

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

AB-9858

File: 20-505865; Reg: 19088943

7-ELEVEN, INC. and NOAL YAMA, INC.,
dba 7-Eleven Store #33160A
298 Sycamore Avenue
Vista, CA 92083,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: June 11, 2020
Telephonic

ISSUED JUNE 19, 2020

Appearances: *Appellants:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as
counsel for 7-Eleven, Inc. and Noal Yama, Inc.,

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

OPINION

7-Eleven, Inc. and Noal Yama, Inc., doing business as 7-Eleven Store #33160A (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹, suspending their license for 10 days, with all 10 days conditionally stayed for a period of one year, provided that no further cause for disciplinary action occurs within that

¹The decision of the Department, dated January 7, 2020, is set forth in the appendix.

timeframe, because their clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Professions Code section 25658(a).

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on January 5, 2011.

There is no record of prior departmental discipline against the license.

On June 7, 2019, the Department filed a single-count accusation against appellants charging that, on November 16, 2018, appellants' clerk, James Adan (the clerk), sold an alcoholic beverage to 17-year-old Sarah Goudarzi (the decoy).

Although not noted in the accusation, the decoy was working for the San Diego County Sheriff's Office (SDSO) at the time.

At the administrative hearing held on October 2, 2019, documentary evidence was received, and testimony concerning the sale was presented by the decoy and SDSO Deputy Ken Colburn. Abdul Amir, owner of the licensed premises, testified on appellants' behalf.

Testimony established that on November 16, 2018, Deputy Colburn entered the licensed premises in a plain-clothes capacity, followed shortly thereafter by the decoy. The decoy walked straight to the alcoholic beverage coolers, selected a three-pack of tall Coors Light beer cans, and brought them to the sales counter for purchase.

At the counter, the clerk scanned the beer and asked the decoy for her identification. The decoy handed the clerk her valid California driver's license, which had several indicators that the decoy was under 21 years of age, including: a vertical orientation, the decoy's correct date of birth (showing her to be 17 years old), and a red stripe which stated "AGE 21 IN 2022." The clerk glanced at the decoy's identification, handed it back to her, and pressed the "Visual ID OK" button on the register. The

decoy then paid for the beer and exited the store. Deputy Colburn exited the licensed premises after the decoy.

The decoy and Deputy Colburn re-entered the licensed premises a short time later and contacted the clerk. After the decoy identified the clerk as the person who sold her the beer, a photograph of the clerk and the decoy was taken (exh. 4) and the clerk was cited.

Evidence at the hearing also established that the decoy was 5'7" tall and weighed approximately 140 pounds at the time of the operation (exhs. 3A and 3B). Her appearance at the hearing was the same except her hair was two inches shorter. The evidence also established that the operation on November 16, 2018 was the decoy's second day of decoy operations. The decoy participated in the SDSO explorer program since May 5, 2018.

The administrative law judge (ALJ) issued her proposed decision on November 8, 2019 sustaining the accusation and recommended a 10-day penalty, with all 10 days conditionally stayed, provided that no cause for disciplinary action occurred for a period of one year. The Department adopted the proposed decision in its entirety on December 26, 2019 and issued a certificate of decision on January 7, 2020. Appellants filed a timely appeal contending that the ALJ improperly based his findings regarding the decoy's appearance on how she appeared at the hearing (rather than how she appeared before the clerk) and that the decoy did not display the appearance generally expected of a person under the age of 21. These issues will be discussed together.

DISCUSSION

Appellants contend that the ALJ's finding that the decoy's appearance complied with rule 141(b)(2)² is not supported by substantial evidence. (AOB at pp. 6-9.) Specifically, appellants argue that "the ALJ repeatedly made findings based not on the evidence available as to the appearance of Decoy Goudarzi before the clerk, but rather, how Decoy Goudarzi appeared to the ALJ." (*Id.* at p. 6.) Further, appellants claim that the decoy's size, apparel and accessories, and mannerisms were "out of the ordinary for a person under 21 years of age." (*Id.* at pp. 8-9.) We disagree.

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.)

Here, the Department found that the decoy's appearance complied with rule 141(b)(2). (Conclusions of Law ¶ 7.) Therefore, this Board is required to defer to those findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] ["In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will

² Cal. Code Regs., tit. 4, § 141(b)(2).

be indulged. [Citations.]"; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] ["When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department."] "Substantial evidence" is "evidence of ponderable legal significance, which is 'reasonable in nature, credible and of solid value.'" (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

In its decision, the Department rejected appellants' arguments that the decoy's physical appearance did not comply with rule 141(b)(2). (Conclusions of Law ¶ 7.) The Department found that "there was nothing about decoy Goudarzi's stature or demeanor which made her appear older than her actual age. In fact, when viewing decoy Goudarzi in-person at the hearing, she has a very youthful appearance and looks her age." (*Ibid.*) The Department further noted that the clerk did not testify to establish and there was "no evidence as to why [he] allegedly believed decoy Goudarzi to be over 21 years of age." (*Ibid.*) As noted above, "we are bound to construe the evidence in the light most favorable to the ALJ's decision" and will uphold the findings so long as they are supported by substantial evidence. (*Southland, supra*, 103 Cal.App.4th at 1087.)

To support its findings, the Department relied on several photographs of the decoy from the day of the operation. (Exhs. 3A, 3B, and 4; Findings of Fact ¶¶ 5, 8.) Photographs of a decoy from the day of the operation are "arguably the most important piece of evidence in considering whether the decoy displayed the physical appearance of someone under 21 years of age." (*Southland, supra*, 103 Cal.App.4th at 1094.) Further, the Department relied on the ALJ's personal observations of the decoy's

appearance at the hearing. The evidence established that the decoy was approximately 5'7" and 140 pounds when she testified at the administrative hearing. (Findings of Fact ¶ 5.) The decoy testified that her appearance at the hearing was essentially the same as the day of the operation, except her hair was shorter by two inches. (*Ibid*; RT at pp. 12:1-14:5.)

The Department is entitled to rely on an ALJ's personal observations of a decoy when the decoy testifies that her appearance and mannerisms were "the same on the stand as it was when [the decoy] purchased the beer." (*Southland, supra*, 103 Cal.App.4th at 1094.) The Board sees no error in the Department's findings regarding the decoy's appearance, which are supported by the photographs of the decoy from the date of the operation, the decoy's testimony, as well as the ALJ's personal observations of the decoy at the hearing. Each of these sources are "reasonable in nature, credible and of solid value." (*County of Los Angeles, supra*, 32 Cal.App.4th at 814.)

However, appellants contend that certain non-physical factors, such as the decoy's law enforcement experience, made her appear older than 21 years old. (AOB at pp. 8-9.) However, the Department noted, there is no evidence in the record that the clerk sold alcohol to the decoy based on her experience or demeanor. The clerk did not testify. Thus, there is no evidence as to why the clerk sold beer to the decoy and rejected the decoy's identification, which revealed her true age, much less any evidence to establish that the clerk's error was the result of the decoy's demeanor.

Based on the above, the Department's findings regarding the decoy's appearance must stand. Ultimately, appellants are asking this Board second guess the Department and reach a different result. Extensive legal authority prohibits this Board from doing so. (*Southland, supra*, 103 Cal.App.4th at 1094.)

ORDER

The decision of the Department is affirmed.³

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

³ 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:**

7-ELEVEN INC., NOAL YAMA INC.
7-ELEVEN STORE 2111 33160A
298 SYCAMORE AVENUE
VISTA, CA 92083-7795

OFF-SALE GENERAL - LICENSE

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

SAN MARCOS DISTRICT OFFICE

File: 20-505865

Reg: 19088943

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 December 26, 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.

RECEIVED

JAN 07 2020

Alcoholic Beverage Control
Office of Legal Services

Sacramento, California

Dated: January 7, 2020



Matthew D. Botting
General Counsel

2/16

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

IN THE MATTER OF THE ACCUSATION AGAINST:

7-Eleven, Inc., and Noal Yama Inc.
Dbas: 7-Eleven Store 2111 33160A
298 Sycamore Avenue
Vista, California 92083-7795

Respondents

Off-Sale Beer and Wine License

} File: 20-505865

} Reg.: 19088943

} License Type: 20

} Word Count: 12,187

} Reporter:

} Shelia McQueen

} Kennedy Court Reporters

} **PROPOSED DECISION**

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Marcos, California, on October 2, 2019.

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

Brian Washburn, Attorney, represented Respondents, 7-Eleven, Inc., and Noal Yama Inc.

The Department seeks to discipline the Respondents' license on the grounds that, on or about November 16, 2018, the Respondents-Licensees' agent or employee, James Adan, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: beer, to Sarah Goudarzi (S.G.), 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 October 2, 2019.

FINDINGS OF FACT

1. The Department filed the accusation on or about June 7, 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 January 5, 2011 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. Sarah Goudarzi (hereinafter referred to as decoy Goudarzi) was born on August 31, 2001. On November 16, 2018, she was 17 years old. On that date she served as a minor decoy in an operation conducted by the San Diego County Sheriff's Department (SDSD) in conjunction with the Department.
5. Decoy Goudarzi appeared and testified at the hearing. On November 16, 2018, she was 5'7" tall and weighed approximately 140 pounds. She wore a plaid shirt, under which she wore a black, long-sleeved shirt, jeans and vans tennis shoes. Her hair was black, shoulder length, and styled with the top portion of her hair pulled back in a bobby pin on each side of her head, allowing the remaining hair to fall past her shoulders by approximately two inches. (Exhibits 3A and 3B.) Her appearance at the hearing was the same, except that her hair was shorter by two inches.
6. On November 16, 2018, Deputy Colburn entered the Licensed Premises, in a plain clothes capacity, followed shortly thereafter by decoy Goudarzi. Decoy Goudarzi walked straight to the alcoholic beverage coolers and selected a three-pack of Coors Light beer. She brought the beer to the sales counter for purchase.
7. Decoy Goudarzi placed the three-pack of Coors Light beer upon the sales counter. Clerk James Adan (hereinafter referred to as clerk Adan) scanned the beer and asked for the decoy's identification (ID). Decoy Goudarzi handed clerk Adan her valid California Driver License, which clerk Adan accepted. Decoy Goudarzi's California Driver License had a vertical orientation, showed her correct date of birth and included a red stripe which read, "AGE 21 IN 2022." (Exhibit 2.) Clerk Adan glanced at the ID and handed it back to the decoy. Clerk Adan did not swipe or scan the ID into the cash register. Clerk Adan continued with the sales transaction, pressing the "Visual ID OK" button which permitted the sales transaction to proceed. Clerk Adan told the decoy the cost of the beer. Decoy Goudarzi gave money to the clerk, who provided the decoy with change. Decoy Goudarzi took the change, the three-pack of Coors Light beer and exited the store. Clerk Adan did not ask the decoy her age or questions about her ID. Deputy Colburn witnessed the transaction with a clear, unobstructed view from approximately 10 feet away. Deputy Colburn exited the store soon after decoy Goudarzi. While decoy Goudarzi was inside the Licensed Premises she did not communicate with Deputy Colburn.
8. Decoy Goudarzi re-entered the Licensed Premises with Deputy Colburn and other deputies. Clerk Adan was contacted at the cash register by a deputy. One of the deputies asked decoy Goudarzi to identify the person who sold her the alcohol. Decoy Goudarzi

pointed at clerk Adan and replied that he was the one who sold her the beer. Decoy Goudarzi and clerk Adan were standing approximately three feet apart, facing each other, with nothing between them, at the time of this identification. A photograph of clerk Adan and decoy Goudarzi was taken after the face-to-face identification, with decoy Goudarzi holding the three-pack of Coors Light beer in her left hand and her ID in her right hand, while standing next to clerk Adan. (Exhibit 4.)

9. During the sales transaction with decoy Goudarzi clerk Adan scanned the three-pack of Coors Light beer, whereupon a yellow screen appeared advising the clerk, "ID 30 AND UNDER MUST BE 21 TO PURCHASE 1. PICTURE ON ID MUST MATCH THE CUSTOMER 2. SCAN OR SWIPE ID OR IF BIRTHDATE IS ON OR BEFORE 11-16-97 PRESS [MANUAL ENTER]" with three button options at the bottom from which to select, "MANUAL ENTER," "VISUAL ID OK," and "EXIT." (Exhibit 5.) Clerk Adan pressed the "VISUAL ID OK" button, which enabled him to proceed with selling the beer to the minor.

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

11. Decoy Goudarzi appeared her age 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 front of clerk Adan at the Licensed Premises on November 16, 2018, decoy Goudarzi 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 Goudarzi has a very youthful appearance and looks her age.

12. November 16, 2018, was the second day of decoy operations in which decoy Goudarzi participated. She had never been to the Licensed Premises prior thereto. Decoy Goudarzi learned about the decoy program through her service as a police explorer with the San Diego County Sheriff's Department. Decoy Goudarzi became a police explorer on May 5, 2018. She attended the winter academy on Wednesday and Saturdays. Her training included learning about drugs, handcuffing, stopping cars, and how to interact with the public. She had gone on two ride-a-longs and helped out in a parade prior to November 16, 2018.

(Respondents' Witness)

13. Abdul Tawab Amir appeared and testified at the hearing. Mr. Amir described himself as one of the franchisees of the Licensed Premises and a store operator since 1989. Mr. Amir said he owns another store besides the current premises. Mr. Amir

claimed to have 30 years' experience as a franchisee without receiving a disciplinary violation until the said violation on November 16, 2018. There was no evidence if, when and for how long the other store was licensed, or of its disciplinary history with the Department other than Mr. Amir's claim. Mr. Amir's responsibilities at the Licensed Premises include training employees on all policy and procedure. Respondents' employees are trained under the supervision of either Mr. Amir or his son² for one week.

14. Respondents' store policy has always been to require its staff to ask for IDs of anyone 35 years of age and under. The staff are instructed to match the picture on the ID with the customer and to scan or swipe the ID to verify the age of the customer. Pursuant to the franchisor 7-Eleven Inc. recommendation the Respondents conduct annual "Come of Age" employee training on the 7-Excel on-line training modules, which review scenarios relating to age-restricted sales and how to thoroughly check IDs to verify a customer's age. Mr. Amir last completed the on-line training himself in 2016. The Respondents presented eight, black and white copies of Certificates of Completion for some of its employees who completed the said on-line training. (Exhibit A.)

15. To ensure Respondents' employees comply with store policy the Respondents post daily at the cash register the requirements of requesting and scanning the ID of anyone appearing 35 years of age or under. The Respondents also participate in the BARS program, which involves a secret shopper randomly visiting the premises to verify the Respondents' clerks are asking for and verifying IDs for age-restricted merchandise transactions. A green card is issued to a clerk who asks for and scans an ID, and a red card is issued when the clerk fails to do so. Mr. Amir presented a black and white photocopy of green cards Respondents' employees received in 2018 and 2019 for successfully requesting and verifying IDs; Mr. Amir was one of the persons to receive a green card. (Exhibit B.) In 2018, one red card was received by one of Respondents' employees, and no red cards were received in 2019 as of the date of the hearing. If an employee receives a red card, Mr. Amir or his son will issue the employee a written warning, and "go through an extensive explanation" to make the clerk aware that if it happens again it could result in the clerk's termination.

16. The Respondents received a letter from the Department for successfully preventing a sale of alcohol to a minor decoy on November 27, 2017. (Exhibit C.) The Respondents have signs advising they check ID for age-restricted products, which signs are posted at their store entrance, on the beer coolers, and on the sales counter. The Respondents also have a clock which changes daily to assist its clerks in determining whether a customer is a minor for age-restricted product sales.

² Mr. Amir said that his son is a certified franchisee and will eventually take over Mr. Amir's stores when Mr. Amir retires.

17. After the said minor decoy operation of November 16, 2018, Mr. Amir reviewed the video surveillance of the said sales transaction. He determined that clerk Adan had pressed the "VISUAL ID OK" button on the register's yellow screen, to bypass the safety protocol of the cash register and which enabled the sale of alcohol to be made to decoy Goudarzi. Mr. Amir suspended clerk Adan for one week for the said violation as an example to other employees so they would be reminded of the consequence for breaking the law. Thereafter clerk Adan quit. Mr. Amir also met with Respondents' staff, informed them the store had received a violation and explained that the violation would result in financial penalty to the store. Mr. Amir required that all staff be retrained and had the "VISUAL ID OK" button removed from his cash register at the Licensed Premises. Mr. Amir always explains to Respondents' employees that the type-20 license does not belong to him but is given to him on a yearly basis and something with which they must be careful.

18. 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 November 16, 2018, the Respondents-Licensees' employee, clerk James Adan, inside the Licensed Premises, sold alcoholic beverages, to-wit: a three-pack of Coors Light beer, to Sarah Goudarzi, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-11, and 17.)

5. The Respondents argued the decoy operation at the Licensed Premises failed to comply with rule 141(b)(2)³ and, therefore, the accusation should be dismissed pursuant to rule 141(c).

6. With respect to rule 141(b)(2), the Respondents argued decoy Goudarzi did not have the appearance of someone under the age of 21 because her larger stature of 5'7" and 140 pounds would be more apt to the appearance of someone over the age of 21.

7. This rule 141(b)(2) argument is rejected. The Respondents presented no evidence as to why clerk Adan allegedly believed decoy Goudarzi to be over 21 years of age. Clerk Adan did not testify. In fact, the evidence indicates clerk Adan knew or at least should have known the decoy was a minor. He was presented with a very youthful appearing decoy Goudarzi, whose vertical formatted minor's ID had a red stripe to alert the clerk she would not turn 21 until the year 2022. Regardless, there was nothing about decoy Goudarzi's stature or demeanor which made her appear older than her actual age. In fact, when viewing decoy Goudarzi in-person at the hearing, she has a very youthful appearance and looks her age. In other words, decoy Goudarzi had the appearance generally expected of a person under the age of 21. (Findings of Fact ¶ 11.)

PENALTY

The Department requested the Respondents' license be suspended for a period of 10 days, based on the following factors: (1) the minor decoy's appearance and fact she was only 17 at the time of the violation, (2) the record indicates clerk Adan had received training and despite all of Respondents' policies it did not prevent the violation, which would lead one to question whether Respondents' policies and procedures were effective or require more stringent policies; Respondents should have done more to correct the problem.

The Respondents recommended a five-day all-stayed mitigated penalty based on the following: (1) Respondents' nearly 8-year discipline-free history, as well as Mr. Amir's claimed 30 years as a franchisee without discipline, (2) Respondents received a letter from the Department for successfully preventing the sale of alcohol to a minor on November 27, 2017, (3) documented training of Respondents' employees with a policy requiring annual training, (4) Respondents' participation in the BARS program, (5) Respondents' week-long disciplinary suspension of clerk Adan and retraining of its employees, and (6) Respondents removed the "VISUAL ID OK" button from its cash register software to prevent similar future sales to minors.

³ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

The Respondents are correct that their approximate 7-year, 10-month discipline-free operation, documented training, discipline of clerk Adan, and removal of the "VISUAL ID OK" button warrant mitigation. Although Mr. Amir claimed to have 30 years discipline-free history at another store he owns, there was no evidence presented of that licensure and disciplinary history other than Mr. Amir's claim. There was no evidence that the other location has been licensed for all or any part of the claimed 30 years. Therefore, there is insufficient evidence to support a conclusion that any prior length of licensure at another store would provide mitigation to the matter at hand, without such evidence. The only credible evidence in the record regarding length of licensure without discipline relates to the Respondents, 7-Eleven, Inc., and Noal Yama Inc. Nevertheless, in looking at the totality of the evidence, it is apparent the Respondents take their license responsibility seriously. The penalty recommended herein complies with rule 144.

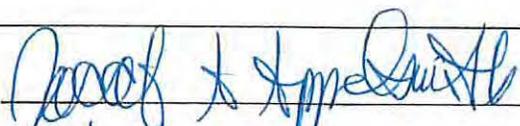
ORDER

The Respondents' off-sale beer and wine license is hereby suspended for a period of 10 days, with execution of 10 days of the suspension stayed upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within one year from the effective date of this decision; that should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in the Director's discretion and without further hearing, vacate this stay order and re-impose the stayed penalty; and that should no such determination be made, the stay shall become permanent.

Dated: November 8, 2019



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>12/26/19</u>