

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

AB-9843

File: 20-509494; Reg: 19088894

7-ELEVEN, INC. and TINA JILL TAKAYA,
dba 7-Eleven Store #2133-13888
7443 Hollister Avenue
Goleta, CA 93117-2567,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: May 7, 2020
Telephonic

ISSUED MAY 12, 2020

Appearances: *Appellants:* Ralph Barat Saltsman and Adam N. Koslin, of
Solomon, Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and
Tina Jill Takaya,

Respondent: Lisa Wong, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Tina Jill Takaya (appellants), doing business as 7-Eleven Store #2133-13888, appeal from a decision of the Department of Alcoholic Beverage Control¹ (the Department) suspending their license for 10 days because their 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 November 4, 2019, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 25, 2011. There is no record of prior departmental discipline against the license.

On May 30, 2019, the Department filed a single-count accusation against appellants charging that, on December 1, 2018, appellants' clerk, Veronica Antoinette Morelli (the clerk), sold an alcoholic beverage to 19-year-old Alexia Soliz (the decoy). Although not noted in the accusation, the decoy was working for the Santa Barbara Sheriff's Office (SBSO) at the time.

At the administrative hearing held on September 10, 2019, documentary evidence was received and testimony concerning the sale was presented by the decoy, and SBSO Deputy Joshua Elizalde. Co-licensee Tina Jill Takaya appeared on behalf of appellants.

Testimony established that on December 1, 2018, Dep. Elizalde entered the licensed premises, followed shortly thereafter by the decoy. The decoy went to the coolers and selected a 3-pack of Bud Light beer which she took to the counter. When it was her turn, the clerk scanned the beer and asked to see the decoy's identification. The decoy handed the clerk her California driver's license, which had a portrait orientation. It contained her correct date of birth — showing her to be 19 years old — and a red stripe indicating "AGE 21 IN 2020." (Exh. 2.) The clerk completed the sale without asking any age-related questions. The decoy exited the premises with the beer, then re-entered to make a face-to-face identification of the clerk. A photo was taken of the decoy and clerk (exh. 4) and the clerk was issued a citation.

The administrative law judge (ALJ) issued his proposed decision on September 13, 2019, sustaining the accusation and recommending the license be suspended for

10 days. The Department adopted the proposed decision in its entirety on October 30, 2019, and a certificate of decision was issued on November 4, 2019.

Appellants then filed a timely appeal contending: (1) the decoy did not display the appearance required by rule 141(b)(2),² and (2) the penalty is excessive in light of mitigation evidence which the ALJ did not consider.

DISCUSSION

I

ISSUE CONCERNING DECOY'S APPEARANCE

Appellants contend that the decoy's matronly stature, facial jewelry, extensive experience as a decoy, and overall level of confidence gave her the appearance of a person over the age of 21, rather than the appearance required by rule 141(b)(2).

(AOB at pp. 6-7.)

Rule 141(b)(2) provides:

The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense.

This rule provides an affirmative defense, and the burden of proof lies with appellants.

(*Chevron Stations, Inc.* (2015) AB-9445; *7-Eleven, Inc./Lo* (2006) AB-8384.)

This Board is bound by the factual findings in the Department's decision so long as those findings are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.]

²References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani) (2004)

118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

When findings are attacked as being unsupported by the evidence, the power of this Board begins and ends with an inquiry as to whether there is substantial evidence, contradicted or uncontradicted, which will support the findings. When two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department—all conflicts in the evidence must be resolved in favor of the Department's decision.

(Kirby v. Alcoholic Bev. Control Appeals Bd. (1972) 25 Cal.App.3d 331, 335 [101

Cal.Rptr. 815]; *Harris v. Alcoholic Beverage Control Appeals Board (1963) 212*

Cal.App.2d 106, 112 [28 Cal.Rptr. 74].)

Therefore, the issue of substantial evidence when raised by an appellant, leads to an examination by the Appeals Board to determine, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. The Appeals Board cannot disregard or overturn a finding of fact by the Department merely because a contrary finding would be equally or more reasonable. (Cal. Const. Art. XX, § 22; Bus. & Prof. Code § 23084; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113]; Harris, supra, 212 Cal.App.2d at p. 114.*)

This Board has stated many times that, in the absence of compelling reasons, it will ordinarily defer to the ALJ's findings on the issue of whether there was compliance with rule 141(b)(2). The ALJ made the following findings regarding the decoy's appearance:

5. Soliz appeared and testified at the hearing. On December 1, 2018, she wore blue jeans, a long-sleeved black shirt, and tennis shoes. Her hair was parted in the middle and pulled back into a half-ponytail. She wore stud earrings and a nose ring. (Exhibits 3-4.) At the hearing her hair was shorter, Her height and weight were the same on December 1, 2018 as they were at the hearing.

¶ . . . ¶

9. Soliz learned of the decoy program through her sister, who works as a nanny for Dep. S. Woodill. She has been a decoy a number of times, both before and after December 1, 2018. On December 1, 2018, she visited 15 locations, of which four sold alcoholic beverages to her. She visited the Licensed Premises during other decoy operations. None of those other visits resulted in a sale.

10. Soliz appeared her age, 19 years old, at the time of the decoy operation. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in the Licensed Premises on December 1, 2018, Soliz displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Morelli.

(Findings of Fact, ¶¶ 5-10.) Based on these findings, the ALJ addressed appellants' rule 141(b)(2) arguments:

5. The Respondents argued that the decoy operation at the Licensed Premises failed to comply with rule 141(b)(2)^[fn.] and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondents argued that Soliz was an experienced decoy who wore jewelry and who appeared to be mature. This argument is rejected. There was nothing about Soliz's appearance which was inconsistent with the appearance of a typical 19 year old. As noted above, Soliz had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 10.)

(Conclusions of Law, ¶ 5.) We agree with the ALJ's reasoning and conclusions.

As this Board has said many times, minors come in all shapes and sizes and we are reluctant to suggest that a minor decoy automatically violates the rule based on her stature or other physical characteristics. (See, e.g., *7-Eleven/ NRG Convenience Stores* (2015) AB-9477; *7-Eleven Inc./Lobana* (2012) AB-9164.) This Board has noted that:

[a]n ALJ's task to evaluate the appearance of decoys is not an easy one, nor is it precise. To a large extent, application of such standards as the rule provides is, of necessity, subjective; all that can be required is reasonableness in the application. As long as the determinations of the ALJs are reasonable and not arbitrary or capricious, we will uphold them.

(*O'Brien* (2001) AB-7751, at pp. 6-7.) Notably, the standard is *not* that the decoy must display the appearance of a "childlike teenager" but "the appearance which could generally be expected of a person under 21 years of age." (Rule 141(b)(2).) In Findings of Fact paragraphs 5-10, and Conclusions of Law paragraph 5, the ALJ found that the decoy met this standard, notwithstanding the details highlighted by appellants such as her weight and jewelry. We agree.

Appellants also argue that the decoy displayed a demeanor which was not typical for a teenager because of her experience working as a decoy. They maintain this experience gave her a confident demeanor which made her appear more mature. The Board has, however, rejected the "experienced decoy" argument many times. As the Board previously observed:

A decoy's experience is not, by itself, relevant to a determination of the decoy's apparent age; it is only the *observable effect* of that experience that can be considered by the trier of fact. . . . There is no justification for contending that the mere fact of the decoy's experience violates Rule 141(b)(2), without evidence that the experience actually resulted in the decoy displaying the appearance of a person 21 years old or older.

(*Azzam* (2001) AB-7631, at p. 5, emphasis in original.) This case is no different.

In a similar minor decoy case, where the Court of Appeal was tasked with determining whether an ALJ's assessment of the decoy's appearance was correct, the Court said that under the facts before them, while:

[O]ne could reasonably look at the photograph [of the decoy] and reasonably conclude that the decoy appeared to be older than 21 years of age, we cannot say that, as a matter of law, a trier of fact could not reasonably have concluded otherwise.

(Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (2002) 103 Cal.App.4th 1084, 1087 [127 Cal.Rptr.2d 652].)

The instant case is no different. We do not believe the evidence supports a finding that the ALJ "could not reasonably have concluded otherwise." (*Id.* at p. 1087.) As stated above, case law instructs us that when, as here, "two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department—all conflicts in the evidence must be resolved in favor of the Department's decision" (*Kirby, supra*, 25 Cal.App.3d at p. 335.)

Appellants presented no evidence that the decoy's physical appearance or demeanor *actually resulted* in her displaying the appearance of a person 21 years old or older on the date of the operation in this case. The clerk did not testify. We cannot know what went through her mind in the course of the transaction, or why she made the sale. There is simply no evidence to establish that the decoy's physical appearance or demeanor were the *actual reason* the clerk made the sale.

Ultimately, appellants are simply asking this Board to second guess the ALJ and reach a different conclusion, despite substantial evidence to support the findings in the decision. This we cannot do.

II

ISSUE CONCERNING PENALTY

Appellants contend that the “decision regarding the Penalty in this matter completely disregarded every piece of mitigating evidence submitted except for the fact that the Appellant [*sic*] had been discipline-free for 7.5 years prior to the instant violation.” (AOB at p. 9.) Appellants argue that the decision should be reversed because of its failure to recite — in the penalty section of the decision — *all* the mitigating factors which were presented by appellants at the administrative hearing, thereby constituting an abuse of discretion. (*Id.* at p. 8.)

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].)

If the penalty imposed is reasonable, the Board must uphold it even if another penalty would be equally, or even more, reasonable. “If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Rule 144 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 consideration of mitigating evidence:

PENALTY

The Department requested that the Respondents' license be suspended for a period of 15 days. The Respondents argued that a 10-day, all stayed suspension was appropriate, noting that they have been in business for 7½ years without any violation before this incident and had not sold alcohol to decoys during other operations. The Respondents are correct at least in part. Some mitigation is warranted based [on] the number of years the Respondents have been in business without incurring any discipline. The penalty recommended herein complies with rule 144.

(Decision at p. 4.)

Appellants fault the decision for failing to note additional evidence of mitigation in this penalty discussion, but one need only look one page earlier in the decision for the very evidence appellants allege is missing from the decision. In Finding of Fact paragraph 11, the ALJ takes note of co-licensee Tina Takaya's testimony regarding training: including on-line computer simulations, verbal instruction, and hands-on training, as well as a secret shopper program and changes in store procedures. (See Findings of Fact, ¶ 11.) Simply because this evidence is not noted in the penalty paragraph does not mean it was not considered by the ALJ.

As we have said time and again, 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. 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. Accordingly, the fact that the ALJ recommended a 5-day reduction in the standard 15-day penalty, rather than the penalty requested by appellants, is entirely within his discretion.

Appellants appear to want the Board to go behind the ALJ's findings and require him to explain his reasons for recommending a 10-day rather than an all-stayed penalty. However, such a requirement has been rejected by this Board numerous times. For example, in *7-Eleven, Inc./Cheema* (2004) AB-8181, the Board said: "Appellants misapprehend *Topanga*.³ It does not hold that findings must be explained, only that findings must be made." (Also see: *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241, 258-259 [242 Cal.Rptr. 760]; *Jacobson v. Co. of Los Angeles* (1977) 69 Cal.App.3d 374, 389 [137 Cal.Rptr. 909].)

Indeed, unless some statute requires it, an administrative agency's decision need not include findings with regard to mitigation. (*Vienna v. Cal. Horse Racing Bd.* (1982) 133 Cal.App.3d 387, 400 [184 Cal.Rptr. 64]; *Otash v. Bureau of Private Investigators* (1964) 230 Cal.App.2d 568, 574-575 [41 Cal.Rptr. 263].) Appellants have not pointed out a statute with such requirements. Findings regarding the penalty imposed are not necessary as long as specific findings are made that support the decision to impose disciplinary action. (*Williamson v. Bd. of Med. Quality Assurance* (1990) 217 Cal.App.3d 1343, 1346-1347 [266 Cal.Rptr. 520].)

With regard to factual findings supporting the accusation — *not* the penalty imposed — this Board has said:

If this Board observes that the evidence appears to contradict the findings of fact, it will review the ALJ's analysis — assuming some reasoning is provided — to determine whether the ALJ's findings were nevertheless proper. Should this Board be faced with evidence clearly at odds with the findings and no explanation from the ALJ as to how he or she reached those findings, this Board will not hesitate to reverse. . . . While an ALJ may better shield himself against reversal by thoroughly explaining his

³*Topanga Assn. for a Scenic Community v. Co. of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].

reasoning, he is not required to do so. **The omission of analysis alone is not grounds for reversal, provided findings have been made.**

(*Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2015) AB-9514, at pp. 6-7, emphasis added.) Moreover, the Board has firmly clarified that it will not widen this holding to include the penalty:

We emphasize that this above language does *not* extend to the penalty. No “analytical bridge” of any sort is required in imposing a penalty. Provided the penalty is reasonable, this Board will have no cause to retrace the ALJ’s reasoning.

(*Hawara* (2015) AB-9512, at p. 9.) We see no reason to deviate from this precedent or to require that the ALJ explain his reasoning process.

Appellants have not established that the Department abused its discretion by imposing a 10-day penalty in this matter.

ORDER

The decision of the Department is affirmed.⁴

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

⁴This 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 APPEAL BY:

7-ELEVEN INC. & TINA JILL TAKAYA
DBA: 7-ELEVEN STORE 2133-13888
7443 HOLLISTER AVE.
GOLETA, CA 93117-2567

VENTURA DISTRICT OFFICE

File: 20-509494

Reg: 19088894

AB: 9843

OFF-SALE BEER AND WINE - LICENSE

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

CERTIFICATION

I, Yuri Jafarinejad, do hereby certify that I am a Senior Legal Analyst for the Department of Alcoholic Beverage Control of the State of California.

I do hereby further certify that annexed hereto is a true, correct and complete record (not including the Hearing Reporter's transcript) of the proceedings held under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code concerning the petition, protest, or discipline of the above-listed license heretofore issued or applied for under the provisions of Division 9 of the Business and Professions Code.

IN WITNESS WHEREOF, I hereunto affix my signature on January 2, 2020, in the City of Sacramento, County of Sacramento, State of California.


Office of Legal Services

2020 JAN -3 PH 2:22
ABC RECEIVED
ABC APPEALS BOARD

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

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

7-ELEVEN INC. & TINA JILL TAKAYA
7-ELEVEN #2133-13888
7443 HOLLISTER AVE
GOLETA, CA 93117-2567

OFF-SALE BEER AND WINE - LICENSE

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

VENTURA DISTRICT OFFICE

File: 20-509494

Reg: 19088894

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on October 30, 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, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after December 16, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: November 4, 2019



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

7-Eleven Inc. & Tina Jill Takaya
dba 7-Eleven #2133-13888
7443 Hollister Ave.
Goleta, California 93117-2567

Respondents

Off-Sale Beer and Wine License

} File: 20-509494
}
} Reg.: 19088894
}
} License Type: 20
}
} Word Count: 8,500
}
} Reporter:
} Shelby Maaske
} Kennedy Court Reporters

PROPOSED DECISION

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Santa Barbara, California, on September 10, 2019.

Lisa Wong, Attorney, represented the Department of Alcoholic Beverage Control.

Adam N. Koslin, attorney-at-law, represented respondents 7-Eleven Inc. and Tina Jill Takaya, who was present.

The Department seeks to discipline the Respondents' license on the grounds that, on or about December 1, 2018, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Alexia Soliz, 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 September 10, 2019.

FINDINGS OF FACT

1. The Department filed the accusation on May 30, 2019.

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

2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on July 25, 2011 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. Alexia Soliz was born on May 20, 1999. On December 1, 2018, she served as a minor decoy during an operation conducted by the Santa Barbara Sheriff's Department. On that date she was 19 years old.
5. Soliz appeared and testified at the hearing. On December 1, 2018, she wore blue jeans, a long-sleeved black shirt, and tennis shoes. Her hair was parted in the middle and pulled back into a half-ponytail. She wore stud earrings and a nose ring. (Exhibits 3-4.) At the hearing her hair was shorter. Her height and weight were the same on December 1, 2018 as they were at the hearing.
6. On December 1, 2018, Dep. J. Elizalde entered the Licensed Premises. Soliz entered a short time later and walked to the coolers. She selected a 3-pack of Bud Light beer, which she took to the counter. She waited in line until it was her turn. The clerk, Veronica Morelli, scanned the beer and asked to see her ID. She handed her California driver license (exhibit 2) to Morelli. Soliz paid for the beer, Morelli gave her some change, then she exited with the beer.
7. Soliz re-entered the Licensed Premises. Dep. Elizalde asked her to identify the person who sold her the beer. At a distance of approximately two feet, she pointed to Morelli and said that she had. A photo of the two of them was taken (exhibit 4), after which Morelli was cited.
8. After the sale, Morelli demonstrated the register's point of sale system as it related to alcoholic beverages. One of the deputies took a photo of the prompt which appeared on the register's screen. (Exhibit 5.) Morelli told Dep. Elizalde that she pressed the visual ID button to complete the sale.
9. Soliz learned of the decoy program through her sister, who works as a nanny for Dep. S. Woodill. She has been a decoy a number of times, both before and after December 1, 2018. On December 1, 2018, she visited 15 locations, of which four sold alcoholic beverages to her. She visited the Licensed Premises during other decoy operations. None of those other visits resulted in a sale.
10. Soliz appeared her age, 19 years old, at the time of the decoy operation. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in the Licensed Premises on December 1, 2018, Soliz displayed the appearance which could generally be

expected of a person under 21 years of age under the actual circumstances presented to Morelli.

11. Co-licensee Tina Takaya testified that she is the franchisee at this location. She described the training all of the employees must undergo, including on-line computer simulations, verbal instruction, and hands-on training. The Respondents use a secret shopper program which tests the Licensed Premises' employees 12 times over the course of a year. They have never failed one of the secret shopper's tests. After the sale at issue here, Takaya began insisting that IDs be swiped or scanned (i.e., sales could no longer be made using the visual ID button).

12. 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 Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on December 1, 2018, the Respondents' employee, Veronica Morelli, inside the Licensed Premises, sold an alcoholic beverage to Alexia Soliz, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-10.)

5. The Respondents argued that the decoy operation at the Licensed Premises failed to comply with rule 141(b)(2)² and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondents argued that Soliz was an experienced decoy who wore jewelry and who appeared to be mature. This argument is rejected. There was nothing about Soliz's appearance which was inconsistent with the appearance of a typical

² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

19 year old. As noted above, Soliz had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 10.)

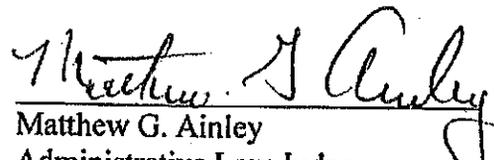
PENALTY

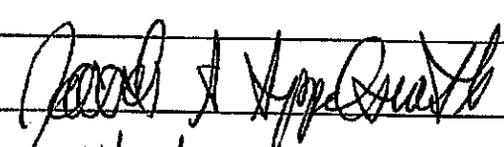
The Department requested that the Respondents' license be suspended for a period of 15 days. The Respondents argued that a 10-day, all stayed suspension was appropriate, noting that they have been in business for 7½ years without any violations before this incident and had not sold alcohol to decoys during other operations. The Respondents are correct, at least in part. Some mitigation is warranted based the number of years the Respondents have been in business without incurring any discipline. The penalty recommended herein complies with rule 144.

ORDER

The Respondents' off-sale beer and wine license is hereby suspended for a period of 10 days.

Dated: September 13, 2019


Matthew G. Ainley
Administrative Law Judge

| |
|---|
| <input checked="" type="checkbox"/> Adopt |
| <input type="checkbox"/> Non-Adopt: _____ |
| By:  |
| Date: 10/30/19 |

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

7-ELEVEN, INC. and TINA JILL
TAKAYA,
dba 7-Eleven Store #2133-13888
7443 Hollister Avenue
Goleta, CA 93117,
Appellants/Licensees,

v.

DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,
Respondent.

) AB-9843

) File: 20-509494

) Reg: 19088894

) **DECLARATION OF SERVICE
BY MAIL**

I, MARIA SEVILLA, declare that I am over the age of eighteen (18) years, and not a party to the within action; that my place of employment and business is 1325 J Street, Suite 1560, Sacramento, CA; that on the 12th day of May, 2020, I served a true copy of the attached **Decision** of the Alcoholic Beverage Control Appeals Board in the above-entitled proceeding on each of the persons named below:

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below:

Ralph Barat Saltsman
Solomon, Saltsman & Jamieson
426 Culver Boulevard
Playa Del Rey, CA 90203
rsaltsman@ssjlaw.com

Department of ABC
Office of Legal Services
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
yuri.jafarinejad@abc.ca.gov

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Sacramento, California, on the 12th day of May, 2020.

Maria Sevilla

MARIA SEVILLA