

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

AB-9949

File: 20-602682; Reg: 21091588

7-ELEVEN, INC. and HARMAN S. BHANDAL,
dba 7-Eleven Store #38369A
420 North Coast Highway
Oceanside, CA 92054-2532,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: October 7, 2022
Telephonic

ISSUED OCTOBER 11, 2022

Appearances: *Appellants:* Jessop M. Stroman, of Solomon, Saltsman &
Jamieson, as counsel for 7-Eleven, Inc. and Harman S. Bhandal,
doing business as 7-Eleven Store #38369A,

Respondent: Alanna K. Ormiston, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Harman S. Bhandal, doing business as 7-Eleven Store #38369A (appellants), appeal from a decision of the Department of Alcoholic Beverage Control (Department)¹ suspending their license for 15 days because their clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).²

¹ The decision of the Department, dated May 10, 2022, is set forth in the appendix.

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

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on July 1, 2019. There is no history of prior Departmental discipline against the license.

On November 19, 2021, the Department filed a single-count accusation against appellants charging that, on December 15, 2020, appellants' clerk, German Ortiz (the clerk), sold an alcoholic beverage to 18-year-old Leslie Garcia (the decoy). Although not noted in the accusation, the decoy was working for the Oceanside Police Department (OPD) at the time.

At the administrative hearing held on March 2, 2022, documentary evidence was received and testimony concerning the sale was presented by the decoy and OCD Detective Kekai Thompson. Co-licensee Harman S. Bhandal testified on appellants' behalf.

Testimony established that on December 15, 2020, the decoy entered the licensed premises. An undercover OCD officer had entered the premises a few minutes before. The decoy selected a 3-pack of Bud Light beer and took it to the counter where the clerk asked to see her identification (ID). The decoy showed the clerk her California Identification card, which showed her true date of birth (making her 18 years of age on that date), a blue stripe indicating "AGE 18 IN 2020," and a red stripe indicating "AGE 21 IN 2023." (Exh. 3.) The ID had expired six months previously, but as noted in the decision, "her ID expired during a time when government offices were either closed or were only providing limited services due to COVID and when individuals were discouraged or prohibited from making 'unnecessary' trips outside their homes." (Finding of Fact, ¶ 7.) The clerk glanced at the ID and completed the sale without asking any age-related questions.

The decoy exited the premises and then re-entered with OCD officers to make a face-to-face identification of the clerk. One of the officers asked the decoy who sold her the beer and she pointed to the clerk from a distance of about seven feet. A photograph was taken of the clerk and decoy together (exh. 4), the clerk was issued a citation, and his employment was subsequently terminated.

The administrative law judge (ALJ) issued a proposed decision on March 17, 2022, sustaining the accusation and recommending a 15-day suspension. The Department adopted the proposed decision in its entirety on May 2, 2022, and a certificate of decision was issued eight days later.

Appellants then filed a timely appeal contending: (1) rule 141(b)(3)³ was violated because the decoy's identification was expired, and (2) the ALJ failed to give proper consideration to factors in mitigation when determining the penalty.

DISCUSSION

I

DECOY'S IDENTIFICATION

Appellants contend that the matter should be reversed pursuant to rule 141(c), which states that failure to comply with rule 141 shall be a defense to any action brought pursuant to section 25658. Appellants maintain the use of an expired license by the decoy violates rule 141(b)(3), and argue that the ALJ's finding that there was compliance with the rule is not supported by substantial evidence. (AOB at pp. 2; 6-7.)

Rule 141(b)(3) provides that a "decoy shall either carry his or her own identification showing the decoy's correct date of birth or shall carry no identification; a

³ 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.

decoy who carries identification shall present it upon request to any seller of alcoholic beverages.” (Cal. Code Regs., tit. 4, § 141(b)(3).)

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

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department’s findings of fact. [Citations.] 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 114.)

This Board has stated many times that, in the absence of compelling reasons, it will ordinarily defer to the ALJ's findings on the issue of whether there was compliance with the various subsections of rule 141(b). The ALJ reached the following conclusions regarding the decoy's identification and subsection (3):

5. The Respondents argued that the decoy operation at the Licensed Premises failed to comply with rule 141(b)(3)^[fn.] and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondents argued that it was improper for the decoy to use an expired ID.

6. There are a large number of cases dealing with expired IDs in the context of fake IDs, but none of them address the situation at hand. In this case, Garcia used her own ID - with her actual date of birth, her actual DMV photo, and her actual physical descriptors. Since the ID was issued in 2015, the photo on the ID was five years old; Garcia was noticeably younger in that photo. Similarly, although Garcia was the same height in 2015 as she was in December 2020, she was 20 pounds lighter.

7. While these differences may matter in some contexts, they do not matter here. The relevant question in this case - indeed, in every case involving the sale of alcoholic beverages - is whether the purchaser is old enough to legally make the purchase. All of the age-related information on the ID was correct: (1) Garcia was born on XXXXXXXXX,⁴ (2) Garcia would turn 21 in 2023 as set forth in the red stripe, and (3) Garcia was only 18 years old in 2020 as set forth in the blue stripe. The mere fact that the ID had expired did not change any of that. In other words, the material information on the ID was correct.

8. Rule 141(b)(3) requires that a decoy carry his or her own ID or carry no ID at all. Garcia carried her own ID, albeit an expired one. While there

⁴ Birthdate redacted for privacy reasons.

may be situations where a decoy's use of an expired ID is improper, under the specific circumstances of this case there was no violation of the rule.

(Conclusions of Law, ¶¶ 5-8.)

Appellants suggest that if an expired ID is permitted in the context of a decoy operation, it will open the door to the use of fake IDs, arguing:

It is also important to consider one of the key reasons that expired I.D.'s should be rejected for alcohol sales. To allow alcohol sales to proceed on expired, but otherwise valid identification, has the potential to create a gray or black market for expired I.D.'s of people over the age of 21 that could then be used by underage individuals. . . .

(AOB at p. 7.) We disagree.

We addressed a rule 141(b)(3) issue in AB-9214. In that case, the Board articulated an important distinction between the use of an expired license in decoy operations versus cases involving a fake ID defense under section 25660:

The rationale behind rule 141(b)(3) is much different than that underlying a §25660 matter. In a decoy operation, the decoy is directed to carry his own identification, showing his correct date of birth, to produce it if requested by a clerk or bartender, and to give his correct age if asked. These directives in a decoy operation give the seller of alcohol an opportunity to realize that they are about to make a mistake, and give the seller an opportunity to abort an impending sale of alcohol to a minor decoy, by asking for and receiving the decoy's identification. There is no issue of reasonable reliance in a decoy matter, because this is their true identification, showing their true picture, description, and birth date. **Even if the license is expired, all of the other indicia are correct, and give the seller the information needed to cut the transaction short and avoid a violation.**

On the other hand, in a fake identification matter, the question is whether the seller of alcohol reasonably relied on false identification, and the expiration date issue is but one of many considerations regarding the reasonableness of accepting such identification to establish that the person is over the age of 21. To equate these two types of cases, and to say that it is unfair to accept an expired license in one but not the other, is comparing apples and oranges.

(7-Eleven, *Akkawi & Bitar* (2012) AB-9214 at p. 4, emphasis added.)

We reiterate our position in AB-9214 here. The requirement that the decoy must provide their identification when asked, gives the seller of alcohol an opportunity to realize that they are about to make a mistake. This gives the seller an opportunity to abort an impending sale of alcohol to a minor decoy by asking for and receiving the decoy's identification. Since this is the decoy's true identification (showing their true picture, description, and birth date), all of the pertinent indicia are correct — even if the license is expired. Accordingly, in spite of an ID displaying an expired date, it still gives the seller all the information needed to cut the transaction short and avoid a violation.

We find no violation of rule 141(b)(3).

II

PENALTY

Appellants contend that the ALJ failed to consider factors in mitigation presented at the administrative hearing when determining the penalty. (AOB at p. 7.)

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.*)

Appellants fault the decision for failing to give greater weight to the factors noted in mitigation. 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.

Appellants' disagreement with the penalty imposed does not mean the Department abused its discretion. This Board's review of a penalty looks only to see whether it can be considered reasonable, not what considerations or reasons led to it. Appellants have not established that the Department abused its discretion by imposing a 15-day penalty in this matter.

ORDER

The decision of the Department is affirmed.⁵

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

⁵ 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.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

APPENDIX

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

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

7-ELEVEN INC. & HARMAN S. BHANDAL
7-ELEVEN #38369A
420 N. COAST HWY.
OCEANSIDE, CA 92054-2532

OFF-SALE BEER AND WINE - LICENSE

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

SAN MARCOS DISTRICT OFFICE

File: 20-602682

Reg: 21091588

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 May 2, 2022. 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, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after June 20, 2022, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: May 10, 2022



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. & Harman S. Bhandal
dba 7-Eleven #38369A
420 N. Coast Hwy.
Oceanside, California 92054-2532

Respondents

Off-Sale Beer and Wine License

} File: 20-602682
}
} Reg.: 21091588
}
} License Type: 20
}
} Word Count: 8,000
}
} Reporter:
} Zoanne Williams
} iDepo
}
} **PROPOSED DECISION**

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference on March 2, 2022.

Alanna K. Ormiston, Attorney, represented the Department of Alcoholic Beverage Control.

Adam N. Koslin, attorney-at-law, represented respondents 7-Eleven Inc. and Harman S. Bhandal. Harman Bhandal was present.

The Department seeks to discipline the Respondents' license on the grounds that, on or about December 15, 2020, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Leslie Garcia, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on March 2, 2022.

FINDINGS OF FACT

1. The Department filed the accusation on November 19, 2021.

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

2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on July 1, 2019 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. Leslie Garcia was born on May 21, 2002. On December 15, 2020, she served as a minor decoy during an operation conducted by the Oceanside Police Department. On that date she was 18 years old.
5. Garcia appeared and testified at the hearing. On December 14, 2020, she wore a gray jacket, a black top, and blue jeans. Her hair was up, although she had let it down by the time she entered the Licensed Premises. As required by COVID regulations, she wore a face shield. She was 5'3" tall and weighed 150 pounds. (Exhibits 2 & 4.) Her appearance at the hearing was the same, except that she was 10 pounds heavier.
6. On December 15, 2020, Garcia entered the Licensed Premises. An officer was already inside, having entered a minute or so before her. She went to the back and selected a 3-pack of Budweiser beer, which she took to the counter. She approached German Ortiz, one of the clerks working at the time, and set the beer down. He asked to see her ID. She showed him her California identification card. (Exhibit 3.) Ortiz glanced at the ID, then handed it back to her. Garcia paid, then exited the Licensed Premises.
7. The ID that Garcia showed to Ortiz was her actual California identification card. The ID had expired on May 21, 2020 (Ortiz's birthday), six months before the sale in this case. Garcia testified that she had not had the opportunity to go to the DMV to renew it. Although Garcia did not elaborate, her ID expired during a time when government offices were either closed or were only providing limited services due to COVID and when individuals were discouraged or prohibited from making "unnecessary" trips outside their homes.
8. After meeting up with one of the officers, Garcia re-entered the Licensed Premises. One of the officers asked her to identify the person who sold her the alcohol. She pointed to Ortiz. They were approximately seven feet apart at the time. A photo of the two of them was taken. (Exhibit 4.)
9. Det. K. Thompson spoke to Ortiz and asked him about the Licensed Premises' procedures relating to the sale of alcoholic beverages. Ortiz showed him the prompt generated by the register (exhibits 5 & B) and indicated that he pressed the "visual ID OK" button to complete the sale to Garcia.

10. A portion of a video taken from one of the officers' body camera was played during the hearing. (Exhibit A.) In the video, Ortiz indicated that Garcia only showed him the ID quickly and that he did not have the opportunity to read it. He simply hit the visual ID button to avoid any problems.

11. Harman Bhandal, the franchisee, testified about the training he provides to the employees. The training includes how to recognize a minor's ID and the prompts generated by the point of sale system. If a minor's ID is swiped or scanned, or if a minor's date of birth is entered, the system will not allow the sale to be completed. Two clerks work at a time; new clerks are always supervised when they begin working.

12. Ortiz had been working for only a month or so at the time of the sale. He was terminated afterward. The visual ID button has been removed.

13. The Licensed Premises uses a mystery shopping program to ensure that its employees follow the proper procedure. On 18 separate occasions, clerks have passed the mystery shopper test. (Exhibit D.) During one recent decoy operation, a clerk did not sell to the decoy. (Exhibit C.)

14. Garcia's appearance was consistent with that of a person who was 18 years old, her actual age. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in the Licensed Premises on December 15, 2020, Garcia displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Ortiz.

15. 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 15, 2020, the Respondents' employee, German Ortiz, inside the Licensed Premises, sold an alcoholic beverage to Leslie Garcia, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-10 & 14.)

5. The Respondents argued that the decoy operation at the Licensed Premises failed to comply with rule 141(b)(3)² and, therefore, the accusation should be dismissed pursuant to rule 141(c). Specifically, the Respondents argued that it was improper for the decoy to use an expired ID.

6. There are a large number of cases dealing with expired IDs in the context of fake IDs, but none of them address the situation at hand. In this case, Garcia used her own ID—with her actual date of birth, her actual DMV photo, and her actual physical descriptors. Since the ID was issued in 2015, the photo on the ID was five years old; Garcia was noticeably younger in that photo. Similarly, although Garcia was the same height in 2015 as she was in December 2020, she was 20 pounds lighter.

7. While these differences may matter in some contexts, they do not matter here. The relevant question in this case—indeed, in every case involving the sale of alcoholic beverages—is whether the purchaser is old enough to legally make the purchase. All of the age-related information on the ID was correct: (1) Garcia was born on May 21, 2002, (2) Garcia would turn 21 in 2023 as set forth in the red stripe, and (3) Garcia was only 18 years old in 2020 as set forth in the blue stripe. The mere fact that the ID had expired did not change any of that. In other words, the material information on the ID was correct

8. Rule 141(b)(3) requires that a decoy carry his or her own ID or carry no ID at all. Garcia carried her own ID, albeit an expired one. While there may be situations where a decoy's use of an expired ID is improper, under the specific circumstances of this case there was no violation of the rule.

PENALTY

The Department requested that the Respondents' license be suspended for a period of 15 days. The Respondents argued that, if the accusation were to be sustained, a mitigated penalty would be appropriate based on the procedures they have in place to prevent such sales and their successful implementation (e.g., other decoy operation, secret shopper results).

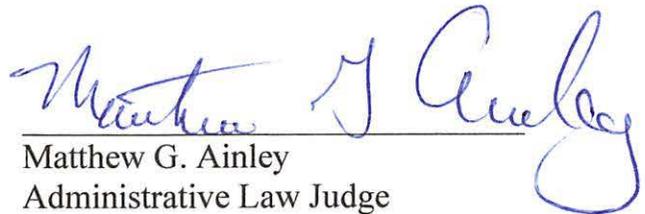
² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

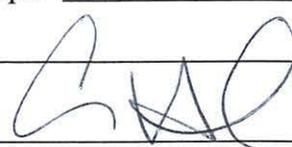
At the time of the sale in this case, the Respondents had been licensed for only seventeen months—too short a period to determine how effective these procedures actually are. Although they successfully avoided selling to one decoy, they actually sold to a second—a success rate of only 50%. There is no reason to deviate from the standard penalty set forth in rule 144.

ORDER

The Respondents' off-sale beer and wine license is hereby suspended for a period of 15 days.

Dated: March 17, 2022


Matthew G. Ainley
Administrative Law Judge

| |
|---|
| <input checked="" type="checkbox"/> Adopt |
| <input type="checkbox"/> Non-Adopt: _____ |
| By:  _____ |
| Date: <u>05/02/22</u> |