seeks to discipline Respondent's Type 47 license at 235 University Avenue in Berkeley, California because Respondent's officer, director, or person holding 10% or more of the

corporate stock, namely Daniel Bong Yoon, aka Bong Yoon, was the subject of a plea, verdict or judgment of guilt or pled nolo-contendere to a crime involving moral turpitude, namely, Falsification of Corporate Records in violation of section 6813(b) of the California Corporations Code and Forgery with Intent to Defraud in violation of section 470(d) of the California Penal Code.¹ (Exhibit 1: Pleadings for Accusation)

That First Amended Accusation further alleged that under California Code of Regulations, Title 4, Division 1, Section 58, Jeenee Sim Yoon, who is the spouse of Daniel Bong Yoon, no longer possessed the qualifications of a licensee because her spouse, Daniel Bong Yoon, suffered the convictions for moral turpitude offenses noted above.

By way of a First Amended Accusation under Registration #17086091, the Department seeks to discipline Respondent's Type 47 license at 7298 San Ramon Road, Dublin, California because Respondent's officer, director, or person holding 10% or more of the corporate stock, namely Daniel Bong Yoon, aka Bong Yoon, was the subject of a plea, verdict or judgment of guilt or pled nolo-contendere to a crime involving moral turpitude, namely, Falsification of Corporate Records in violation of section 6813(b) of the California Corporations Code and Forgery with Intent to Defraud in violation of section 470(d) of the California Penal Code. (Exhibit 1: Pleadings for Accusation)

That First Amended Accusation further alleged that under California Code of Regulations, Title 4, Division 1, Section 58, Jeenee Sim Yoon, who is the spouse of Daniel Bong Yoon, no longer possessed the qualifications of a licensee because her spouse, Daniel Bong Yoon, suffered the convictions for moral turpitude offenses noted above.

As the core of the two accusations involved the same issues based on a common set of facts, the two accusations were ordered consolidated for purposes of a hearing and decision thereon. (Exhibit 1-Order Consolidating Hearings)

After oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing regarding the accusations, both matters were argued by the parties and submitted for decision on February 13, 2018.

FINDINGS OF FACT

1. In 1985, Bong K. Yoon, who later changed his name to Daniel Bong Yoon, married Sim Soon Yoon, who is also known as Jeenee Sim Yoon.

¹ Applying standard pleading practice, it is deemed as though the First Amended Accusation replaces and speaks in lieu of the Accusation originally filed.

2. On January 5, 1995, the Department issued Respondent a Type-47 On-Sale General Bona Fide Eating Place license for its restaurant, known as Hana Japan, at 7298 San Ramon Road, Dublin, California². (Hereafter, “the Dublin restaurant”) There has been no prior disciplinary action by the Department against that license since it was issued.

3. On January 30, 2006, the Department issued Respondent a Type-47 On-Sale General Bona Fide Eating Place license for a second restaurant, known as Hana Japan Steakhouse, at 235 University Avenue, Berkeley, California. (Hereafter, “the Berkeley restaurant”) There has been no prior disciplinary action by the Department against that license since it was issued.

4. In 1994, when Respondent applied for its Type-47 license for its Dublin restaurant, its Chief Executive Officer/President was Bong K. Yoon, its Secretary was Sim Soon Yoon, and its Chief Financial Officer was Bong K. Yoon. Bong K. Yoon owned 60% of the corporate stock and Sim Soon Yoon owned 40% of the corporate stock. (Exhibit 4: application documents and corporate records)³

5. In 2005, when Respondent applied for its Type-47 license for its Berkeley restaurant, its President and Chief Financial Officer was Bong K. Yoon and its Secretary/Chief Financial Officer was Sim Soon Yoon. Bong K. Yoon owned 60% of the corporate stock and Sim Soon Yoon owned 40% of the corporate stock. Bong K. Yoon and Sim Soon Yoon were still husband and wife as of that date and up to the date of the hearing. (Exhibit 5: application documents and corporate records)

6. On June 21, 2016, the District Attorney for the County of Merced, California, filed a criminal information against Daniel Bong Yoon. Daniel Bong Yoon was the same person as Bong K. Yoon.⁴ In essence, the information charged that Daniel Bong Yoon had: 1) knowingly received property of a corporation, and, with intent to defraud, failed to make a full entry of that in the corporate books and records in violation of California Corporation Code section 6813(a); 2) with intent to defraud, destroyed, altered, mutilated or falsified books, papers, writings or securities of the corporation in violation of California Corporations Code section 6813(b); 3) with intent to defraud, falsely made, altered, forged or counterfeited, uttered, published, passed or attempted to pass as genuine a Certification Page for a Statement of Information, knowing the same to be false in violation of California Penal Code section 470(d) and 4) with intent to defraud, falsely made, altered, forged, or counterfeited a Personal History of John Yoon in Support of a Loan, knowing such to be

² A Type-47 On-Sale General Bona-Fide Public Eating Place license permits the holder to retail beer, wine, and distilled spirits in a premises that also operates as a bona-fide eating place as described in section 23038.

³ Bong K. Yoon testified that he originally obtained a beer and wine license for the Dublin restaurant in 1984. In 1987, he obtained a Type-47 license to replace the beer and wine license. In 1995, he self-incorporated.

⁴ Bong K. Yoon testified that his full name was Bong Kyu Yoon, but that he changed it to Daniel Bong Yoon in 1997 when he applied for United States citizenship.

false, altered, forged or counterfeited. (Exhibit 2: Merced County Criminal Information for case 16 CR-00245)

7. On or about April 18, 2017, Daniel Bong Yoon, aka Bong K. Yoon, pled nolo-contendere to all four counts in the criminal information. He was sentenced to three years of probation. He also had to pay a "Court Security Assessment Fee" of \$40 as to each count, pay a conviction assessment fee of \$30.00 as to each count, and pay a separate Restitution Fine of \$150.00. (Exhibit 3: Superior Court Minute Order)

8. There was no evidence presented the wrongful acts alleged in the criminal charges were tied to, related to, or directly involved either of Respondent's licensed restaurants. The evidence suggested the wrongful activity involved another business endeavor, K.S. Aviation, a flight school, where Bong K. Yoon had worked the past 13-14 years, but where he no longer works, but still holds some of its stock.

9. Respondent's two licensed restaurants have a combined total of 55 employees and a payroll of \$1.2 million.

10. Sim Soon Yoon always held 40% of Respondent's stock since it was formed. She was an officer of Respondent since the licenses were issued. She currently manages both restaurants.

11. Bong K. Yoon has an adult son, Jong Yoon, who is currently a law school student in California and expected to graduate in May 2018. On some occasions, he worked in the restaurants as a cook, accountant, bus-boy, and bartender.

12. Bong K. Yoon has a second adult son, Jong Ki Yoon, who is also a student.

13. In approximately 2013, Bong K. Yoon, conveyed most all of the Respondent's stock shares he held to his two adult sons. He conveyed 30% of the corporate stock to Jong Yoon and 25% of the corporate stock to Jong Ki. He retained 5% of the shares for himself. Sim Soon Yoon still owns 40% of the shares. Neither Bong K. Yoon nor Respondent ever reported these sales/conveyances of stock to the Department.⁵

14. In approximately 2013, Bong K. Yoon resigned from being President/CEO of Respondent. Since his resignation, he has not served as any officer of Respondent-corporation. His son, Jong Yoon, was made the President/CEO of Respondent. Neither Bong K. Yoon nor Respondent ever reported this change of presidency of Respondent to the Department.

⁵ Bong K. Yoon testified that he was not aware such changes of stock ownership or changes in officers had to be reported to the Department.

LEGAL BASIS OF DECISION

1. Article XX, section 22, of the California Constitution and Business and Professions 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. Business and Professions Code section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any rules of the Department and 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.
3. Business and Professions Code section 24200(d) provides that a licensee's plea, verdict, or judgment of guilt or plea of nolo contendere to any public offense involving moral turpitude is a basis for license suspension or revocation.
4. Business and Professions Code section 23405(d) provides that when the license is held by a corporation, the Department may suspend or revoke the license where conditions exist in relation to any officer, director, or person holding 10% or more of the stock of the corporation which would constitute grounds for disciplinary action against that person if the person was a licensee.
5. Under California Code of Regulations, Title 4, Division 1, section 58, an unlicensed spouse must have the same qualifications required of the holder of a license. This applies to the ownership, by either spouse, of 10% or more of the stock of any corporation holding an alcoholic beverage license. (Hereafter, "Rule 58")
6. California Corporations Code section 6813 states: "(a) Every director, officer or agent of any corporation, who knowingly receives or acquires possession of any property of the corporation, otherwise than in payment of a just demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the corporation is guilty of a crime.
(b) Every director, officer, agent or member of any corporation who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to the corporation or makes or concurs in omitting to make any material entry in any book of accounts or other record or document kept by the corporation is guilty of a crime.
(c) Each crime specified in this section is punishable by imprisonment in state prison, or by imprisonment in a county jail for not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment."

7. California Penal Code section 470(d) states: “Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier’s check, traveler’s check, money order, post note, draft, any controller’s warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b)”.

8. In *People v. Flanagan* (1986) 185 Cal.App.3d 764, 768, the court acknowledged that “It is beyond dispute that the crime of forgery inherently involves dishonesty and a readiness to lie, and thus involves moral turpitude”.

9. In *Rice v. Department of Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 37 the court acknowledge that “...moral turpitude is inherent in crimes involving fraudulent intent, dishonesty for purposes of personal gain or other corrupt purposes...”

DETERMINATION OF ISSUES

1. With respect to Count 1 of each accusation, cause for suspension or revocation of Respondent’s license does not exist under Article XX, section 22 of the California State Constitution and Business and Professions Code sections 24200(a) and (b) and (d) and section 23405(d) because it was not proven by a preponderance of the evidence that on or about April 18, 2017 Danial Bong Yoon aka Bong K. Yoon was an officer, director, or holder of 10% or more of the Respondent’s stock when he pled nolo contendere to the four counts in the criminal information.

2. Section 23405(d) permits the Department to revoke or suspend a license issued to a corporation if "...conditions exist in relation to any officer, director, or person holding 10% or more of the stock of the corporation which would constitute grounds for disciplinary action against that person if the person was a licensee." Business and Professions Code section 24200(d) provides that a licensee's plea, verdict, or judgment of guilt or plea of nolo contendere to any public offense involving moral turpitude is a basis for license suspension or revocation.

3. In this instance, the Department contended that the moral turpitude convictions suffered by Daniel Bong Yoon aka Bong K. Yoon would, under section 24200(d), be grounds to suspend or revoke Respondent's license because if Daniel Bong Yoon held the license as an individual, his moral turpitude convictions would be grounds for suspension or revocation of the license under section 24200(d). However, it must be shown that when Daniel Bong Yoon suffered the conviction, he was an officer, director, or shareholder of 10% or more of Respondent-corporation. To prove up this part of the violation, the Department relied on the 1994 Corporate Questionnaire and related documents for the Dublin restaurant (Exhibit 4) and 2005 Corporate Questionnaire and related documents for the Berkeley restaurant (Exhibit 5) that Respondent submitted when it applied for those respective licenses. While those documents reflected Daniel Bong Yoon was a 60% shareholder and an officer, the records were approximately 23 years old and 12 years old respectively. The Department's investigation did not seek to directly confirm with Respondent or any other source a more current status of stock ownership or confirm the current identity of Respondent's corporate officers.

4. At the hearing, Daniel Bong Yoon aka Bong K, Yoon, now 68 years old, testified that in 2013, he conveyed 55% of all shares of corporate stock to his two sons, retaining only a 5% interest for himself. He also testified that he resigned as President, the only office he ever held in the corporation, about three years ago. He testified that he did not know he had to report such corporate stock ownership or changes or corporate officer changes to the Department. The Department was unable to rebut this testimony.

5. Under section 23405, any corporation holding a license is required to report in writing to the Department within 30 days any issuance or transfer of stock to any person(s) that results in that person owning 10% or more of the corporate stock. It is also to report in writing to the Department any change of the corporate officers that is it required to have under Corporations Code section 312.⁶ In this instance, the latest corporate information the

⁶ Corporations Code section 312 states: "(a) A corporation shall have (1) a chairperson of the board, who may be given the title of chair of the board, chairperson of the board, chairman of the board, or chairwoman of the board, or a president or both, (2) a secretary, (3) a chief financial officer, and (4) such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments and share certificates. The president, or if there is no president the chairperson of the board, is the general manager and chief executive officer of the corporation, unless

Department had about the shareholders and officers was from when Respondent originally filed for the respective applications. Respondent had not, as Bong K. Yoon confirmed, filed or submitted any written notifications to the Department about his conveying 30% of the corporate stock and corporate presidency to one son and 25% of the corporate stock to another son.

6. Under section 24071.1, when 50% or more "...of the shares of stock of a corporation, which is required to report the issuance or transfer of those shares of stock under Section 23405, is acquired or transferred to a person or persons who did not hold the ownership of 50 percent of those shares of stock on the date the license was issued to the corporation, the license of the corporation shall be transferred to the corporation as newly constituted". The section adds that "... before the license is transferred, the department shall conduct an investigation pursuant to the provision of Section 23958. Any person or persons who own 50% or more of the shares of stock of the corporation or who own as limited partners 50% or more of the capital or profits of the limited partnership, as the case may be, shall have all the qualifications required of a person holding the same type license." The section also includes other procedural steps that must be taken in this type of license transfer.

7. In this instance, as Bong K. Yoon conveyed a combined total of 55% of the corporate stock to his two sons, who were not stockholders when the licenses were issued, the required investigation by the Department into the qualifications of Respondent's new majority stock holders was never conducted along with the added procedural steps required for that license transfer. As such, Respondent's current majority shareholders have not been determined by the Department to have all the qualifications of a person that can hold that type license.

8. As Respondent failed to report the stock transfers and change of officers to the Department as described above, it is no surprise the latest corporate information the Department had during the moral turpitude conviction investigation was from when the Respondent applied for its two licenses many years ago. However, the fact that the Respondent did not report those changes did not mean they did not occur as testified to by Bong K. Yoon. In an accusation, the Department has the burden to prove each element of the offense by a preponderance of the evidence. In this instance, while the Department did prove Bong K. Yoon was a 60% shareholder and corporate officer of Respondent when the two licenses were issued, it did not specifically prove, by a preponderance of evidence,

otherwise provided in the articles or bylaws. Any number of offices may be held by the same person unless the articles or bylaws provide otherwise.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party."

especially in light of Bong K. Yoon's testimony, that he was an officer, director, or a 10% or more shareholder of Respondent when he suffered his moral turpitude conviction in 2017.⁷ Therefore, Count 1 in each accusation cannot be sustained.

9. With respect to Count 2 of each accusation, cause for suspension or revocation of Respondent's license does exist under Article XX, section 22 of the California State Constitution and Business and Professions Code sections 24200(a) and (b) because it was proven by a preponderance of the evidence that Jeenee Sim Yoon, aka Sim Soon Yoon, a 40% stockholder and officer of Respondent, no longer possesses the qualifications of a licensee because, under Rule 58, her spouse, Daniel Bong Yoon aka Bong K. Yoon suffered convictions of offenses/crimes involving moral turpitude.

10. Sim Soon Yoon aka Jeenee Soon Yoon, the spouse of Bong K. Yoon, always owned 40% of the shares of Respondent since the licenses were issued by the Department at both of Respondent's licensed premises. Rule 58 requires that if a person owns 10% or more of a corporation that holds a license, the spouse of that shareholder must also be as qualified as a licensee.

11. There was no doubt the four charges that Bong K. Yoon pled nolo contendere to involved moral turpitude. Count 1 in the criminal complaint for violation of Corporations Code section 6813(a) required an "intent to defraud" in corporate record keeping for property received. Count 2 involved a conviction of Corporations Code section 6813(b) for destroying, altering, or mutilating corporate records with an "...intent to defraud...". Counts 3-4 both involved a violation of Penal Code section 470(d), forgery, which the courts long ago acknowledged as a moral turpitude offense.

12. Under 24200(d), the plea of nolo contendere to a crime involving moral turpitude is a specific ground for license suspension or revocation.

13. In this case, as Sim Soon Yoon's spouse, Bong K. Yoon, suffered convictions involving moral turpitude which disqualify him from holding a license, under Rule 58, she became as disqualified as Bong K. Yoon in her owning 40% of Respondent's stock. Therefore, Count 2 of each accusation was proven and is sustained.

⁷The Department's investigation primarily focused on the discovery of Bong K. Yoon's 2017 convictions and determination that he, as far as the Department records revealed from Respondent's original license application information, was a 60% corporate shareholder and president of Respondent. The Department assumed that remained the same based on the absence of any written report in its records from Respondent disclosing changes in stock ownership or changes in corporate officers. There was no evidence the Department otherwise confirmed the current status of stock ownership or Bong K. Yoon's status with Respondent as an officer by way of an interview with Respondent, requesting Respondent for more current corporate records, requesting information from the Secretary of State, or other sources of information.

PENALTY

1. 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 that rule, the presumptive penalty for a licensee convicted of a crime involving moral turpitude is license revocation.
2. Rule 144 permits imposition of a different penalty based on the presence of a non-exhaustive list of aggravating or mitigating factors. Prior disciplinary history is specifically noted as a factor in aggravation. The length of licensure without prior disciplinary action or problems is specified as a factor in mitigation.
3. In this instance, the Department contended that both licenses should be revoked based upon Rule 144. It argued the four moral turpitude crime convictions were clear grounds for license revocation and that Bong K. Yoon had not even met Respondent's responsibilities in reporting stock ownership changes and officer changes to the Department. Also, based on Rule 58, Bong K. Yoon's wife, Sim Soon Yoon, was also now as disqualified from being a licensee as her husband.
4. Respondent did not dispute that the criminal convictions disqualified Bong K. Yoon from remaining affiliated with Respondent and that, under Rule 58, his conviction had the same effect on his wife, Sim Soon Yoon. In arguing for a mitigated penalty, Respondent indicated that any reporting deficiencies to the Department were based on Bong K. Yoon's mere ignorance of Respondent's reporting responsibilities and that small closely held family corporations may not be as familiar with all of their corporate reporting responsibilities as they should be. Respondent argued it was licensed at the Dublin restaurant premises since 1984 with a Type 41 on-sale beer and wine eating place license followed by a Type-47 license, held in Bong K. Yoon's own name, until he self-incorporated in 1995. During that entire time, there was no disciplinary history at that premises. Respondent added that it has been licensed since 2006 at the Berkeley restaurant premises with no disciplinary history either. Respondent asserted Bong K. Yoon's underlying convictions were not shown to be tied to the operation or management of either licensed business, but were tied to a separate unrelated business endeavor. Also, Sim Soon Yoon was never shown to be tied to any illegal acts related to Bong K. Yoon's convictions.
5. Respondent argued that if a penalty were to be assessed, Respondent be permitted to transfer the license to a newly formed corporation headed and owned by one or more of the Yoon's two sons and that any actual license suspension imposed be for a fixed term, such as 15 days, and not an indefinite suspension pending transfer of the license. Further, Sim Soon Yoon should be permitted to remain an employee at both premises. However, she would agree to surrender ownership interest in Respondent or any successor corporation created to

become a transferee of the licenses and give up management responsibilities and powers at both licensed premises.

6. In this instance, out-right revocation of the licenses would be too harsh a penalty. While the evidence clearly established Bong K. Yoon's moral turpitude convictions, it was not shown the underlying offenses were in any way connected to the day-to-day operation or management of either licensed premises. His convictions were not shown to be based upon actions that directly harmed or threatened public safety as directly related to Respondent's operation of the two licensed premises. Rather, both licensed sites have operated for many years with no history of disciplinary action whatsoever. The absence of disciplinary history is expressly included in Rule 144 as a factor in mitigation. Also, while the charges Bong K. Yoon pled nolo contendere to involved moral turpitude, it is noted he was basically put on probation for three years, assessed a \$70.00 fine for each count, and was ordered to pay a total of \$150.00 in restitution.

7. In protecting public welfare and morals, the Department has a strong interest in making sure only qualified persons and/or entities hold licenses. Bong K. Yoon's convictions for crimes involving moral turpitude and the related disqualification of his wife as a 40% stockholder warrant a meaningful measure of discipline in and of itself. Additionally, a controlling 55% stock interest in Respondent, a licensed corporation, is now held by two persons who have never been determined by the Department to be qualified licensees. The Department was not able to make that assessment because Respondent did not fulfill its statutory reporting duty to the Department as required by section 23405. Further, there has not been an appropriate transfer of license to the Respondent as newly constituted with the new majority shareholders as required by section 24071.1. Again, this was due to the Respondent's failure to report to the Department the transfer of a majority interest of stock that occurred years ago. Therefore, Respondent has effectively no qualified shareholders, yet is exercising privileges under two Type-47 licenses. The over-all state of affairs calls for a significant measure of discipline, yet short of straight revocation of either license.

8. Based on weighing the factors in aggravation and mitigation as permitted under Rule 144, the below order is made.

9. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties raised in the pleadings or at the hearing lack merit.

ORDER

As to the First Amended Accusation filed against Respondent's license 47-301803:

Count 1 of the First Amended Accusation under Reg: 17086091 is dismissed.

Count 2 of the First Amended Accusation under Reg: 17086091 is sustained.

Respondent's license 47-301803 is revoked, however, the revocation is stayed for 180 days to permit a person-to-person transfer of the license to a party or parties acceptable to the Department. If the license is not transferred within 180 days as ordered herein, the Director of the Department may, in his/her sole discretion and without any further hearing, lift the stay and revoke the license. Additionally, Respondent's license is suspended for 20 days and indefinitely thereafter until the license transfers as ordered herein.

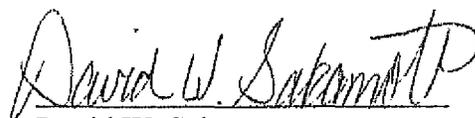
As to the First Amended Accusation filed against Respondent's license 47-431273:

Count 1 of the First Amended Accusation under Reg: 17086096 is dismissed.

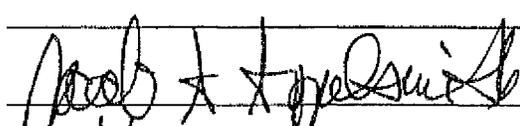
Count 2 of the First Amended Accusation under Reg: 17086096 is sustained.

Respondent's license 47-431273 is revoked, however, the revocation is stayed for 180 days to permit a person-to-person transfer of the license to a party or parties acceptable to the Department. If the license is not transferred within 180 days as ordered herein, the Director of the Department may, in his/her sole discretion and without any further hearing, lift the stay and revoke the license. Additionally, Respondent's license is suspended for 20 days and indefinitely thereafter until the license transfers as ordered herein.

Dated: February 26, 2018



David W. Sakamoto
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>4/4/18</u>