

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

AB-9777

File: 47-509237; Reg: 18086992

ISLANDS RESTAURANTS L-PSHIP,
dba Islands Fine Burgers & Drinks
12320 Seal Beach Boulevard
Seal Beach, CA 90740,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: October 3, 2019
Los Angeles, CA

ISSUED OCTOBER 15, 2019

Appearances: *Appellant:* Ralph B. Saltsman, of Solomon, Saltsman & Jamieson,
as counsel for Islands Restaurants L-Pship,

Respondent: Alanna Ormiston, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Islands Restaurants L-Pship, doing business as Islands Fine Burgers & Drinks (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 10 days because its employee served an alcoholic beverage to a Department minor decoy, in violation of Business and Professions Code section 25658(a).

FACTS AND PROCEDURAL HISTORY

¹The decision of the Department, dated December 6, 2018, is set forth in the appendix.

Appellant's on-sale general eating place license was issued on May 27, 2011.

Appellant has no record of prior disciplinary action.

On May 29, 2018 the Department instituted an accusation against appellant charging that, on February 9, 2018, appellants' employee and bartender, Michelle Clarisse Ceja Chau (the bartender), sold an alcoholic beverage to police minor decoy Martin P. (the decoy). Although not noted in the accusation, the decoy was working for the Seal Beach Police Department at the time.

At the administrative hearing held on September 27, 2018, documentary evidence was received, and testimony concerning the violation charged was presented by the decoy and Seal Beach Police Officer Nicholas Joseph Lacarra-Baker. Appellant's General Manager, Julie Garcia, testified on appellant's behalf.

Testimony established that on February 9, 2018, Officer Baker and Department Agent Rushing entered the licensed premises in a plain clothes capacity. A couple of minutes later, the decoy entered the licensed premises with Brooklyn, a second decoy involved in the operation. The decoy asked if he and Brooklyn could sit at the bar and was told that they could.

Once seated, the bartender approached the decoy and Brooklyn and asked what they wanted to drink. The decoy ordered a bottle of Bud Light beer while Brooklyn ordered a water. There was no evidence Brooklyn made any other statements to or had any conversation or interaction with the bartender. The bartender walked away and returned with the drinks. The bartender placed the Bud Light beer bottle in front of the decoy along with an empty glass. The bartender did not ask for either decoys' identification or age.

Officer Baker, who observed the sale with an unobstructed view, approached the bartender and asked to speak with the on-duty manager. When the manager arrived, Officer Baker informed her of the violation. Officer Baker then had the decoy identify the bartender as the person who sold him alcohol. A photo was taken of the bartender and the decoy after the face-to-face identification. (Exh. 2.)

Officer Baker and the bartender then exited the licensed premises, and the bartender was placed under arrest and read her Miranda rights. The bartender waived her Miranda rights and told Officer Baker that she served the decoy alcohol because he had the appearance of a 30-year-old. Officer Baker then cited the bartender.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established. Appellant filed a timely appeal contending that the Department failed to proceed in a manner required by law by failing to produce the second decoy at the administrative hearing, as required by Business and Professions Code section 25666.

DISCUSSION

Appellant contends the Department erred by failing to produce the second decoy, Brooklyn, at the administrative hearing. (AOB at pp. 5-9.) Specifically, appellant contends that Brooklyn's presence "was part of the actual circumstances as to [*sic*] presented to the server at the time of the alleged offense and had an impact on the overall presentation of the decoy to the bartender." (*Id.* at p. 8.)

In a similar case, *CEC Entertainment, Inc.*, this Board discussed the relevance of a second decoy and when a second decoy may be required at the hearing:

Appellant contends that the administrative law judge (ALJ) should have compelled the presence of Carlos Perez, a second decoy who

accompanied the decoy to whom the beer was sold, so that he (the ALJ) could conduct a full and fair analysis of the apparent age of Duran. Appellant cites *Hurtado* (2000) AB-7245, a decision of the Appeals Board which ruled that consideration of the effect of another person who accompanied a decoy was "essential for disposition."

In *Hurtado*, a 27-year-old plain-clothes policeman sat at a small table with a minor decoy. Each ordered and were served a beer. The Appeals Board concluded that the "active participation" of the police could have misled the seller as to how the decoy appeared. Thus, the decoy operation was unfair and violated Rule 141.

This case is nothing like *Hurtado, supra*. There is no evidence in this case that the second decoy did anything, by way of word or gesture, that might have distracted the clerk or caused the kind of confusion that was the concern of the Board in *Hurtado, supra*, or *Southland Corporation/R.A.N., Inc.* (1998) [AB-6967], another Board decision cited by appellant.

In *7-Eleven, Inc./Jamizeh* (2002) AB-7790, the Board explained that "the real question to be asked when more than a single decoy is used is whether the second decoy engaged in some activity intended or having the effect of distracting or otherwise impairing the ability of the clerk to comply with the law."

Thus, the mere fact that a second decoy accompanied the decoy who made the purchase is not, in and of itself, enough to persuade us that the decoy operation was unfair. The clerk did not testify, so any claim that the clerk was actually misled is wholly speculative.

(*CEC Entertainment, Inc.* (2004) AB-8189, at pp. 2-3.)

Based on *CEC Entertainment, Inc., supra*, the Board rejects appellant's claim that section 25666 requires the second decoy's appearance at the hearing as a matter of law. "[T]he mere fact that a second decoy accompanied the decoy who made the purchase is not, in and of itself, enough to persuade us that the decoy operation was unfair." (*Ibid.*) Further, under the facts of this case, the Board does not believe appellant has shown that Brooklyn's physical appearance was required for (or even relevant to) the ALJ's determination of appellant's 141(b)(2) defense.

Here, appellant contends that Brooklyn's mere presence *could* have influenced the employee's perception of the decoy's age, and therefore, her physical appearance must also be evaluated. However, appellant has not offered or pointed to any evidence to support its contention. The uncontroverted evidence in the record shows that, other than ordering a water, "[t]here was no evidence decoy Brooklyn made any other statements to or had any conversation or interaction with bartender Chau." (Findings of Fact, ¶ 8.)

Based on this finding, the ALJ addressed appellant's arguments regarding Brooklyn's appearance:

9. The Respondent's unsupported assertions that decoy Brooklyn's presence, or appearance for that matter, had any impact on bartender Chau's alleged claim that decoy Martin appeared 30 are simply that, supposition and conjecture. [...] There is no evidence whatsoever that decoy Brooklyn's presence of appearance in front of bartender Chau had any impact on bartender Chau's ability to comply with the law.

(Conclusions of Law, ¶ 9.) The Board agrees and sees no cause to second-guess the ALJ's conclusions.

As we said recently in *Hyatt Corp.* (2019) AB 9778, at p. 6, "absent some evidence to establish that the presence of a second decoy was the *actual reason* the employee served alcohol to a minor decoy, appellant's arguments must fail."

ORDER

The decision of the Department is affirmed.²

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

² 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.*

APPENDIX

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

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

ISLANDS RESTAURANTS L-PSHIP
ISLANDS FINE BURGERS & DRINKS
12320 SEAL BEACH BLVD
SEAL BEACH, CA 90740-2709

ON-SALE GENERAL EATING PLACE - LICENSE

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

SANTA ANA DISTRICT OFFICE

File: 47-509237

Reg: 18086992

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 November 30, 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 January 16, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: December 6, 2018



Matthew D. Botting
General Counsel

RECEIVED

DEC 06 2018

**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:

Islands Restaurants L-PSHIP DbA:
Islands Fine Burgers & Drinks
12320 Seal Beach Boulevard
Seal Beach, California 90740-2709

Respondent

} File: 47-509237
}
} Reg.: 18086992
}
} License Type: 47
}
} Word Count: 8,874
}
} Reporter:
} Samantha Maciel
} Kennedy Court Reporters
}
} **PROPOSED DECISION**

On-Sale General Eating Place License

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Santa Ana, California, on September 27, 2018.

Jonathan Nguyen, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Alexa Halloran, Attorney, represented the Respondent, Islands Restaurants L-PSHIP.

The Department seeks to discipline the Respondent's license on the grounds that, on or about February 9, 2018, the Respondent's agent or employee, Michelle Clarisse Ceja Chau, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to wit: beer, to M.P., an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit I.)

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 September 27, 2018.

FINDINGS OF FACT

1. The Department filed the accusation on May 29, 2018.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

2. The Department issued a type 47, on-sale general eating place license to the Respondent for the above-described location on May 27, 2011 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. M.P.² (hereinafter referred to as decoy Martin) was born on October 14, 2000. On February 9, 2018, he was 17 years old. On that date he served as a minor decoy, with a second decoy, Brooklyn³ (Exhibit 4) who was also 17 years old, in an operation conducted by the Seal Beach Police Department (Seal Beach PD) in conjunction with the Department.
5. Decoy Martin appeared and testified at the hearing. On February 9, 2018, he was approximately 5'9" tall and weighed approximately 160 pounds. He wore a black and white flannel shirt with a blue hood, black cargo pants and dark, navy blue Vans shoes. The decoy described his hair cut as military style along the sides and "sport" on the top. The decoy's hair along the sides of his head was shaved close to the scalp and the top of his hair was a little bit longer in length. (Exhibits 2 and 3.) His appearance at the hearing was the same, except that his hair was cut a little bit shorter on the top.
6. On February 9, 2018, Seal Beach PD Officer Nicholas Joseph Lacarra-Baker and Department Agent Rushing (hereinafter referred to as Officer Baker and Agent Rushing) entered the Licensed Premises, in a plain clothes capacity, and took a seat in the lobby at the entrance of the restaurant, approximately 35 feet from the bar. Officer Baker and Agent Rushing awaited the minor decoys' entrance. Officer Baker informed the hostess they would wait in the waiting area.
7. A couple of minutes after Officer Baker and Agent Rushing entered, decoys Martin and Brooklyn entered the Licensed Premises. The hostess asked decoy Martin if he wanted to be seated. Decoy Martin asked if he and Brooklyn could sit at the bar. The hostess said that it would be okay and gave decoy Martin directions where the bar was located. The two decoys walked by themselves over to the bar and sat down at the bar. There were no other customers seated at the bar. There was one on-duty bartender working at the bar, Michelle Clarisse Ceja Chau (hereinafter referred to as bartender Chau).
8. Bartender Chau approached the decoys and asked what they wanted to drink. Decoy Martin ordered a bottle of Bud Light beer and decoy Brooklyn requested water. There was no evidence decoy Brooklyn made any other statements to or had any conversation

² While the accusation refers to the minor decoy as M.P., the parties agreed, off the record, to refer to the minor decoy throughout the hearing by his first name (Martin) since he was still a juvenile.

³ The parties also agreed off the record to refer to the second minor decoy by her first name (Brooklyn) during the hearing because she also was a juvenile.

or interaction with bartender Chau. Bartender Chau walked away, retrieved the drinks, returned to the bar and placed the Bud Light beer bottle along with an empty glass on the bar in front of decoy Martin, approximately one foot way from decoy Martin, and then placed the water in front of decoy Brooklyn. Decoy Martin grabbed the Bud Light beer bottle and brought it closer to him.⁴ Bartender Chau asked decoy Martin if he wanted anything else. Decoy Martin asked the bartender if they could just wait for a few minutes. Bartender Chau did not ask for either decoys' identification (ID) or age. Officer Baker observed the interaction between bartender Chau and decoy Martin with an unobstructed view.

9. Officer Baker saw decoy Martin pull the Bud Light beer bottle closer to his person, indicating the signal that the decoy was furnished with alcohol. Officer Baker informed Agent Rushing of his observations. Agent Rushing then relayed the said violation to Seal Beach PD Sergeant Bar and Officer Davis, who were outside of the Licensed Premises.

10. Officer Baker walked by himself straight to the bar and asked bartender Chau for the on-duty manager. Bartender Chau acquiesced, leaving the bar area and returning within 30 seconds with the on-duty manager, Jeanette Conde (hereinafter referred to as manager Conde). Officer Baker informed manager Conde of the said violation.

11. Officer Baker then asked bartender Chau to step to the customer side of the bar and directed decoy Martin to join Officer Baker and bartender Chau. Both bartender Chau and decoy Martin complied. Officer Baker informed bartender Chau she had just furnished alcohol to a 17 year old. Officer Baker then asked decoy Martin to identify the person who sold him the alcohol. Decoy Martin pointed at bartender Chau and stated, "She provided me with the alcohol." Decoy Martin and bartender Chau were standing approximately 4 to 5 feet apart and facing each other at the time of this identification. A photo of bartender Chau and decoy Martin was taken after the face-to-face identification, with decoy Martin holding the bottle of Bud Light beer in his hands, while standing next to bartender Chau. (Exhibit 2.) At some point Sergeant Bar and Officer Davis entered the Licensed Premises, and during the face-to-face identification they stood scattered about nearby along with decoy Brooklyn. Decoy Martin was instructed to sit back down while the officers conducted the investigation, which the decoy did.

12. Officer Baker and bartender Chau exited the Licensed Premises. Officer Baker informed bartender Chau she was being placed under arrest for the said violation, read the bartender her Miranda rights, which she waived, and then asked her why she did not ask decoy Martin for his ID. Bartender Chau replied that she did not ask for his ID and served him the alcohol because he had the appearance of a 30 year old.

⁴ Decoy Martin testified that he brought the beer closer to him because the officers had given him prior instructions to do so, so as to signal the officers that he was furnished with alcohol.

13. Officer Baker issued bartender Chau a citation after the face-to-face identification. Bartender Chau did not appear at the hearing. There was no evidence that bartender Chau was distracted during her furnishing of the Bud Light beer to decoy Martin or during the face-to-face identification.

14. Decoy Martin appeared his age at the time of the decoy operation. Based on his overall appearance, i.e., his physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and conduct in front of bartender Chau at the Licensed Premises on February 9, 2018, decoy Martin displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to bartender Chau. At the hearing, decoy Martin had the appearance of a teenager, appearing his age.

15. February 9, 2018, was the first day of minor decoy operations in which decoy Martin participated. He had never been to the Licensed Premises prior to February 9, 2018. Decoy Martin learned about the decoy program through his participation in the Police Explorer Program through the Buena Park Police Department. He has been a police explorer for approximately three years. Decoy Martin's explorer training includes tactical training such as car stops, active shooters and tubular assaults. He provided an example of a tubular assault, as "a hostage situation on a bus and the officers are the first to respond, we will try to calm the situation down until the SWAT team arrives." He described the police explorer training as preparation for the academy and becoming a cadet and/or officer. Decoy Martin believes his explorer training has helped him to carry himself more confidently.

16. Julie Garcia appeared and testified at the hearing. She is the Respondent's general manager at the Licensed Premises. She was not working on February 9, 2018, because she was on maternity leave. The Respondent's bartenders are required to take the Department LEAD course prior to their beginning training in the Licensed Premises bar. The Respondent's servers and server partners are required to take the company's on-line alcohol beverage service course in the second and fourth quarter of each fiscal year. After completion of the on-line course there is a quiz made up of eight to 10 questions, including questions whether they would card someone under the age of 40, actually take the ID in hand and look to see if it is valid or expired. On February 9, 2018, the Respondent's policy required its employees to ask for the ID of anyone appearing under 30 years of age. As of approximately, July 2018, the Respondent changed its policy and requires its employees to card anyone appearing under 40 years old. The Respondent also participates in the BARS secret shopper program twice a month at its premises. After February 9, 2018, the Respondent required that all of its servers and server partners retrain in the alcoholic beverage service on-line course within a two week period. Bartender Chau's employment was terminated as a result of the said violation.

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

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.

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 February 9, 2018, the Respondent's bartender, Michelle Clarisse Ceja Chau, inside the Licensed Premises, furnished an alcoholic beverage to Martin P., a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-14.)

5. The Respondent argued the decoy operation at the Licensed Premises failed to comply with rule 141(b)(2) and, therefore, the accusation should be dismissed pursuant to rule 141(c).

6. With respect to rule 141 (b)(2), the Respondent argued decoy Martin did not have the appearance of someone under 21 based on a number of factors including Respondent counsel's opinion that, (1) although decoy Martin is 17 years old, "he carries himself with confidence," (2) he is a police explorer ,(3) decoy Martin testified that his police explorer training makes him more confident, (4) he appeared with another decoy, Brooklyn, who did not appear at the hearing and therefore "we have no idea what bartender [Chau] saw when the two approached the bar together" although decoy Martin was the only one who ordered alcohol, "they both ordered drinks together, [and] sat together at the bar," and (5) decoy Brooklyn played an active role in the decoy operation.

7. This rule 141(b)(2) argument is rejected. As an affirmative defense, it is incumbent upon the Respondent to produce substantial evidence in support its contentions. In other

words, the burden rests on the Respondent to prove its affirmative defense.⁵ The only evidence in the record as to why bartender Chau furnished the Bud Light beer to decoy Martin was her hearsay statement to Officer Baker she thought he appeared 30.

Bartender Chau's statement is found not credible and self-serving as described more fully below. Decoy Martin definitely did not appear anywhere near 30, least of all 21 years old. Decoy Martin has the appearance of a teenager, appearing his age, 17, not only under the circumstances as presented to bartender Chau on February 9, 2018, but in-person at the hearing as well. There was nothing about decoy Martin's experience as a police explorer, explorer training, demeanor, mannerisms, or appearance which made him appear older than his actual age, regardless of whom he was with. In other words, decoy Martin had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 14.)

8. Respondent's counsel admitted, rightly so, in closing that while bartender Chau said decoy Martin appeared to be 30, "we're not sure if it was because of the other minor's presence or just [decoy] Martin alone." Respondent further argued that "having the other minor would help us to determine if that was the case." This latter argument is rejected.

9. The Respondent's unsupported assertions that decoy Brooklyn's presence, or appearance for that matter, had any impact on bartender Chau's alleged claim that decoy Martin appeared 30 are simply that, supposition and conjecture. If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code, section 412.) There is no evidence whatsoever that decoy Brooklyn's presence or appearance in front of bartender Chau had any impact on bartender Chau's ability to comply with the law.

10. In giving the Respondent the benefit of the doubt and addressing this argument, decoy Brooklyn's photograph marked and admitted as Exhibit 4, which was taken on February 9, 2018, prior to the decoy operation at the Licensed Premises, depicts a youthful appearing minor. Officer Baker gave undisputed, unrebutted, credible testimony that Exhibit 4 accurately depicts how decoy Brooklyn appeared on the day of the operation. Decoy Martin also provided undisputed, credible testimony Exhibit 4 depicts how 17 year old decoy Brooklyn appeared on February 9, 2018. Thus, Exhibit 4 accurately depicts how decoy Brooklyn appeared in front of bartender Chau during the said violation. Decoy Brooklyn, as depicted in Exhibit 4, does not appear anywhere near 21, let alone 30 years of age. While inside the Licensed Premises, decoys Martin and Brooklyn had the appearance of two teenagers seated together at the bar.

⁵ The Respondent argued the Department was obligated to produce decoy Brooklyn at the hearing under section 25666. This argument is without basis in law or fact. There was no sale of alcohol to decoy Brooklyn and she was not named in the accusation. By its own terms, section 25666 does not apply,

11. The Respondent failed to present Bartender Chau at the hearing. Bartender Chau is the only person who could say why she allegedly thought decoy Martin appeared 30 to her. There was no testimony from bartender Chau to indicate why decoy Martin allegedly appeared 30 years old to her, or whether the decoys' presence "together" made decoy Martin appear older than his age. Bartender Chau's hearsay statement is given little weight and is found not credible and self-serving. Bartender Chau was facing certain discipline for the said violation, and by alleging the minor appeared 30 to her, she would then arguably be within the Respondent's policy of not carding anyone 30 years of age or older at the time; in light of the Respondent's then policy requiring she card anyone appearing "under" 30.

12. Additionally, bartender Chau made no statements to any of the officers after the said violation on February 9, 2018, as to why decoy Martin allegedly appeared 30 to her. She made no statements that decoy Martin appeared 30 because he was with decoy Brooklyn. In fact, bartender Chau made no statements about decoy Brooklyn's presence or appearance at all. Besides decoy Brooklyn placing an order of water with bartender Chau there was no evidence decoy Brooklyn made any other statements to or had any other conversation or interaction with bartender Chau.

13. Lastly, there was simply no evidence that the fact decoys Martin and Brooklyn were seated at the bar together inside the Licensed Premises affected or impaired bartender Chau's ability to comply with the law. At the bar bartender Chau asked for their drink order. Decoy Martin first placed an order with bartender Chau for a Bud Light beer. It was only after decoy Martin placed his order that decoy Brooklyn ordered water. There was no evidence decoy Brooklyn either interjected herself while decoy Martin placed his order, or distracted bartender Chau in any way. (Findings of Fact ¶ 8.)

PENALTY

The Department requested the Respondent's license be suspended for a period of 15 days, arguing the length of licensure without discipline since 2011 is overcome by the fact the Respondent's bartender furnished alcohol to a 17 year old without asking for ID or age. The Department further argued the training of Respondent's employees does not warrant lowering the standard 15 day penalty recommended under rule 144.

The Respondent requested a mitigated penalty. This argument was based on the Respondent, (1) implementing its own training beyond the Department's LEAD program to train its employees, (2) having retrained its employees in its existing training program after the said violation, and (3) revising its policy from requiring its servers card persons appearing under 30, to carding persons appearing under 40 years of age.

The Respondent's witness, Julie Garcia, made a distinction between the Respondent's servers and server partners from its bartenders when describing the required training they must undergo. However, the elicited testimony indicated that Respondent's servers and server partners were the persons retrained after the said violation. There was no evidence that Respondent's bartenders were also required to undergo retraining since the said violation occurred with one of its bartenders. Regardless, even giving the Respondent the benefit of the doubt that the bartenders were included in retraining, the steps taken by the Respondent were remedial. Simply requiring its employees to "card" someone whether under 30 or 40, and employing the BARS secret shopper program, reinforces only the requirement of asking for ID and does not fully address the prevention of sales of alcoholic beverages to minors. There was no evidence of whether the company's on-line course and quiz included the distinct red flags of minor's vertical formatted IDs with the red stripe advising servers when the minor turns 21. Nonetheless, some mitigation is warranted for the combined efforts of retraining employees, changing policy, terminating bartender Chau for the said violation thereby setting an example to other employees of a zero tolerance policy, and the Respondent's length of licensure without discipline. The penalty recommended herein complies with rule 144.

ORDER

The Respondent's on-sale general eating place license is hereby suspended for a period of 10 days.

Dated: October 11, 2018



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u> Jacob A. Appelquist </u>
Date: <u> 11/30/18 </u>