

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

AB-9915

File: 21-560792; Reg: 20090498

JAI BABA LAL ENTERPRISES, INC.,
dba OM Liquor and Deli
4901 Auburn Boulevard
Sacramento, CA 95841-2618,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: September 3, 2021
Telephonic

ISSUED SEPTEMBER 13, 2021

Appearances: *Appellant:* Dean R. Lueders, of ACTlegally, as counsel for Jai
Baba Lal Enterprises, LLC,

 Respondent: Matthew Gaughan, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Jai Baba Lal Enterprises, LLC, doing business as OM Liquor and Deli
(appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹
revoking its license because it sold or furnished alcoholic beverages while the license
was under suspension, in violation of Business and Professions Code² section 23300,

¹ The decision of the Department, dated March 23, 2021, is set forth in the
appendix.

² All statutory references are to the California Business and Professions Code
unless otherwise stated.

and sold alcoholic beverages to an individual under the age of 21 years, in violation of section 25658(a).

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on January 14, 2016. There is one record of prior discipline against the license which resulted from a stipulation and waiver that was signed on July 17, 2020. On July 19, 2020, the Department issued a decision revoking appellant's license with a 180-day suspension of the revocation to permit the appellant to transfer the license. The Department also ordered the license to be suspended indefinitely until the license was transferred.

On September 28, 2020, the Department filed a three-count accusation against appellant charging that on August 7, 2020: 1) appellant's employee, Parmod Dhir ("Dhir"), sold or furnished alcoholic beverages while the license was under suspension; 2) appellant's employee, Rita Narayan ("Narayan"), sold or furnished alcoholic beverages to Colton Taylor ("Taylor"), an individual under the age of 21 years, and; 3) Dhir sold or furnished alcoholic beverages to Taylor, an individual under the age of 21 years.

At the administrative hearing held on December 23, 2020, documentary evidence was received, and testimony was given by Narayan and Department Agent Nate Lauer. Testimony established that Agent Lauer went to the licensed premises on August 7, 2020 to determine whether appellant was complying with its suspension. Agent Lauer parked about 100 feet away and across from the entrance of the licensed premises and used binoculars to observe. Agent Lauer observed a youthful appearing male re-park the vehicle he was driving near the entrance of the licensed premises. The male appeared to be 18 to 19 years old. Agent Lauer watched Dhir, who he was familiar with as being one of appellant's corporate officers, place a box into the trunk of the youthful looking male's vehicle.

Agent Lauer followed the male's car as he drove from the licensed premises. Agent Lauer stopped the car, contacted the driver, and retrieved the male's driver's license. Agent Lauer identified the male as Colton Taylor, and that he was 18 years old. Taylor initially denied making any purchases. However, after Agent Lauer told him that he watched the box being placed in his trunk, Taylor admitted that he had purchased alcoholic beverages from the licensed premises.

Taylor told Agent Lauer that he was not asked for his age or an identification by the clerk during the transaction. Taylor described the clerk as a woman with reddish hair. Taylor also described Dhir as the person who placed the purchases in his car. Agent Lauer looked in Taylor's trunk and recognized the box that he observed Dhir placing into the vehicle. The box contained all alcoholic beverages: a 12-pack of White Claw hard seltzer, a 6-pack of Mike's Hard Mango, and a 6-pack of Mike's Hard Lemonade.

Agent Lauer took Taylor back to the licensed premises, and Taylor pointed out Narayan as the clerk who sold him the alcoholic beverages. At first, the clerk appeared confused, but she later admitted to making the sale to Taylor. Agent Lauer also spoke to Dhir, who admitted to being aware that the license to sell alcoholic beverages at the licensed premises was suspended. Dhir also admitted to being aware of the sale of alcoholic beverages to Taylor by Narayan. Dhir did not deny placing the alcoholic beverages in Taylor's vehicle trunk.

At the hearing on December 23, 2020, Taylor was called to testify, but through his attorney, asserted his Fifth Amendment right against self-incrimination. (RT at pp. 10:18-19:11.) Appellant's counsel requested a continuance, stating that "the minor's testimony is pivotal on the issue of permitting, and specifically to the issue as to actually who carried the alcohol from the store and placed it in the minor's truck" (*Id.* at p. 13:8-

15.) However, the ALJ ultimately denied appellant's request for a continuance, stating:

I am going to find that, despite the assertion of a Fifth Amendment privilege by this minor, that the Department has indicated that they can go forward. I'll rule on the admissibility of statements offered by Mr. Taylor as they're brought up, but I do find that you are -- you know, to continue the matter with the uncertainty of when it's going to resolve, the fact that he's asserting a privilege in and of itself is not impacting unduly your ability to proceed with evidence in this matter given that you have witnesses to testify to the facts. You have the ability just like [the Department] does, to offer statements against penal interests that may be -- may have been made by Mr. Taylor to the agents in this matter. So I do find that we are not compelled to continue the matter. This is an administrative proceeding regarding the licensure of the licensees in this matter and we are going to proceed.

(*Id.* at pp. 18:8-19:1.)

The administrative law judge (ALJ) issued a proposed decision on February 4, 2021, sustaining all three counts in the accusation and recommending that appellant's license be revoked. The Department adopted the proposed decision in its entirety on March 18, 2021, and issued a certificate of decision five days later. Appellant filed a timely appeal contending that the ALJ improperly denied appellant's request for a continuance "after the minor refused to testify based on the Fifth Amendment"

(AOB, at p. 1.)

DISCUSSION

Appellant contends the Department erred when it denied its motion to continue the administrative hearing until after potential criminal charges against Taylor were resolved.

(AOB, at pp. 2-7.) Specifically, appellant claims that "the minor's testimony as to who carried the purchased items from the licensed premises to the car is relevant to the credibility of the ABC Agent and the credibility of the clerk." (*Id.* at pp. 5-6.) Appellant continues, arguing that "whether the minor or Mr. Parmod Dhir carried the purchased

items to the minor's car is the core of whether the licensee permitted the violation." (*Id.* at p. 6.)

Pursuant to Government Code section 11524, the ALJ may grant a request for continuance for good cause. The party requesting a continuance must show that good cause exists for granting the request. There is no absolute right to a continuance; one is granted or denied at the discretion of the ALJ, and a refusal to grant a continuance will not be disturbed on appeal unless it is shown to be an abuse of discretion. (*Cooper v. Board of Medical Examiners* (1975) 49 Cal.App.3d 931, 944 [123 Cal.Rptr. 563]; *Savoy Club v. Board of Supervisors* (1970) 12 Cal.App.3d 1034, 1038 [91 Cal.Rptr. 198]; *Givens v. Department of Alcoholic Beverage Control* (1959) 176 Cal.App.2d 529, 532 [1 Cal.Rptr. 446].)

The "power to determine when a continuance should be granted is within the discretion of the court, and there is no right to a continuance as a matter of law. [Citation.]" (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170 [272 Cal.Rptr. 602].) One court offered the following guidance:

In exercising the power to grant continuances in an administrative proceeding, an administrative law judge must be guided by the same principles applicable to continuances generally in adjudicative settings: continuances should be granted sparingly, nay grudgingly, and then only on a proper and adequate showing of good cause. In general, a continuance for a short and certain time is less objectionable than a continuance for a long and uncertain time, and there must be a substantial showing of necessity to support a continuance into the indefinite future. But the factors that influence the granting or denying of a continuance in any particular case are so varied that the judge must necessarily exercise a broad discretion. Since it is impossible to foresee or predict all of the vicissitudes that may occur in the course of a contested proceeding, the determination of a request for a continuance must be based upon the facts and circumstances of the case as they exist at the time of the determination.

(*Arnett v. Office of Admin. Hearings* (1996) 49 Cal.App4th 332 [56 Cal.Rptr.2d 774].)

In the instant case, we agree with the Department that the ALJ did not abuse his discretion in denying appellant's continuance. Appellant claims the minor's testimony as to whether he carried the alcohol to his car was "relevant" and "core" issue in the matter. (AOB, at pp. 5-6.) However, both Narayan and Dhir could have testified to this issue. In fact, Narayan did testify that, although she did not see Dhir carry out the box of alcohol to the minor's vehicle, she believed that he would not have done so. (RT at p. 86:3-19.) Dhir did not testify. The ALJ found Narayan's testimony to be "unreliable" and gave it "little weight." (Conclusions of Law, ¶ 12.)

Finally, the sale to the minor while the license was suspended was established through Agent Lauer and Narayan's own testimony. Agent Lauer testified that he personally observed Dhir carry the box of alcohol to Taylor's car. Even without Taylor's admission that Dhir carried the box of alcohol to his car, Agent Lauer's testimony constitutes substantial evidence to sustain the accusation. Taylor's additional testimony at the hearing would have added little value, if any, to the issues before the ALJ. In contrast, the ALJ would have had to postpone the administrative hearing for an indefinite period of time until Taylor's criminal charges resolved. In short, the Board sees no error with the ALJ's decision to deny appellant's request for a continuance.

ORDER

The decision of the Department is affirmed.³

SUSAN BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, 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:**

JAI BABA LAL ENTERPRISES, LLC
OM LIQUOR AND DELI
4901 AUBURN BLVD
SACRAMENTO, CA 95841-2618

OFF-SALE GENERAL - LICENSE

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

SACRAMENTO DISTRICT OFFICE

RECEIVED

File: 21-560792

MAR 24 2021

Reg: 20090498

Alcoholic Beverage Control
Office of Legal Services

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 March 18, 2021. 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 May 3, 2021, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: March 23, 2021



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Jai Baba Lal Enterprises, LLC
DBA: OM Liquor and Deli
4901 Auburn Blvd.
Sacramento, California 95841-2618

Respondent

Off-Sale General License

} File: 21-560792
}
} Registration: 20090498
}
} License Type: 21
}
} Page Count: 50
}
} Reporter:
} Brenda Sanches-CSR # 13019
} iDepo Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Sacramento, California, on December 23, 2020.

Matthew Gaughan, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Dean Leuders, Attorney, represented Respondent Jai Baba Lal Enterprises, LLC. (Respondent)

The Department seeks to discipline the Respondent's license in a three count Accusation that alleges the following:

(Count 1)

On or about August 7, 2020, Respondent-Licensee's agent or employee, Parmod Dhir, sold or furnished alcoholic beverages, to-wit: White Claw Seltzer, Mike's Hard Mango, and Mike's Hard Lemonade, while the license was under suspension, in violation of Business and Professions Code section 23300.¹ (Exhibit D-1)

(Count 2)

On or about August 7, 2020, Respondent-Licensee's agent or employee, Rita Narayan, at said premises, sold, furnished, gave or caused to be sold, furnished or given, alcoholic beverages, to-wit: White Claw Seltzer, Mike's Hard Mango, and Mike's Hard Lemonade, to Colton Taylor, an individual under the age of 21 years, in violation of section 25658(a). (Exhibit D-1)

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

(Count 3)

On or about August 7, 2020, Respondent-Licensee's agent or employee, Parmod Dhir, at said premises, sold, furnished, gave or caused to be sold, furnished or given, alcoholic beverages, to-wit: White Claw Seltzer, Mike's Hard Mango, and Mike's Hard Lemonade, to Colton Taylor, an individual under the age of 21 years, in violation of section 25658(a). (Exhibit D-1)

In each of the above counts alleged in the Accusation, the Department further alleged that there is cause for suspension or revocation of the license of the Respondents in accordance with section 24200 and sections 24200(a) and (b). The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b). (Exhibit D-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 December 23, 2020.

FINDINGS OF FACT

1. The Department filed the accusation on September 28, 2020. (Exhibit D-1)
2. On January 14, 2016 the Department issued a type 21, off-sale general license to the Respondent for the above-described location (the Licensed Premises). The following is the record of prior Department discipline against the Respondent's license as established by official records introduced by the Department (Exhibit D-2):

| Violation Date | Violations | Registration Date | Registration Number | Penalty |
|-----------------------|---|--------------------------|----------------------------|---|
| 5/21/2019-6/25, 2019 | section 11364.7(a)(1), Penal Code section 664/496(a) (four counts), section 23804 (two counts), section 23402 | 7/19/2020 | 20089652 | Revocation stayed 180 days to permit transfer of the license. |

3. The above decision against the Respondent's license resulted from a stipulation and waiver that was signed on July 17, 2020 by the Respondent. On July 19, 2020, the Department Director issued a decision revoking the license of the Respondent with a 180 day suspension of the revocation to permit the Respondent to transfer the license. The Director also ordered the Respondent's type 21 license to be suspended indefinitely until the transfer of the license. To ensure that the Respondent was aware of the suspension, Department agents personally served

and posted the notice of suspension at the Licensed Premises on August 4, 2020. (Exhibit D-7) As a result of this decision and order, The Respondent was aware it did not have type 21 privileges on August 7, 2020. (Exhibit D-2)

4. On August 7, 2020, Department Agent N. Lauer (Lauer) went to the Licensed Premises to determine whether the Respondent was complying with the suspension. Lauer parked across from the entrance of the Licensed Premises. He was about 100 feet away from the entrance and Lauer used binoculars to observe. From this vantage point, Lauer observed a youthful appearing male re-park the vehicle he was driving near the entrance of the Licensed Premises. The male appeared to be 18 to 19 years of age. Lauer had earlier seen Parmod Dhir (Dhir) at the Licensed Premises and he was familiar with him being one of the officers of the corporation that held its license. Lauer watched Dhir place a box into the trunk of the youthful looking male.

5. Based on his five years of training and experience as an agent of the Department, Lauer was concerned that the youthful appearing male was receiving alcoholic beverages from Dhir. Lauer followed the youthful appearing male's car as he drove from the Licensed Premises. While Lauer was following the car, the driver began to drive over the speed limit. Lauer stopped the car and contacted the driver at his car window. Lauer retrieved the license of the youthful appearing male and confirmed that his name was Colton Taylor (Taylor) and that he was 18 years old with a date of birth of August 20, 2001. Taylor's appearance was consistent with his actual age. He had medium-short hair combed in a part and did not have facial hair. He was wearing a blue t-shirt and khaki shorts. He was approximately 5'5" in height and 150 pounds in weight. Taylor was not wearing any visible jewelry and he did not have any visible tattoos. (Exhibit D-4)

6. Taylor initially denied making any purchases. After Lauer told Taylor that he had watched the box being placed in his trunk, Taylor admitted that he had purchased alcoholic beverages from the Licensed Premises. Taylor was not asked for his age or an identification by the clerk during the transaction. Lauer looked in Taylor's trunk and recognized the box that Dhir had placed into it. It was the only box in the trunk. The box contained a 12-pack of White Claw hard seltzer, a 6-pack of Mike's Hard Mango and a 6-pack of Mike's Hard Lemonade. All of these products were alcoholic beverages. The items Lauer recovered from Taylor's trunk were photographed during the investigation. (Exhibit D-3) Taylor described the salesperson who rang up the purchase in the Licensed Premises as a woman with reddish hair. Taylor described Dhir as the person who placed the purchases in his car.

7. Lauer took Taylor back to the Licensed Premises with him. After they entered the Licensed Premises, Lauer had Taylor point out the clerk who sold the alcoholic beverages to him. Taylor pointed to the clerk behind the counter from about two to three feet away. Lauer approached the clerk, identified himself and told the clerk why they were there. At first, the clerk appeared confused, but she later admitted to making the sale to Taylor. Lauer identified the female clerk as Rita Narayan (Narayan) after contacting her. She was photographed during the investigation. (Exhibit D-6) Narayan's appearance matched the description Taylor had given to Lauer of the clerk during their conversation at the time of the initial stop.

8. Taylor spoke with Dhir just after contacting Narayan about the sale to Taylor. On that date, Dhir admitted to being aware that the license to sell alcoholic beverages at the Licensed Premises was suspended. On that date, Dhir also admitted to being aware of the sale of alcoholic beverages to Taylor by Narayan. Dhir was also photographed during the investigation. (Exhibit D-5)

9. Based on Taylor's overall appearance, i.e., his physical appearance, clothing, poise, demeanor, maturity, and mannerisms, Taylor displayed an appearance which would generally be expected of a person less than 21 years of age, during his interactions with Narayan and Dhir.

10. Narayan testified at the hearing. She denied being a formal employee of the Licensed Premises but did admit that she was there to assist Dhir. Narayan testified that she is a family friend of Dhir and she was helping him out in the Licensed Premises on August 7, 2020. She had done so on prior occasions. She was helping at the register that day. According to Narayan, Dhir had told her not to sell alcohol because the license was suspended. Narayan testified that she did not understand that this included beer and wine and that she understood the limit to only apply to distilled spirits.

11. Narayan testified that she did handle the transaction with Taylor that day. Narayan testified that she asked Taylor his age and that he said he was 22 or that he was going to be 22. Narayan testified that she asked Taylor to provide an identification and that the identification he provided showed that he was born in May 1999. Narayan testified that Dhir was in the process of moving boxes from the Licensed Premises to his own vehicle because he was in the process of selling the store. Narayan testified that she was unsure of who carried the box of Taylor's purchases out to Taylor's vehicle. Narayan testified that Dhir got angry with her about selling to the alcoholic beverages to Taylor because of the suspension. According to Narayan, Dhir learned this after the fact because he was not involved in the transaction.

12. On August 7, 2020 Lauer spoke with both Dhir and Narayan about the sale to Taylor that day. Both individuals discussed the transaction with Lauer. Neither of them alleged that Taylor showed an identification indicating that he was over 21. Narayan did not mention her alleged erroneous belief about the parameters of the suspension. Dhir did not deny being aware of the transaction or placing the alcoholic beverages in Taylor's vehicle trunk.

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 23300 provides that no person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.

4. 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.

5. Section 25660 provides that:

(a) Bona fide evidence of majority and identity of the person is any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the Armed Forces that includes a date of birth and a picture of the person.

(b) Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon bona fide evidence in any transaction, employment, use, or permission forbidden by Section 25658, 25663, or 25665 shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

6. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on August 7, 2020, while the license of the Respondent was suspended, the Respondent's clerk, Rita Narayan and the Licensee-Respondent, Parmod Dhir, inside the Licensed Premises, sold alcoholic beverages, to-wit: White Claw Seltzer, Mike's Hard Mango and Mike's Hard Lemonade, to Colton Taylor, a person under the age of 21, in violation of sections 23300 and 25658(a) as alleged in counts 1-3. (Findings of Fact ¶¶ 2-12)

7. The evidence established that on August 7, 2020 Taylor was 18 years old and he purchased a 12-pack of White Claw Seltzer, a 6-pack of Mike's Hard Mango and a 6-pack of Mike's Hard Lemonade alcoholic beverages inside the Licensed Premises. The location was subject to the responsibilities of an establishment holding a type 21, off-sale, general license. Further, on August 7, 2020 the Licensed Premises was subject to an indefinite suspension and did not have the privilege to conduct any sales of alcoholic beverages. (Findings of Fact ¶¶ 2-12)

8. Despite the suspension, Taylor was allowed to complete the purchase of these alcoholic beverages by the Respondent's agent Narayan. Despite the fact that these items were alcoholic beverages, Narayan did not ask for identification or any age related questions even though Taylor appeared consistent with his chronological age of 18 years old. Dhir, one of the actual Licensee-Respondents, was aware of the ongoing transaction and Taylor's appearance. Despite his actual awareness of the suspension and the youthful appearance of Taylor, Dhir failed to stop the transaction and instead assisted Taylor with the completion of his purchase by carrying and placing the alcoholic beverages in the trunk of Taylor's vehicle. (Findings of Fact ¶¶ 2-12)

9. The Respondent has offered testimony in support of the assertion that Dhir was unaware of the transaction and that Narayan did obtain identifying information from Taylor that established that he was over 21 years of age. The Respondent also offered testimony that it was abiding by the suspension, that Narayan had been told to abide by the suspension and that her sale of the alcoholic beverages was the product of her not understanding that the suspension extended to beer and wine products. The Respondent asserted that the provisions of section 25660 should apply as a defense to the 25658(a) counts in the accusation. Section 25660 provides a defense to any person who was shown and acted in reliance upon bona fide evidence of majority in permitting a minor to enter and remain in a public premises in contravention of section 25665, a sale forbidden by section 25658(a), or in permitting a minor to consume in an on-sale premises in contravention of section 25658(b).

10. The defense offered by this section is an affirmative defense. As such, the Respondent, as the licensee, has the burden of establishing all of its elements, namely, that evidence of majority and identity was demanded, shown, and acted on as prescribed.² This section applies to identifications actually issued by government agencies as well as those which purport to be.³ A licensee or his or her employee is not entitled to rely upon identification if it does not appear to be a bona fide government-issued identification or if the personal appearance of the holder of the identification demonstrates, above mere suspicion, that the holder is not the legal owner of the identification.⁴ The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.⁵

11. In this matter, there is a direct conflict between the version of events presented by the Department and the version presented by the Respondent. They cannot be reconciled. The

² *Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control*, 261 Cal. App. 2d 181, 189, 67 Cal. Rptr. 734, 739 (1968); 27 Ops. Atty. Gen. 233, 236 (1956).

³ *Dept. of Alcoholic Beverage Control v. Alcoholic Control Appeals Bd. (Masani)*, 118 Cal. App. 4th 1429, 1444-45, 13 Cal. Rptr. 3d 826, 837-38 (2004).

⁴ *Masani*, 118 Cal. App. 4th at 1445-46, 13 Cal. Rptr. 3d at 838; *5501 Hollywood, Inc. v. Department of Alcoholic Beverage Control*, 155 Cal. App. 2d 748, 753, 318 P.2d 820, 823-24 (1957); *Keane v. Reilly*, 130 Cal. App. 2d 407, 411-12, 279 P.2d 152, 155 (1955); *Conti v. State Board of Equalization*, 113 Cal. App. 2d 465, 466-67, 248 P.2d 31, 32 (1952).

⁵ *5501 Hollywood*, 155 Cal. App. 2d at 751-54, 318 P.2d at 822-24; *Keane*, 130 Cal. App. 2d at 411-12, 279 P.2d at 155 (construing section 61.2(b), the predecessor to section 25660).

Department established that Taylor did not show identification and was not asked his age. The Department established in evidence that Dhir was actively involved in the transaction when Lauer saw Dhir carry Taylor's purchases to Taylor's vehicle. This established that Dhir was complicit in the sale and that Narayan's actions were not at odds with the purported instructions of Dhir. The Department established that the sale occurred during a period that the type 21 license was suspended, and the Respondent was aware of the suspension. (Findings of Fact ¶¶ 2-12)

12. The attempted rebuttal of the Department's case in chief by the Respondent was based on the testimony of Narayan. Her testimony is found to be unreliable and as such it is given little weight. Taylor said he was not asked for and did not present identification. This is at odds with Narayan's later version of the transaction during her testimony. Lauer interviewed Narayan and Dhir about the transaction with Taylor on August 7, 2020. They both would have had an opportunity and a strong motive to bring this up, had it occurred. Taylor was there to be searched for a fake identification if he had used one. Despite this, neither of them brought up that Taylor purportedly showed an identification to Narayan when they spoke with Lauer. Neither mentioned the alleged mix-up of Narayan regarding the alcohol sales suspension. Dhir did not deny involvement in the transaction even though Narayan testified that Dhir was purportedly bringing out boxes of his belongings, and that he was likely not carrying Taylor's alcoholic beverage purchases. This assertion is directly at odds with Lauer's direct observation that Dhir carried and placed the alcoholic beverages in Taylor's trunk. Narayan was vague as to other particulars of the transaction which further raised questions about her credibility and accurate recollection of the actual events that occurred. The Department's presentation of the events is found to be more credible and it is given significantly more weight in this matter. (Findings of Fact ¶¶ 2-12)

13. The Department has met its burden of proof that there were violations of section 25658(a) as alleged in counts 2 and 3. and the Respondent has failed to establish a defense under section 25660. It is specifically found that Narayan and Dhir did not ask for identification, or any age based information, during the transaction, so the defense is not applicable. The sale occurred during a period where the license of the Respondent was under suspension so the allegation in count 1 of the Accusation is also established. (Findings of Fact ¶¶ 2-14)

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

PENALTY

The Department recommended that the Respondent's license be revoked as a result of the seriousness of the prior discipline, the seriousness of the present offense, its occurrence during a period of actual suspension pending revocation, and the direct involvement of Licensee-Respondent Dhir. The standard penalty for a violation of section 23300 would be from five days up to revocation. The standard penalty for a violation of section 25658(a) would be 15 days. The Respondent focused on the allegation that the violations did not occur with the exception of the section 23300 violation being mitigated.

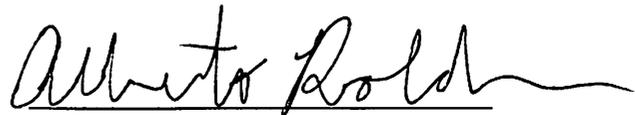
Jai Baba Lal Enterprises, LLC
DBA: OM Liquor and Deli
File: 21-560792
Registration: 20090498
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There are no factors in mitigation applicable to this matter. There appear to be multiple factors in aggravation applicable to these violations. The violations occurred mere months after the prior discipline. The license was already subject to a stayed revocation because of prior acts of moral turpitude in the prior discipline that resulted in a stayed revocation penalty. There was a sale to an 18 year old minor at a time when the Respondent had no alcohol sale privileges. The sale involved the active participation of one of the Licensee-Respondents. The penalty recommended herein complies with rule 144.

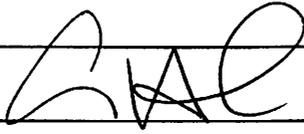
ORDER

The Respondents' off-sale general license is hereby revoked.

Dated: February 4, 2021



Alberto Roldan
Administrative Law Judge

| |
|--|
| <input checked="" type="checkbox"/> Adopt |
| <input type="checkbox"/> Non-Adopt: _____ |
| By: _____  |
| Date: _____ 03/18/21 |