

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

AB-9817

File: 20-552768; Reg: 18087560

99 CENTS ONLY STORES, LLC,
dba 99¢ Only Store #64
430 North Mountain Avenue
Ontario, CA 91762,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: January 9, 2020
Los Angeles, CA

ISSUED JANUARY 21, 2020

Appearances: *Appellant:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as
counsel for 99 Cents Only Stores, LLC,

Respondent: John P. Newton, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

99 Cents Only Stores, LLC, doing business as 99¢ Only Store #64, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 15 days because its clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

¹The decision of the Department, dated May 9, 2019, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on April 22, 2016. There is no record of prior departmental discipline against the license.

On October 12, 2018, the Department filed a single-count accusation charging that appellant's clerk, Ruben Jose Cervantes (the clerk), sold an alcoholic beverage to 19-year-old Jair Eduardo Torres Adame (the decoy) on March 17, 2018. Although not noted in the accusation, the decoy was working for the Ontario Police Department (OPD) at the time.

At the administrative hearing held on February 5, 2019, documentary evidence was received, and testimony concerning the sale was presented by the decoy; OPD Officers Erich Kemp and Eric Quinones; and Roxana Iraheta, the store manager at the licensed premises.

Testimony established that on March 17, 2018, the decoy entered the licensed premises followed shortly thereafter by OPD Ofcr. Kemp in an undercover capacity. The decoy went to the alcoholic beverage section where he selected a package of hite beer.² (Exh. 3.) He took the beer to the registers and waited in line. When it was his turn, he set the beer on the counter and the clerk asked for his identification.

The decoy handed the clerk his California driver's license, which had a portrait orientation, contained his correct date of birth — showing him to be 19 years of age — and a red stripe indicating "AGE 21 IN 2019." (Exh. 5.) The clerk swiped the ID several times in the register and each time a red light flashed. The clerk then looked at the ID and entered what appeared to be a birthdate into the register, but the register rejected

²The name of the beer is not capitalized on the packaging on this product.

the transaction. Finally, the clerk entered a “fake, age-appropriate birthdate” (finding of fact ¶ 7) into the register and the transaction was allowed to proceed. The clerk then completed the sale without asking the decoy any age-related questions.

The decoy exited the premises, then re-entered with OPD officers to make a face-to-face identification of the clerk who sold him the beer. A photograph of the clerk and decoy was taken (exh. 2) and the clerk was subsequently cited. During the investigation, the clerk stated to Ofcr. Kemp that he thought the decoy looked 22 years old.

The administrative law judge (ALJ) issued her proposed decision on February 22, 2019, sustaining the accusation and recommending a 15-day suspension. The Department adopted the proposed decision in its entirety on April 11, 2019 and issued a certificate of decision on May 9, 2019.

Appellant then filed a timely appeal contending the ALJ erred in determining the penalty.

DISCUSSION

Appellant contends the ALJ erred in determining the penalty by holding appellant to an impossible standard. Specifically, it alleges the decision requires appellant to make it physically impossible for its clerks to make improper sales before evidence in mitigation will be applied. (AOB at p. 1.)

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* (1966)

240 Cal.App.2d 659, 666-667 [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.)

In the decision, the ALJ addresses the issue of penalty and the factors taken into account in determining the recommended suspension:

PENALTY

The Department requested the Respondent's license be suspended for a period of 15 days, based on several argued for aggravating factors. Those factors included, (1) the said sale to minor violation within less than a year from issuance of Respondent's license on April 22, 2016, (2) Respondent presented no evidence of a policy preventing password sharing or that it informed other employees of clerk Cervantes' discipline after the said violation, (3) there is no change in the training other than having the same training in an entertaining computer-based video format, (4) management was aware clerk Cervantes used the cash registers even though he did not have his own passcode, and permitted him to use someone else's passcode to work the registers, (5) clerk Cervantes went to great effort, using someone else's passcode, calculating a fake birthdate allowing the sale of alcohol to the minor, whom he initially told officers was just a young guy trying to get beer.

The Respondent recommended a 10-day suspension based on a number of factors, including, (1) clerk Cervantes' discipline, (2) Respondent's change in policy eliminating the practice of allowing a non-trained employee to work the register when the store is busy and disciplining anyone who gets on a register and has not been appropriately trained,(3) Respondent had all 21 cashiers retrained on the "My 99 Learning" computer-based training and implemented huddles reviewing policy.

While the above-described steps Respondent took are commendable, the Department is correct, any mitigation argued by Respondent, is offset by its short licensure and the minor changes it has made since the date of the violation. But of grave concern to the undersigned, is the decoy's youthful appearance, age, and Respondent's failure to correct and address the underlying problems. Respondent's cashiers, despite the above argued for mitigating factors, are still able to override the cash register safety protocol by inputting a fake, age-appropriate birthdate to trick the POS system into allowing the age-restricted sale, just as clerk Cervantes had cleverly done.^[fn.] Furthermore, there was no evidence Respondent addressed the additional problem of the passcode sharing and incorporated some sort of passcode sharing prevention policy. The penalty recommended herein complies with rule 144.

(Decision at pp. 6-7.)

The Board may not disturb a penalty order unless it is so clearly excessive that any reasonable person would find it to be an abuse of discretion in light of all the circumstances. “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].)

Appellant’s disagreement with the penalty imposed does not mean the Department abused its discretion. This Board’s review of a penalty looks only to see whether it can be considered reasonable, and, if it is reasonable, the Board’s inquiry ends there. “[T]he propriety of the penalty to be imposed rests solely within the discretion of the Department whose determination may not be disturbed in the absence of a showing of palpable abuse. [Citations.]” (*Rice v. Alcoholic Bev. Control Appeals Bd.* (1979) 89 Cal.App.3d 30, 39 [152 Cal.Rptr. 285].) Appellant’s claim — that the decision requires appellant to make it physically impossible for its clerks to make improper sales before evidence in mitigation will be applied — is simply not supported by the record. The penalty here is within the bounds of the Department’s discretion, and is amply justified and explained in the decision.

The Board is not empowered to reach a contrary conclusion from that of the Department — and substitute its own judgment — when, as here, the penalty is reasonable and the underlying decision is supported by substantial evidence. We find no error.

ORDER

The decision of the Department is affirmed.³

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

³This 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 of said code.

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:**

99 CENTS ONLY STORES LLC
99¢ ONLY STORE #64
430 NORTH MOUNTAIN AVENUE
ONTARIO, CA 91762

OFF-SALE BEER AND WINE - LICENSE

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

RIVERSIDE DISTRICT OFFICE

File: 20-552768

Reg: 18087560

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 April 11, 2019. 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, 300 Capitol Mall, Suite 1245, Sacramento, CA 95814.

On or after June 19, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: May 9, 2019



Matthew D. Botting
General Counsel

RECEIVED

MAY 10 2019

**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:

99 Cents Only Stores LLC
Dbas: 99¢ Only Store #64
430 North Mountain Avenue
Ontario, California 91762

Respondent

} File: 20-552768
}
} Reg.: 18087560
}
} License Type: 20
}
} Word Count: 12,497
}
} Reporter:
} Savauna Winn
} Kennedy Court Reporters

Off-Sale Beer and Wine License

PROPOSED DECISION

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Riverside, California, on February 5, 2019.

John Newton, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Donna Hooper, Attorney, represented Respondent, 99 Cents Only Stores LLC.

The Department seeks to discipline the Respondent's license on the grounds that, on or about March 17, 2018, the Respondent-Licensee's agent or employee, Ruben Jose Cervantes, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: beer, to Jair Eduardo Torres Adame, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on February 5, 2019.

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

FINDINGS OF FACT

1. The Department filed the accusation on October 12, 2018. At the hearing, the Department amended the accusation by interlineation, without objection by the Respondent, replacing the name "Cervants" with the name "Cervantes" in count 1.
2. The Department issued a type 20, off-sale beer and wine license to the Respondent for the above-described location on April 22, 2016 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. Jair Eduardo Torres Adame (hereinafter referred to as decoy Jair) was born on December 28, 1998. On March 17, 2018, he was 19 years old. On that date he served as a minor decoy in an operation conducted by the Ontario Police Department (Ontario PD).
5. Decoy Jair appeared and testified at the hearing. On March 17, 2018, he was 5'7" tall and weighed 145 pounds. He wore a sweatshirt with a graphic thereon, black pants, and light brown Adidas shoes. He described his hair style as long, curly hair on the top and shaved along the sides. (Exhibits 2 and 4.) His appearance at the hearing was the same, except that he was 5'8" tall and weighed 155 pounds, and his hair on the top was cut shorter and slicked in a right comb-over. He also wore a jacket at the hearing.
6. On March 17, 2018, at 3:30 p.m. decoy Jair entered the Licensed Premises followed shortly thereafter by Ontario PD Officer Kemp, who was in a plain clothes capacity posing as a customer. Decoy Jair walked to the alcoholic beverage section and selected from a shelf a package of hite Extra Cold beer. (Exhibit 3.) Hite Beer is an alcoholic beverage. Decoy Jair brought the package of beer to the front where the cash registers were located and stood in line. After approximately two minutes, he reached the front of the line.
7. Decoy Jair placed the package of hite beer upon the sales counter. The male clerk, Ruben Jose Cervantes (hereinafter referred to as clerk Cervantes), asked for the decoy's ID. Decoy Jair handed to clerk Cervantes his valid California Driver License. Decoy Jair's California Driver License had a vertical orientation, showed his correct date of birth and included a red stripe which read, "AGE 21 IN 2019." (Exhibit 5.) Clerk Cervantes swiped the ID a couple of times along the cash register. Each time the clerk swiped the ID, decoy Jair saw a red flashing light appear along the side of the register; the cash register did not allow the sales transaction to proceed. After clerk Cervantes made a final swipe attempt of the ID and the decoy saw another red flash, clerk Cervantes then appeared to look at the date of birth on the ID and input it into the computer cash register multiple times. The register did not allow the transaction to proceed. Clerk Cervantes handed the ID back to the decoy, entered a fake, age-appropriate birthdate into

the cash register and the register permitted the sale of alcohol to proceed. Clerk Cervantes told decoy Jair the price of the beer, for which decoy Jair paid. Decoy Jair took the package of hite beer and exited the store. There was no evidence clerk Cervantes asked decoy Jair any age-related questions or questions about his ID. Officer Kemp witnessed the transaction. There was no evidence decoy Jair communicated with Officer Kemp while inside the Licensed Premises. Officer Kemp remained in the store.

8. Ontario PD Corporal Quinones entered the Licensed Premises in a uniformed capacity and joined Officer Kemp in making contact with clerk Cervantes. Officer Kemp identified himself to the clerk as a police officer with the Ontario PD. Officer Kemp asked clerk Cervantes if there was a supervisor or someone to take over the register. Eventually someone took over clerk Cervantes' register. Office Kemp and Corporal Quinones removed clerk Cervantes to a private location inside the store, off to the side, in the back.

9. Decoy Jair re-entered the Licensed Premises with two Ontario PD Officers, all of whom joined Corporal Quinones, Officer Kemp and clerk Cervantes. Corporal Quinones positioned the decoy approximately three feet from clerk Cervantes, and then asked decoy Jair to identify the person who sold him the beer. Decoy Jair pointed at clerk Cervantes and replied, "He was the one who sold me the beer," identifying clerk Cervantes. Decoy Jair and clerk Cervantes were standing approximately three feet apart and facing each other at the time of this identification. Corporal Quinones asked clerk Cervantes if he understood he was being identified as the person who sold beer to the minor decoy. Clerk Cervantes acknowledged in the affirmative. A photo of clerk Cervantes and decoy Jair was taken after the face-to-face identification, with decoy Jair holding the package of hite beer in his left hand and his California Driver License in his right hand, while standing next to clerk Cervantes. (Exhibit 2.)

10. Officer Kemp issued a citation to clerk Cervantes after the face-to-face identification. There was no evidence that clerk Cervantes was distracted during the sales transaction or the face-to-face identification. Clerk Cervantes did not appear at the hearing.

11. Officer Kemp read clerk Cervantes his Miranda rights and asked him about the sales transaction with the decoy. Clerk Cervantes informed Officer Kemp that he had asked for the decoy's ID and attempted multiple times to enter the date of birth but that the register would not allow the transaction to proceed. Clerk Cervantes also said that the decoy looked as though he was just a young guy trying to get beer for St. Patrick's Day. Clerk Cervantes thereafter claimed he thought the decoy looked 22 years old, old enough to purchase alcohol.²

² In balancing the factors of Evidence Code section 780, the undersigned did not find this statement credible, but self-serving and inconsistent with his former statement to Officer Kemp.

12. Decoy Jair 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 clerk Cervantes at the Licensed Premises on March 17, 2018, decoy Jair displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to the clerk. In-person, decoy Jair has a youthful appearance, that of a teenager.

13. March 17, 2018, was the first day of decoy operations in which decoy Jair participated. He learned about the decoy program through his service as a Police Explorer with the Ontario PD. As of March 17, 2018, the decoy had been a Police Explorer for approximately one month and a half.

14. On March 17, 2018, decoy Jair visited five locations, with two of those locations selling alcoholic beverages to him, including the Licensed Premises.

(Respondent's Witness)

15. Roxana Esmeralda Iraheta appeared and testified at the hearing. Ms. Iraheta has worked at the Licensed Premises for one year, and worked in general for 99 Cents Only Stores for five years. On March 17, 2018, she was working as the store manager at the Licensed Premises and remains the store manager. At the time of the said violation the store was busy, down one cashier who called in sick, Ms. Iraheta's key-holder management team member was on break, and Ms. Iraheta was accepting a truck delivery during which time she was called on the intercom several times to come to the front. When Ms. Iraheta entered the store, she walked to where the Ontario PD officers and clerk Cervantes were standing, and became aware of the said violation. Ms. Iraheta subsequently learned that clerk Cervantes, who is not a cashier, but a floor person, had been asked to help on the cash registers to help with the long line of customers, after which time he sold alcohol to the minor decoy.

16. Clerk Cervantes had been hired approximately two years prior to said violation and his job duties included sweeping and mopping the store. There was no evidence clerk Cervantes received company policy training on how to conduct age-restricted sales. He was asked to work on the registers, for approximately 10 minutes every 30 day period. Each cashier has their own passcode to access the computer registers. Clerk Cervantes did not have a passcode to access the computer registers, but used someone else's passcode when he helped on the registers. Ms. Iraheta questioned clerk Cervantes about the said sales transaction but he was not able to explain to her satisfaction what had occurred. Ms. Iraheta did not find clerk Cervantes to be the "brightest" employee. Ms. Iraheta was not sure how to discipline clerk Cervantes because she had never had an employee sell alcohol to a minor decoy while she was store manager. Mr. Iraheta issued

clerk Cervantes a written warning stating that he was under investigation until further notice. Sometime later clerk Cervantes quit his employment with the Respondent.

17. After the violation of March 17, 2018, Ms. Iraheta took steps to prevent future sales of age-restricted products to minors. Typically, the store's policy is to exempt retraining employees who were "paper tested"³ and to only retrain new employees on the new computer-based training, "My 99 Learning" implemented the year prior. Instead of the foregoing Ms. Iraheta chose to retrain all 21 of her cashiers on the computer-based module whether or not they had received paper only training. The paper training consisted of testing in the form of a paper quiz which basically asked the same questions as the new computer-based training; with the only difference that the computer-based training has video scenarios designed to be more entertaining to keep employees engaged. Ms. Iraheta conducted huddles reminding cashiers and verbally quizzing them as to alcohol related sales, what to do if a customer appeared under-aged and the clerk was not sure of the ID presented. Ms. Iraheta no longer allowed, under any circumstances, anyone to work on the cash registers unless they became alcohol sales certified by completing the computer-based training, "My 99 Learning." Any employee who has not been alcohol sales certified and who "jumps on a register" will be written up.

18. The "My 99 Learning" consists of video scenarios that walk the employees through alcohol sales policy and procedure, what to look for, what to do, and what not to do. The training provides samples of acceptable IDs, and instructs cashiers to compare the ID to the customers before them, and recognize the red flags of minors' vertical IDs with the red stripe indicating the year they turn 21. Clerks are required to ask for the ID of every customer when it relates to age-restricted sales. Ms. Iraheta has subsequently learned that the store's discipline policy if an employee sells an age-restricted product to a minor is immediate termination of employment. With the new computer-based training, management can run a search to see who has completed the training; whereas with the paper training Ms. Iraheta had to search through paper files, which became cumbersome.

19. Ms. Iraheta explained that the cash registers are computers, which when alcohol is scanned a white and green screen appears instructing the clerk to ask for ID and enter the customer's date of birth. Clerks can override the safety protocol for age-restricted products by entering an age-appropriate birth date which will enable to the alcohol sales to proceed. If a minor's birthdate is entered into the screen the register will not allow the alcohol sales to proceed.

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

³ Ms. Iraheta explained that "paper testing" meant the employees were trained on paper and took a paper quiz as opposed to the new computer-based training method.

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 March 17, 2018, the Respondent-Licensee's employee, clerk Ruben Jose Cervantes, inside the Licensed Premises, sold alcoholic beverages, to-wit: a package of hite beer, to Jair Eduardo Torres Adame, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-12.)

PENALTY

The Department requested the Respondent's license be suspended for a period of 15 days, based on several argued for aggravating factors. Those factors included, (1) the said sale to minor violation within less than a year from issuance of Respondent's license on April 22, 2016, (2) Respondent presented no evidence of a policy preventing password sharing or that it informed other employees of clerk Cervantes' discipline after the said violation, (3) there is no change in the training other than having the same training in an entertaining computer-based video format, (4) management was aware clerk Cervantes used the cash registers even though he did not have his own passcode, and permitted him to use someone else's passcode to work the registers, (5) clerk Cervantes went to great effort, using someone else's passcode, calculating a fake birthdate allowing the sale of alcohol to the minor, whom he initially told officers was just a young guy trying to get beer.

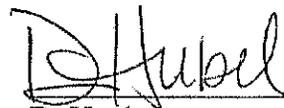
The Respondent recommended a 10-day suspension based on a number of factors, including, (1) clerk Cervantes' discipline, (2) Respondent's change in policy eliminating the practice of allowing a non-trained employee to work the register when the store is busy and disciplining anyone who gets on a register and has not been appropriately trained, (3) Respondent had all 21 cashiers retrained on the "My 99 Learning" computer-based training and implemented huddles reviewing policy.

While the above-described steps Respondent took are commendable, the Department is correct, any mitigation argued by Respondent, is offset by its short licensure and the minor changes it has made since the date of the violation. But of grave concern to the undersigned, is the decoy's youthful appearance, age, and Respondent's failure to correct and address the underlying problems. Respondent's cashiers, despite the above argued for mitigating factors, are still able to override the cash register safety protocol by inputting a fake, age-appropriate birthdate to trick the POS system into allowing the age-restricted sale, just as clerk Cervantes had cleverly done.⁴ Furthermore, there was no evidence Respondent addressed the additional problem of the passcode sharing and incorporated some sort of passcode sharing prevention policy. The penalty recommended herein complies with rule 144.

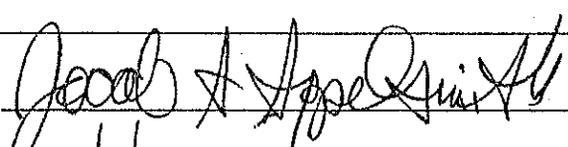
ORDER

The Respondent's off-sale beer and wine license is hereby suspended for a period of 15 days.

Dated: February 22, 2019



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: 4/11/19

⁴ It is concerning clerk Cervantes was permitted to work the cash registers once monthly despite not being properly trained on age-restricted sales, and with Ms. Iraheta considering him to be "not the brightest" employee.