

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

AB-9895

File: 20-551522; Reg: 19089170

7-ELEVEN, INC. and PRABHJOT, INC.,
dba 7-Eleven Store #34123B
1831 South Pacific Avenue
San Pedro, CA 90731-5426,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: April 9, 2021
Telephonic

ISSUED APRIL 9, 2021

Appearances: *Appellants:* Andrew Mark Grassel, of Solomon, Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and Prabhjot, Inc.,

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

OPINION

7-Eleven, Inc. and Prabhjot, Inc., doing business as 7-Eleven Store #34123B (appellants), appeal from a decision of the Department of Alcoholic Beverage Control (Department)¹ 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).

¹ The decision of the Department, dated October 29, 2020, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on February 4, 2015.

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

On August 27, 2019, the Department filed a single-count accusation against appellants charging that, on December 20, 2018, appellants' clerk, Ramond Navarro (the clerk), sold an alcoholic beverage to 19-year-old Jorge Hernandez (the decoy). Although not noted in the accusation, the decoy was working for the Los Angeles Police Department (LAPD) at the time.

An administrative hearing was held on December 18, 2019.² Documentary evidence was received and testimony concerning the sale was presented by the decoy. During his testimony, the administrative law judge (ALJ) questioned Department counsel about why this decoy was testifying because a different decoy, Jesus Reyes, was named in the accusation. It was determined that this was an error, and the accusation was amended to include the correct name of the decoy, Jorge Hernandez (exh. 1). An amended accusation was subsequently filed on July 15, 2020 (exh. 4).

Counsel for appellants requested a continuance on the basis that they had prepared to examine Mr. Reyes, not Mr. Hernandez. The request was granted and the hearing was continued — originally to April 7, 2020, and later to July 30, 2020.

A second administrative hearing was held via video conference on July 30, 2020. Documentary evidence was received and testimony concerning the sale was presented by the decoy and LAPD Officer Christopher Lindberg. Franchisee Jagjit Ghuman appeared on behalf of appellants regarding employee training, corrective measures

² Findings of Fact ¶¶ 1 and 2 reference "December 19, 2019" but these appear to be scrivener's errors. Elsewhere in the Decision the correct date is referenced.

taken after the incident to prevent sales of alcohol to minors, signage posted in the store, and participation in 7-Eleven's secret shopper program.

Testimony established that on December 20, 2018, an undercover police officer entered the licensed premises, followed shortly thereafter by the decoy. The decoy looked for the alcoholic beverages and selected a 24-ounce can of Bud Light beer. He waited in line and when it was his turn, he set the beer down and the clerk asked to see 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 displayed a red stripe indicating "AGE 21 IN 2020." (Exh. 2.) The clerk looked at the license and said something like "that's cool" or "that's fine" and completed the sale without asking any age-related questions and without swiping or scanning the ID in the register.³ The undercover LAPD officer observed the transaction from inside the store.

The decoy exited the premises then re-entered with several LAPD officers to make a face-to-face identification of the clerk who sold him the beer. Officer Lindberg asked the decoy who sold him the beer and the decoy pointed out the clerk, saying "that's him" while standing two to three feet away. A photograph was taken of the decoy and clerk together (exh. 3) after which the clerk was issued a citation.

The ALJ issued a proposed decision on August 25, 2020, sustaining the accusation and recommending a 10-day suspension. The Department adopted the proposed decision in its entirety on October 27, 2020, and issued a certificate of

³ Testimony established that, following this incident, employees are now required to scan or slide identification through the register and cannot override this requirement with a visual ID key.

decision on October 29, 2020. Appellants then filed a timely appeal contending: (1) the decoy did not display the appearance required by rule 141(b)(2)⁴ and (2) the penalty is excessive because it fails to take into consideration all factors in mitigation.

DISCUSSION

I

DECOY'S APPEARANCE

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.)

Appellants contend:

The Department unfairly conducted a minor decoy operation by employing the use of a decoy with an appearance of a man over the age of 21, as he wore jewelry, was tall, well-built, and was experienced in similar decoy operation. The decoy had extensive experience and training with law enforcement roles and positions, including undergoing law enforcement training as a cadet for the LAPD, conducting activities where he would interact with the public, and acting as a leader in his capacity as command staff sergeant.

(AOB, at pp. 1; 7-9.)

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:

⁴ References 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 cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] 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, at p. 114.*)

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

6. Hernandez appeared and testified at the hearing. On December 20, 2018, he was 6' 2" tall and weighed 220 pounds. He wore a Vans t-shirt and black jeans and had a rosary around his wrist. (Exhibit 3.) He was not sure, but believed that he probably wore a watch. His appearance at the hearing was the same, except that he was 10 pounds lighter and may have been an inch taller.

¶ . . . ¶

10. Hernandez learned of the minor decoy program through his participation in LAPD's cadet program. He had been a cadet for approximately five years before December 20, 2018, rising to the rank of command staff sergeant. In this position, he was responsible for a platoon of cadets, including making assignments for various community events. Hernandez had been a decoy no more than five times prior to December 20, 2018, visiting a total of 15 to 20 locations. Hernandez described himself as confident even before becoming a command staff sergeant.

11. Hernandez appeared his age, 19 years old, 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 the Licensed Premises on December 20, 2018, Hernandez displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Navarro.

(Findings of Fact, ¶¶ 6-11.) Based on these findings, the Department 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 Hernandez was tall and well built, with extensive experience as a decoy and cadet. He was confident and, by virtue of his rank, supervised other cadets. This argument is rejected. Although Hernandez was taller than average, there was nothing about his height or weight which was unusual or made him appear to be older than his actual

age. Similarly, his demeanor was consistent with that of a person 19 years old. Phrased another way, Hernandez had the appearance generally expected of a person under the age of 21. (Finding of Fact, ¶ 11.)

(Conclusions of Law, ¶ 5) We agree with this assessment.

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 his or her 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 6 through 11, and Conclusions of Law paragraph 5, the Department found that the decoy met this standard, notwithstanding the details of the decoy's physical appearance highlighted by appellants. We agree.

Appellants also argue that the decoy displayed a demeanor which was more mature and confident because of his experience as a minor decoy and as a police cadet. They maintain this experience gave the decoy a confident demeanor which made him 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.” (*Ibid.*) 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 him 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 his mind in the course of the transaction, or why he made the sale in spite of having seen the decoy's identification showing him to be under 21. 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

PENALTY

Appellants contend that the penalty is excessive. (AOB at pp. 5-7.) 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. (*Ibid.*)

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 factors:

PENALTY

The Department requested that the Respondent's license be suspended for 15 days. The Respondents argued that a 10-day suspension, all stayed, was appropriate given the steps they have taken to prevent sales to minors and their clean disciplinary history. (Findings of Fact ¶¶12-13.) Six years without discipline (from 2012 to 2018) indicates that the Respondents' policies are working to some degree. As such, some mitigation is warranted. Conversely, there is no evidence which explains why the clerk made the sale in this case, e.g., whether he acted intentionally or simply made a mistake in reading the ID. It is equally unclear why the clerk did not scan or swipe the ID. The penalty recommended herein complies with rule 144.

(Decision at pp. 4-5.)

Appellants fault the decision for failing to mitigate the penalty further. However, 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 all-stayed 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*.⁵ It does not hold that findings must be explained,

⁵ *Topanga Assn. for a Scenic Community v. Co. of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].

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].)

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.⁶

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

⁶ 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 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:**

7-ELEVEN INC. & PRABHJOT INC.
7-ELEVEN #34123B
1831 S. PACIFIC AVE.
SAN PEDRO, CA 90731-5426

OFF-SALE BEER AND WINE - LICENSE

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

LAKWOOD DISTRICT OFFICE

File: 20-551522

Reg: 19089170

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 27, 2020. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

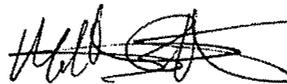
Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date 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 8, 2020, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: October 29, 2020



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. & Prabhjot Inc.
dba 7-Eleven #34123B
1831 S. Pacific Ave.
San Pedro, California 90731-5426

Respondents

Off-Sale Beer and Wine License

} File: 20-551522
}
} Reg.: 19089170
}
} License Type: 20
}
} Word Count: 4,000 & 11,000
}
} Reporter:
} Miranda Perez & Eileen Eldridge
} Kennedy Court Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Cerritos, California, on December 18, 2019 and by video conference on July 30, 2020.

Patrice G. Huber and Lisa Wong, Attorneys, represented the Department of Alcoholic Beverage Control.

Adam N. Koslin and Brian D. Washburn, attorneys-at-law, represented respondents 7-Eleven Inc. and Prabhjot Inc. Jagjit Singh Ghuman, President of Prabhjot Inc., was present.

The Department seeks to discipline the Respondents' license on the grounds that, on or about December 20, 2018, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Jorge Hernandez, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibits 1 & 4.)

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 July 30, 2020.

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

FINDINGS OF FACT

1. The Department filed the accusation on August 27, 2019. At the hearing on December 19, 2019, the Department moved to amend the accusation by interlineation to correct the name of the minor from Jesus Reyes to Jorge Hernandez. This motion was granted. The Department followed up by filing a first amended accusation on July 15, 2020.
2. The hearing commenced on December 19, 2019 in Cerritos, California. Jorge Hernandez appeared in person and testified in part. Following the Department's amendment of the accusation, the matter was continued at the request of the Respondents. Due to concerns arising from COVID-19, the continued hearing on July 30, 2020 was held via video conference as set forth in the Stipulation Regarding (sic) Hearing by Video Conference. (Exhibit 4.)
3. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on February 4, 2015 (the Licensed Premises).
4. There is no record of prior departmental discipline against the Respondents' license.
5. Jorge Hernandez was born on September 14, 1999. On December 20, 2018, he served as a decoy during an operation conducted by the Los Angeles Police Department. On that date he was 19 years old.
6. Hernandez appeared and testified at the hearing. On December 20, 2018, he was 6'2" tall and weighed 220 pounds. He wore a Vans t-shirt and black jeans and had a rosary around his wrist. (Exhibit 3.) He was not sure, but believed that he probably wore a watch. His appearance at the hearing was the same, except that he was 10 pounds lighter and may have been an inch taller.
7. On December 20, 2018, an undercover officer entered the Licensed Premises. Hernandez followed a few moments later and looked for the alcoholic beverages. He selected a 24-oz. can of Bud Light beer and got in line (there were one or two people already waiting).
8. When it was his turn, he set the beer down and the clerk, Ramond Navarro, asked to see his ID. He handed his California driver license (exhibit 2) to Navarro. Navarro looked at it, said, "That's cool" or "That's fine," and handed the ID back to Hernandez. Hernandez paid, Navarro gave him some change, then Hernandez exited.
9. Hernandez went to the vehicle where Sgt. Manlove was waiting. He handed the change to Sgt. Manlove. Once the undercover officer had exited, Hernandez re-entered

the Licensed Premises with Sgt. Manlove and other officers. They waited until Navarro finished with a customer. Ofcr. C. Lindberg asked Hernandez to identify the person who sold him the beer. At a distance of 2-3 feet, he pointed to Navarro and said that that was him. Navarro was looking at Hernandez at the time. A photo of the two of them was taken (exhibit 3), after which Navarro was cited.

10. Hernandez learned of the minor decoy program through his participation in LAPD's cadet program. He had been a cadet for approximately five years before December 20, 2018, rising to the rank of command staff sergeant. In this position, he was responsible for a platoon of cadets, including making assignments for various community events. Hernandez had been a decoy no more than five times prior to December 20, 2018, visiting a total of 15 to 20 locations. Hernandez described himself as confident even before becoming a command staff sergeant.

11. Hernandez appeared his age, 19 years old, 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 the Licensed Premises on December 20, 2018, Hernandez displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Navarro.

12. Jagjit Singh Ghuman, owner and sole officer of Respondent Prabhjot Inc., testified that Prabhjot is the franchisee at this location. Either in his name or through Prabhjot, he has been the licensee at this location since 2012. Ghuman oversees the operation of the Licensed Premises and is personally present five to six hours every day. He also monitors the Licensed Premises remotely via the security system. This is his first violation.

13. Ghuman described the on-line training all of his employees must undergo when first hired. He has them repeat the training once a year after that. Their policy is to ask for ID from anyone who appears under the age of 30. After the sale in this case, he eliminated the "Visual ID OK" button from the register. Now the clerk must swipe or scan an ID in connection with the sale of alcoholic beverages. (Exhibit A.) He has posted signs on both the customer and clerk sides of the sales counter (exhibit B) and requires his employees to wear badges stating that they check ID. He also uses a secret shopper program. He awards \$25 to any employee who passes a secret shopper check. He does not recall any of his employees ever failing such a check. The Licensed Premises recently passed a tobacco decoy operation. (Exhibit C.)

14. 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 20, 2018, the Respondents' employee, Ramond Navarro, inside the Licensed Premises, sold an alcoholic beverage to Jorge Hernandez, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 5-11.)
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 Hernandez was tall and well built, with extensive experience as a decoy and cadet. He was confident and, by virtue of his rank, supervised other cadets. This argument is rejected. Although Hernandez was taller than average, there was nothing about his height or weight which was unusual or made him appear to be older than his actual age. Similarly, his demeanor was consistent with that of a person 19 years old. Phrased another way, Hernandez had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 11.)

PENALTY

The Department requested that the Respondent's license be suspended for 15 days. The Respondents argued that a 10-day suspension, all stayed, was appropriate given the steps they have taken to prevent sales to minors and their clean disciplinary history. (Findings of Fact ¶¶ 12-13.) Six years without discipline (from 2012 to 2018) indicates that the Respondents' policies are working to some degree. As such, some mitigation is warranted. Conversely, there is no evidence which explains why the clerk made the sale in this case, e.g., whether he acted intentionally or simply made a mistake in reading the

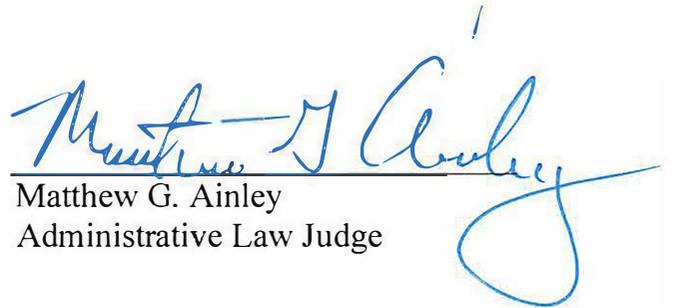
² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

ID. It is equally unclear why the clerk did not scan or swipe the ID. 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: August 25, 2020


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>16/27/20</u>