

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

AB-9929

File: 21-457090; Reg: 20090700

BALVINDER SINGH SARAI and RANJIT KAUR SARAI,
dba Manzanita Food and Liquor
4150 Manzanita Avenue, Suite 400
Carmichael, CA 95608-1800,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: January 14, 2022
Telephonic

ISSUED JANUARY 19, 2022

Appearances: *Appellants:* Balvinder Singh Sarai and Ranjit Kaur Sarai, *in propria persona*,

Respondent: Sean Klein, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Balvinder Singh Sarai and Ranjit Kaur Sarai, doing business as Manzanita Food and Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control (Department)¹ revoking their license (with the revocation stayed for a period of six months to permit the transfer or reactivation of the license), because appellants surrendered their license and thereafter failed to reactivate, transfer or

¹ The decision of the Department, dated July 6, 2021, is set forth in the appendix.

obtain an extension of it within the one-year period following the date of surrender, as required by rule 65, subsection (d).²

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on September 14, 2007. There is no history of prior departmental discipline against the license.

On December 31, 2020, the Department instituted a single-count accusation against appellants charging that, having surrendered their off-sale general license on March 14, 2011, pursuant to rule 65(a), appellants failed to reactivate, transfer or obtain an extension of the surrendered license within the one-year period required by rule 65(d).

At the administrative hearing held on April 28, 2021, documentary evidence was received and testimony was presented by Department Agent/Investigator Cynthia Jimenez. Co-licensee Ranjit Kaur Sarai testified on appellants' behalf.

Testimony established that the licensed premises operated from September 14, 2007 to March 6, 2011, when the property became unavailable to lease from the owner. Appellants submitted form ABC-231 on March 14, 2011, surrendering their license and indicating their intention to reactivate the license at a future date at a new location. (Exh. D-2.)

In 2012, appellants identified a potential property in North Highlands, and submitted a premises-to-premises transfer request. (Exh. L-1) For several years the appellants worked with the Department on the premises-to-premises transfer, but it was ultimately denied in on the basis of over-concentration of licenses in that census tract.

² Cal. Code Regulations, tit. 4, § 65.

Appellants appealed that denial, but the Department's decision was ultimately affirmed by the Appeals Board. (See *Sarai*, AB-9470 (2015) and *Sarai*, AB-9470a (2017).)

On September 2, 2020, prior to receiving any communication from the Department, appellants initiated a second effort to transfer the property. However, due to COVID-19 the landlord withdrew the lease offer. The appellants withdrew their transfer application on November 10, 2020.³ (Exh. L-1.)

Prior to the withdrawal of the 2020 application, the Department sent a warning letter to appellants via certified mail, on September 16, 2020, reminding them that the license had been surrendered on March 14, 2011, and that pursuant to rule 65, appellants could only leave the license in that status for 30 months. The letter instructed appellants to contact the Department within 10 business days to reinstate, transfer, or cancel the license. The letter included the email and phone contact information for Agent Jimenez. (Exh. D-2.) On September 27, 2020, appellants emailed Agent Jimenez, informing her they had applied for a premises-to-premises transfer of the license and that a transfer was pending. They also discussed the matter with Agent Jimenez on the phone on September 29, 2020. (*Ibid.*)

On December 31, 2020, the accusation at issue was filed. In January 2021, appellants entered into new negotiations to transfer the license to a buyer and execute a premises-to-premises transfer of the license. The potential buyer submitted its

³ Some confusion exists in the record regarding this date, because the format used throughout exhibit L-1 is day/month/year. Consequently, there is a discrepancy between the date on the exhibit — 10/11/20, or November 10, 2020 — and the date cited by the administrative law judge (ALJ) in the decision which is October 11, 2020. (Conclusions of Law, ¶ 7.)

application materials to the Department on February 4, 2021. That application is currently pending before the Department.

After the administrative hearing on April 28, 2021, the ALJ issued a proposed decision on May 3, 2021, sustaining the accusation and recommending that the license be revoked (with the revocation stayed for a period of six months to permit the transfer or reactivation of the license). The Department adopted the proposed decision in its entirety on June 24, 2021, and a certificate of decision was issued on July 6, 2021.

Appellants then filed a timely appeal contending the Department's decision: (1) is arbitrary and constitutes an abuse of discretion, (2) is biased and inaccurate, and (3) omits the key fact that there is an pending application for a premises-to-premises transfer of the license — thereby qualifying them for an exception to mandatory revocation under rule 65, subsection (d)(1), and establishing that the decision is not supported by substantial evidence. These issues will be discussed together.

DISCUSSION

In determining whether a decision of the Department is supported by substantial evidence, this Board's review is limited to determining, in light of the entire administrative record, whether substantial evidence exists — even if contradicted — to reasonably support the Department's factual findings, and whether the decision is supported by those findings. (*Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113] (*Boreta*)). The Board is bound by the factual findings of the Department. (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal.App.2d 106, 113 [28 Cal.Rptr. 74] (*Harris*)). A factual finding of the Department may not be disregarded merely because a contrary finding would have been equally or more reasonable. (*Boreta, supra*, at p. 94.) The Board

may not exercise independent judgment regarding the weight of the evidence; it must resolve evidentiary conflicts in favor of the Department's decision and view the whole record in a light most favorable to the decision. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].) The Board must accept all reasonable inferences from the evidence which support the Department's decision. (*Harris*, at p. 113.)

"Substantial evidence" is relevant evidence which reasonable minds would accept as reasonable support for a conclusion. (*Universal Camera Corp. v. N.L.R.B.* (1951) 340 U.S. 474, 477 [71 S.Ct. 456].)

Substantial evidence, of course, is not synonymous with "any" evidence, but is evidence which is of ponderable legal significance. It must be "reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." [Citations.] Thus, the focus is on the quality, not the quantity of the evidence. Very little solid evidence may be "substantial," while a lot of extremely weak evidence might be "insubstantial."

(*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647] (*Toyota*).)

The rule at issue in this matter is Department rule 65 which provides:

Surrender of License on Closing of Business

(a) Every licensee who surrenders, abandons or quits his licensed premises, or who closes his licensed business for a period exceeding 15 consecutive calendar days, shall, within 15 days after closing, surrendering, quitting, or abandoning his licensed premises, surrender his license or licenses to the department. The department may seize the license certificate or certificates

of any licensee who fails to comply with the surrender provisions of this rule, and may proceed to revoke his license or licenses.

(b) Upon the voluntary request by any licensee, on such form as the department may prescribe, the department may cancel his license or licenses.

(c) A surrendered license may be reinstated upon request made at least 10 days prior to the date of reinstatement upon certification by the licensee that there has been no change of ownership of the licensed business, and that the premises possess the same qualifications required for the original issuance of the license.

(d) Any license voluntarily surrendered under paragraph (a) of this rule shall be revoked if it is not transferred to another person or for use at another premises, or redelivered and the licensed activity resumed, within one year from the date of such surrender. There shall be no extension of such surrender period except when the department finds good cause exists where:

(1) an application is pending for transfer of the surrendered license; or

(2) litigation other than that involving disciplinary action by the department is pending; or

(3) the premises for which the license had been issued and for which the license is sought to be redelivered were destroyed due to circumstances beyond the control of the licensee by fire, flood, or other natural catastrophe, or as part of an urban renewal program, and the licensee makes an affirmative showing of good faith efforts that he is attempting to obtain reconstruction of such destroyed premises; or

(4) the Director in his judgment finds a case of undue hardship exists which would warrant an extension.

(Cal. Code Regs., tit. 4, § 65, emphasis added.)

Appellants contend they fall squarely within the exception contained in rule 65(d)(1) because an application is pending for a premises-to-premises transfer of the surrendered license. They assert that the ALJ ignored or overlooked this point and that the decision should be reversed because it is not supported by substantial evidence.

In the decision, the ALJ specifically acknowledges that a transfer of this license is currently pending:

9. . . . Subsequent to the filing of the accusation but prior to the hearing in this matter, the Respondents again entered into negotiations to transfer the license to a buyer. The negotiations were initiated in January 2021 and the potential buyer submitted its application materials to the Department on February 4, 2021. That transfer application is currently pending with the Department.

(Finding of Fact (FF), ¶ 9.) However, the ALJ does not explain why this pending application to transfer the license fails to qualify for the exception contained in rule 65(d)(1) and merely states:

3. The Department is not obligated to keep this license in surrendered status indefinitely. Under normal circumstances, the surrendered status is to last no more than one year. The Department exercised its discretion not to act on the revocation of the license for multiple years past the first one. The Department properly communicated a change in position on September 16, 2020 and the Respondents did not timely act to prevent the revocation mandated by Rule 65 under the circumstances described above.

(Conclusions of Law (CL), ¶ 3.)

Between 2011 and 2018, when appellants first attempted to transfer the license, much of the delay which occurred was entirely outside their control. (See *Sarai*, AB-9470 (2015), at p. 4. [the county's decision, finding against public convenience or necessity, was made on December 12, 2012, and the Department's order, denying the application, was not sent to appellants until March 12, 2014, fifteen months after the county's decision.]) Following two appeals (AB-9470 and AB-9470a), the Department denied the transfer request in 2018.

The Department now seems to blame appellants for an unreasonably long delay in transferring their license, when the added difficulties of the current COVID-19 pandemic are certainly not of their making, and the year and a half of delay from 2012 to 2014 was under the Department's direction and control. On the other hand, some of the delays during the period from 2014 to 2020 are justifiably attributed to appellants.

In the decision, the ALJ found:

7. The Respondents were on notice that the Department intended to revoke the license pursuant to Rule 65 and that the Respondents needed to act. At the time of the September 16, 2020 letter from the Department, the Respondents were attempting to transfer the license. When the Respondents emailed Jimenez on September 27, 2020 about the most recent effort to transfer the license, they remained in compliance with the instructions of the Department. However, the evidence shows that this attempt was withdrawn on October 11, 2020 and that the Respondents did not try to communicate with the Department further regarding their efforts to address the surrendered license. From the September 27, 2020 email through the filing of the accusation in this matter on December 31, 2020, there were no further communications from the Respondent regarding the surrendered license. While there is an ongoing effort to transfer the license that was initiated in January 2021, the Department has established a violation of Rule 65 as alleged in count one. (Findings of Fact ¶¶ 1-9)

(CL, ¶ 7.)

As noted earlier, the October 11, 2020 date cited by the ALJ is incorrect — the correct date of withdrawal is November 10, 2020. (Exh. L-1.) Furthermore, the ALJ’s statement: “From the September 27, 2020 email through the filing of the accusation in this matter on December 31, 2020, there were no further communications from the Respondent regarding the surrendered license.” (CL ¶ 7) is not supported by the record. Appellants informed Agent Jimenez by email and by phone that a pending premises-to-premises transfer was in process.

The investigator’s report dated October 21, 2020, however, simply states: “On March 14, 2011, the below listed license was surrendered by the Department. To date the licensee has failed to cancel, transfer, or reactivate the license as provided by R65.” (Exh. D-2.) Investigator Jimenez fails to note that in the September 27, 2020 email from appellants to her, they inform her:

We have presently again applied for transfer of the said Liquor License PREMISES TO PREMISES TRANSFER on 2nd September, 2020 and the

Department of Alcoholic Beverages has again issued us the new license # 619197 and our request is pending with your Department Office in Sacramento District where you are employed as Agent.

(Attach. 4 to Exh. D-2.) The report also fails to reflect that this information was reiterated in a September 29th phone call between appellants and Agent Jimenez. Even though the attachment to the investigator's own report shows a pending transfer, she ignores this fact and concludes that appellants are in violation of rule 65.

Appellants contend that this conclusion, and the ALJ's adoption of it constitute an abuse of discretion. "'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].) However, the ALJ did not base his decision on the investigator's report alone — he was fully aware of the current pending transfer which is underway.

The Department's License Query System (LQS) confirms appellants' attempt to transfer their license in September 2020, showing that a transfer to license #619197 was listed as in-process as of September 2, 2020, and that it was withdrawn on November 10, 2020. Subsequently, another application to transfer the license was filed in January of 2021, and the LQS reflects that there is a current pending transfer of appellant's license, #457090, to Carniceria Mi Mercadito, LLC under license #624558.

The ALJ notes in the penalty considerations of the decision:

3. The Department is not obligated to keep this license in surrendered status indefinitely. Under normal circumstances, the surrendered status is to last no more than one year. The Department exercised its discretion not to act on the revocation of the license for multiple years past the first one. The Department properly communicated a change in position on September 16, 2020 and the Respondents did not timely act to prevent

the revocation mandated by Rule 65 under the circumstances described above.

(Decision, at p. 6.) In short, the Department has decided that notwithstanding the present pending premises-to-premises transfer, appellants effort is too little too late to invoke the exception in rule 65(d)(1). This is a permissible exercise of its discretion under rule 144. (Cal. Code Regulations, tit. 4, § 144.) The ALJ notes:

4. In line with the penalty guidelines of rule 144 and balancing the aggravating and mitigating factors, it is found that the mitigating factors outweigh the aggravating factors. The penalty recommended herein complies with rule 144.

(Decision, at p. 6.) The Board cannot reweigh the evidence in this matter to reach a contrary conclusion, nor can it overturn the Department's decision simply because it would have weighed the factors differently or would prefer a more lenient penalty.

We sympathize with appellants' long and difficult struggle to transfer the license, but as we have said time and again, this Board's review of the 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. Appellants have not established that the penalty of revocation (stayed for six months to allow the to permit the transfer or reactivation of the license) in this matter constitutes an abuse of discretion. We sincerely hope the current pending transfer of the license is successful during the period of stayed revocation.

ORDER

The decision of the Department is affirmed.⁴

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

⁴ 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:**

BALVINDER SINGH SARAI & RANJIT KAUR
SARAI
MANZANITA FOOD & LIQUOR
4150 MANZANITA AVE, STE 400
CARMICHAEL, CA 95608-1800

OFF-SALE GENERAL - LICENSE

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

SACRAMENTO DISTRICT OFFICE

File: 21-457090

Reg: 20090700

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 June 24, 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. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcb.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

Sacramento, California

Dated: July 6, 2021

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Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Balvinder Singh Sarai & Ranjit Kaur Sarai
DBA: Manzanita Food and Liquor
4150 Manzanita Avenue, Suite 400
Carmichael, CA 95608-1800

Respondents,

Off-Sale General License

} File: 21-457090
}
} Reg: 20090700
}
} License Type: 21
}
} Word Count: 10,829
}
} Reporter: Julia Lennon-CSR#12843
} IDepo Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on April 28, 2021.

Sean Klein, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Ranjit Kaur Sarai appeared on behalf of the Respondents Balvinder Singh Sarai & Ranjit Kaur Sarai (Respondents).

The Department seeks to discipline Respondents' license on the grounds that, on or about March 14, 2011, the Respondents surrendered to the Department their Type 21 Off-Sale General License for the above designated premises under Title 4, California Code of Regulations, Rule 65 and that Respondents subsequently failed to reactivate, transfer or obtain an extension of this license within a period of one year from the date of such surrender as required by Title 4, California Code of Regulations, Rule 65, subsection (d). 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) of the Business and Professions Code. The Department further alleged that the continuance of the license of the Respondents 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) of the Business and Professions Code. (Exhibit D-1).

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Oral and documentary evidence on the record was received at the hearing and the matter was argued and submitted for decision on April 28, 2021.

FINDINGS OF FACT

1. The Accusation was filed on December 31, 2020.
2. The Department issued a type 21 (Off-Sale General) license to Respondents at the above-identified location (Licensed Premises) on September 14, 2007.
3. There is no record of prior disciplinary action against this license.
4. At the time this license was issued, the business address of the Licensed Premises was 4150 Manzanita Avenue, Suite 400, Carmichael, CA 95608-1800. This address was leased by the Respondents from a third party to house the Licensed Premises.
5. The Licensed Premises operated as Manzanita Food and Liquor until it ceased operation at the Licensed Premises on March 6, 2011. The closure was the result of the property becoming unavailable to lease by the Respondents from the property owner. The Respondents surrendered the license to the Department on March 14, 2011. In the form ABC-231 that was submitted to the Department by the Respondents, they indicated that it was their intent to reactivate the license at a future date. (Exhibit D-2) The intent of the Respondents was to find a new location in the same general area and transfer the license to that business.
6. By 2012, the Respondents had identified a potential property for the transfer of the license in North Highlands, California. The Respondents sought a premises to premises transfer of the license with the Department to this location. (Exhibit L-1) There was an extended period of multiple years where the Respondents actively worked on the premises to premises transfer with the Department. The Department ultimately denied the premises to premises transfer of the license to the North Highlands location in January 2018.
7. In 2020, the Respondents initiated an effort to transfer the license. Because of the COVID-19 pandemic, the effort to transfer the license was disrupted. The landlord of the property that was identified withdrew from the lease offer. As a result of this and other disruptions, the Respondents were compelled to withdraw the transfer application on October 11, 2020. (Exhibit L-1) Prior to the withdrawal of the most recent transfer application, on September 16, 2020 the Department sent a warning letter to the Respondents regarding the status of the license.
8. The certified letter sent on September 16, 2020 informed the Respondents that the license had been surrendered under the authority of Rule 65¹ on March 14, 2011 and that the license could only remain in a surrendered status for a period of 30 months from the surrender date.

¹ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

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The letter, sent on Department letterhead, informed the Respondents that they needed to contact the Department within 10 business days to reinstate, transfer, or cancel the license. It also provided the email and phone contact information for Department Agent C. Jimenez (Jimenez) so that the Respondents had a point of contact with the Department. (Exhibit D-2)

9. The Respondents emailed Jimenez on September 27, 2020 informing her that they were in the process of attempting to transfer the license. This was in reference to the transfer attempt that was later withdrawn on October 11, 2020. By October 21, 2020 Jimenez had received no further communications from the Respondents regarding their efforts to reinstate, transfer or cancel the license. As a result, the Department submitted its investigation that resulted in the filing of the accusation in this matter on December 31, 2021. Subsequent to the filing of the accusation but prior to the hearing in this matter, the Respondents again entered into negotiations to transfer the license to a buyer. The negotiations were initiated in January 2021 and the potential buyer submitted its application materials to the Department on February 4, 2021. That transfer application is currently pending with the Department.

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. Business and Professions Code section 23950 requires that both applicants and premises must be qualified by the Department in order to be licensed.

3. Rule 65 was enacted to establish rules for addressing licenses that no longer meet the qualification requirements beginning with Business and Professions Code section 23950. Rule 65 states as follows:

(a) Every licensee who surrenders, abandons or quits his licensed premises, or who closes his licensed business for a period exceeding 15 consecutive calendar days, shall, within 15 days after closing, surrendering, quitting, or abandoning his licensed premises, surrender his license or licenses to the department. The department may seize the license certificate or certificates of any licensee who fails to comply with the surrender provisions of this rule, and may proceed to revoke his license or licenses.

(b) Upon the voluntary request by any licensee, on such form as the department may prescribe, the department may cancel his license or licenses.

(c) A surrendered license may be reinstated upon request made at least 10 days prior to the date of reinstatement upon certification by the licensee that there has been no change of ownership of the licensed business, and that the premises possess the same qualifications required for the original issuance of the license.

(d) Any license voluntarily surrendered under paragraph (a) of this rule shall be revoked if it is not transferred to another person or for use at another premises, or redelivered and the licensed activity resumed, within one year from the date of such surrender. There shall be no extension of such surrender period except when the department finds good cause exists where:

- (1) an application is pending for transfer of the surrendered license; or
- (2) litigation other than that involving disciplinary action by the department is pending; or
- (3) the premises for which the license had been issued and for which the license is sought to be redelivered were destroyed due to circumstances beyond the control of the licensee by fire, flood, or other natural catastrophe, or as part of an urban renewal program, and the licensee makes an affirmative showing of good faith efforts that he is attempting to obtain reconstruction of such destroyed premises; or
- (4) the Director in his judgment finds a case of undue hardship exists which would warrant an extension.

4. Cause for revocation of Respondents' license was established in accordance with the code and regulatory sections cited above for the violation alleged in Count 1 of the accusation. (Findings of Fact ¶¶ 1-9)

5. It is undisputed that the Licensed Premises ceased meeting the requirements of section 23950 in 2011 when it ceased operating. The license was properly surrendered at that time by the Respondents. The surrender set in motion the period in which the Respondents were required to act in order to preserve the license and prevent its revocation. Through January 2018, the Respondents were actively involved in trying to transfer the license to another premises. This tolled Department action until the Department's denial of the application for the North Highlands premises location in January 2018. (Findings of Fact ¶¶ 1-9)

6. Subsequent to the denial in January 2018, the Respondents did not communicate with the Department about an effort to preserve the license from the denial in 2018 through 2020 when the Respondents initiated an effort to transfer the license. Even though a period of greater than a year passed, the Department apparently used its discretion pursuant to Rule 65(d)(4) by not acting earlier than the Department notice sent on September 16, 2020 to indicate that the Respondents needed to communicate about their intentions regarding the license. The Department was clearly communicating a change in approach in its September 16, 2020 letter. The Department instructed the Respondents to communicate what action it was going to take regarding the surrendered license. (Findings of Fact ¶¶ 1-9)

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7. The Respondents were on notice that the Department intended to revoke the license pursuant to Rule 65 and that the Respondents needed to act. At the time of the September 16, 2020 letter from the Department, the Respondents were attempting to transfer the license. When the Respondents emailed Jimenez on September 27, 2020 about the most recent effort to transfer the license, they remained in compliance with the instructions of the Department. However, the evidence shows that this attempt was withdrawn on October 11, 2020 and that the Respondents did not try to communicate with the Department further regarding their efforts to address the surrendered license. From the September 27, 2020 email through the filing of the accusation in this matter on December 31, 2020, there were no further communications from the Respondent regarding the surrendered license. While there is an ongoing effort to transfer the license that was initiated in January 2021, the Department has established a violation of Rule 65 as alleged in count one. (Findings of Fact ¶¶ 1-9)

8. Except as set forth in this decision, all other allegations in the accusation and all other contentions made by the parties in the pleadings or at the hearing regarding those allegations lacked merit.

PENALTY CONSIDERATIONS

1. The Department recommended that the license be revoked with a stay of 6 months to facilitate the pending transfer that is being sought. Rule 144 provides for a penalty up to revocation for violations of the section alleged. This mandate is satisfied, however, by a stayed revocation as well as an outright revocation.

2. As to the Rule 65 surrender, Article XX, Section 22 of the California Constitution provides that the Department has the exclusive right and power to license and regulate those who exercise the privileges of a license. Section 23950 requires that both the licensee and the premises must be qualified. Respondents do not have a qualified premises to operate the business. Because of this, the Department had no choice but to compel the revocation of the license unless it is transferred prior to the revocation.

3. The Department is not obligated to keep this license in surrendered status indefinitely. Under normal circumstances, the surrendered status is to last no more than one year. The Department exercised its discretion not to act on the revocation of the license for multiple years past the first one. The Department properly communicated a change in position on September 16, 2020 and the Respondents did not timely act to prevent the revocation mandated by Rule 65 under the circumstances described above.

4. In line with the penalty guidelines of rule 144 and balancing the aggravating and mitigating factors, it is found that the mitigating factors outweigh the aggravating factors. The penalty recommended herein complies with rule 144.

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ORDER

Respondent's off-sale general license is hereby revoked, with the revocation stayed for 6 months from the effective date of this decision to permit the transfer or reactivation of this license.

Dated: May 3, 2021

Alberto S. Roldan

Alberto Roldan
Administrative Law Judge

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

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05/24/21