

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

AB-9956

File: 21-568991; Reg: 22091932

CANYON CREST WINE & SPIRITS, INC.,
dba Canyon Crest Liquor
1350 Massachusetts Avenue
Riverside, CA 92507,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Hubel

Appeals Board Hearing: March 17, 2023
Telephonic

ISSUED MARCH 20, 2023

Appearances: *Appellant:* F. Michael Ayaz and Karen Adraneda, of Blake & Ayaz,
A Law Corporation, as counsel for Canyon Crest Wine & Spirits,
Inc.,

Respondent: Jason T. Liu, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Canyon Crest Wine & Spirits, Inc., doing business as Canyon Crest Liquor,
appeals from a decision of the Department of Alcoholic Beverage Control,¹ because its
clerk sold an alcoholic beverage to a minor, in violation of Business and Professions
Code section 25658(a).

¹The decision of the Department, dated October 25, 2022, is set forth in the
appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on July 20, 2016. There is no record of prior departmental discipline against the license.

The Department filed a single-count accusation against appellant on March 1, 2022, alleging that, on July 3, 2021, appellant's clerk, Fadi Samaan (the clerk), sold an alcoholic beverage to 18-year-old Santos Figueroa (Santos).

At the administrative hearing held on July 26, 2022, documentary evidence was received, and testimony concerning the sale was presented by Department Agents Camrin Flores and Alfredo Garcia. Appellant did not present any witnesses.

Evidence established that on, July 3, 2021, Agents Garcia and Flores, along with a third agent, Agent Holsapple, were parked near the licensed premises to conduct a random spot check and to observe for any administrative or criminal violations. Agent Holsapple observed Santos, a youthful appearing male, park his vehicle. Agent Holsapple told Agent Flores about his observations of Santos.

Santos exited his vehicle and entered the license premises. Agent Flores, who was in plain clothes, exited his vehicle and followed Santos into the licensed premises. Once inside, Santos walked straight to the alcoholic beverage coolers, selected a 12-pack of Modelo 12-ounce beer cans, and walked to the sales counter and waited in line. When it was his turn, Santos approached the clerk and placed the beer on the sales counter. Santos handed the clerk a fraudulent United States Permanent Resident Card (exh. 4). The clerk looked at the card for a couple of seconds, and then immediately handed it back to Santos. Santos paid the clerk in cash and the clerk completed the sale of alcohol to Santos.

Agent Flores posed as a customer and witnessed the transaction between Santos and the clerk with a clear and unobstructed view. Agent Flores observed that the clerk appeared confused and unsure when looking at Santos' identification. After Santos paid for the alcohol, Agent Flores exited the premises and informed Agents Garcia and Holsapple about the sale. After Santos walked out of the store, the agents contacted him approximately ten feet from the entrance and identified themselves as police officers.

Agent Flores told Santos in English that he appeared youthful and asked to see his identification. Santos did not appear to completely understand. Agent Garcia, who speaks fluent Spanish, asked Santos if he preferred to speak in English or Spanish. Santos said he preferred Spanish because his English was limited. Agent Garcia spoke in Spanish to Santos and began asking Santos questions.²

Agent Garcia asked if Santos purchased the 12-pack of Modelo beer. Santos said he did and nodded his head affirmatively. Agent Garcia asked Santos if he was 21 years of age or older. Santos paused and did not initially reply. Agent Garcia repeated the question a second time. Santos appeared nervous and did not respond. Agent Garcia observed that Santos was most likely nervous because he was being contacted by police officers. Agent Garcia reassured Santos there was nothing to worry about, and that they just needed to confirm his age. Santos then said that he was 18 years old. Santos was cooperative with the agents during their interaction with him.

² Santos appeared very youthful to Agent Garcia, who estimated Santos to be between the ages of 17 and 19.

Santos consented to a search of his person. Agent Flores searched Santos and retrieved a wallet from Santos' pocket. Agent Flores searched the wallet and retrieved what immediately appeared to him to be a fraudulent United States Permanent Resident card. Agent Flores, in briefly looking at the card, noticed the plastic was peeling on the card corners and the signature under the photograph appeared to be a computer-generated font signature, which a valid identification would not have. Santos did not have any other identification on his person. Agent Flores handed the identification card to Agent Garcia.

Agent Garcia also noticed that the card was fraudulent based on his personal experience. Agent Garcia has some familiarity with how a valid permanent resident card should appear because his father has a permanent resident card. The initial thing that jumped out to Agent Garcia was that Santos' card was an older version of the permanent resident card. Based on Santos' age, he would have had the newer version issued to him. Secondly, Agent Garcia noticed the lack of quality and precision of the card. Agent Garcia's father's permanent resident card has a goldish-hued, reflective hologram on the front of the card and on the film on the back of the card. Santos' card had no hologram on either side, and the colors on the front of the card were very flat and dull.

On the back of Santos' card, the date and location of birth were printed directly onto the card and not within the film as would appear on a valid permanent resident card. Agent Garcia also noticed chips on the edges of the card. Santos' card also had no physical descriptors (e.g. eye color, height, weight, etc.). Santos' card only had his picture and a date of birth which would have made Santos 23 years old at the time of the sale.

Agent Garcia asked Santos if his permanent resident card was fraudulent. Santos said the card was fake and acknowledged that it belonged to him. Santos further admitted it was the card he showed to the clerk, and the card he used to purchase the Modelo beer. Agent Garcia seized Santos' permanent resident card (exh. 4).

Agent Garcia and Santos went back into the licensed premises and stood near the front of the store. Agent Garcia asked Santos to point out the clerk who sold him the beer. Santos pointed at the clerk. Agent Garcia and Santos exited the store.

Agent Garcia photographed Santos. At some point, Santos consented to a search of his vehicle. The agents found an Amazon employee card with Santos' name and no other descriptors. Agent Garcia ran Santos' name through the CHP dispatch and CLETS, a law enforcement criminal database, but came up with nothing. Agent Garcia surmised that it was due to Santos being undocumented. Santos gave the agents his telephone number and resident address. Agent Garcia issued a citation to Santos.

Agents Garcia and Holsapple walked back inside the licensed premises, contacted the clerk, and identified themselves as police officers. Agent Garcia asked the clerk if he recognized Santos, and the clerk said he recognized Santos as the person to whom he had just sold alcohol. The clerk admitted that Santos appeared underage but explained that there are various people who shop at the premises who appear youthful and use out of state licenses. Agent Garcia asked the clerk if Santos' identification appeared fraudulent, and the clerk said he had a suspicion that it was. Agent Garcia took a photograph of the clerk and issued him a citation. (Exh. 3.)

On August 31, 2022, Administrative Law Judge Doris Huebel, issued a proposed decision substantiating the violation of section 25658(a) and recommending a 15-day suspension of appellant's license. The Department adopted the proposed decision on October 7, 2022 and issued a certificate of decision on October 25, 2022.

Appellant filed a timely appeal alleging that: 1) the Department is applying a heightened standard of knowledge about false identifications onto the clerk and that the clerk made a due diligent inspection of Santos' identification; 2) the Department improperly found that Santos made a statement against his pecuniary or proprietary interest, and; 3) the Department failed to confirm Santos' true identity and age.

DISCUSSION

I. SECTION 25660

Appellant contends that the Department improperly imputed a heightened standard regarding false identifications to its clerk. (Appellant's Opening Brief (AOB), at pp. 4-6.) Specifically, appellant argues that the defects of Santos' fake identification "were more readily familiar to the Departments' Agents who have a heightened knowledge and a keen eye for spotting fakes with minimal to no inspection." (*Id.* at p. 4.) The appellant further argues that the clerk "performed his duties by requesting Santos' identification and making a due diligent inspection of the identification presented to him prior to completing the transaction." (*Id.* at p. 5.)

Section 25660(c) provides:

Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon [a government-issued identification or identification purporting to be government-issued³] shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

(Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.

(2004) 118 Cal.App.4th 1429, 1444-1445 [13 Cal.Rptr.3d 826, 837] (Masani).)

However, section 25660 must be narrowly construed and the licensee has the burden of establishing the defense. *(Lacabanne Properties, Inc. v. Alcoholic Beverage etc.*

Appeals Board (1968) 261 Cal.App.2d 181, 189-190 [67 Cal.Rptr. 734] (Lacabanne).)

One of the requirements of section 25660 is that a licensee must show that reliance on the false identification was *reasonable*. *(Lacabanne, supra, at p. 189; 5501 Hollywood v. Dept. of Alcoholic Bev. Control (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820] (5501 Hollywood).)* In other words, a licensee (or employee) must exercise the caution that a reasonable and prudent person would show in the same or similar circumstances. *(Lacabanne, supra, at p. 189; Farah v. Alcoholic Bev. Control Appeals*

³ It is immaterial whether the identification used was actually government-issued.

In *Masani*, the court said:

The licensee should not be penalized for accepting a credible fake that has been reasonably examined for authenticity and compared with the person depicted. A brilliant forgery should not ipso facto lead to licensee sanctions. In other words, fake government ID's cannot be categorically excluded from the purview of section 25660. The real issue when a seemingly bona fide ID is presented is the same as when actual governmental ID's are presented: reasonable reliance that includes careful scrutiny by the licensee.

(Masani, supra at p. 1445.)

Bd. (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*, at p. 753.)

Further, reasonable reliance cannot be established if the appearance of the person presenting the identification is “too young in appearance to be 21.” (*5501 Hollywood, supra*, at p. 754.)

Finally, the Department’s findings regarding a section 25660 defense will be upheld so long as those findings are supported by substantial evidence. (*Masani, supra*, at p. 1437; *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”].) Substantial evidence is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’ ” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

In the instant case, the Department found that appellant failed to meet its burden of proof. (Conclusions of Law, ¶7.) The Department stated:

7. [...] While clerk Fadi did not make a due diligent inspection of the permanent resident card offered, even after his brief two second review of it, clerk Fadi had a suspicion Santos’ card was fake. Any clerk who is properly trained in recognizing a fraudulent ID would notice the obvious flaws in the card, including, the lack of physical descriptors, the plastic peeling [*sic*] on the card corners, the chips on its edges, the computer-generated font signature, and lack of holograms.

8. Furthermore, Santos’ appearance did not indicate that he could have been 21 years of age. Santos’ personal appearance demonstrated above mere suspicion that he was not the legal owner of the permanent resident card. The agents sworn, direct testimony credibly maintained that on July 3, 2021, Santos appeared to all three of the agents to have a youthful appearance, so much so that it caused Agent Holsapple to advise Agent Flores to follow Santos into the Licensed Premises. Santos appeared

very youthful in-person, in front of clerk Fadi, as evidenced by the credible testimony of the agents, the video surveillance and the photograph taken of Santos after the said violation. (Exhibits 2 and 6.) Even clerk Fadi thought Santos appeared underage. But clerk Fadi pointed out to the agents that it was his custom not to judge customers by their appearances. In fact, clerk Fadi, as any clerk who sells alcoholic beverages, should, at least initially, judge customers by their appearance to determine if they are of legal age to purchase alcohol, and subsequently verify their age. Santos in no way could pass for 21 years of age, let alone 23 years old as the date of birth on the ID claimed. Agent Garcia credibly testified that Santos appeared “very youthful” to him, between the ages of 17 and 19.

(*Id.* at ¶ 7-8.)

Based on the above, the Department's findings regarding Santos' appearance are supported by substantial evidence, since they were based upon video evidence of the sale, the photograph of Santos, the false identification, as well as the testimony of Agents Flores and Garcia. Further, the record does not support appellant's argument that the Department applied a “heightened standard” to the clerk; the Department found that the clerk's inspection of the false identification consisted of a “brief two second review of it.” (Conclusions of Law, ¶ 7.) Finally, the clerk cannot rely on an identification if the person presenting the identification is “too young in appearance to be 21.” (*5501 Hollywood, supra*, at p. 754.) The Department found that “Santos' appearance did not indicate that he could have been 21 years of age.” (Conclusions of Law, ¶ 8.) For these reasons, the Department's findings must stand.

II. DECLARATION AGAINST INTEREST

Appellant contends that the ALJ erred in admitting Santos' statement that he was 18 years old as a declaration against pecuniary interest because he was “assured by the Department's Agents that he had nothing to worry about” in telling them his true age. (AOB at p. 6.) In the decision, the Department found that:

7. [...] Agent Garcia told Santos he appeared youthful to have alcohol in his possession, that the officers wanted to confirm his age and confirm he is of the legal age to purchase alcohol. Agent Garcia asked Santos if he was 21 years of age or older. Santos paused and did not initially reply. Agent Garcia repeated the question a second time. Santos appeared nervous and did not respond. Agent Garcia observed that Santos was most likely nervous because he was being contacted by police officers. Agent Garcia reassured Santos there was nothing to worry about, that they just needed to confirm his age. Santos then truthfully said he was 18 years old. Santos was cooperative with the agents during their interview of him.

(Findings of Fact, ¶ 7.)

The Department argues that appellant failed to object to the admission of Santos' statement regarding his age, and therefore, appellant waived the objection and the statement was properly admitted. (Respondent's Reply Brief, at pp. 11-12.) A review of the hearing transcript confirms that appellant failed to make any objection to Agent Garcia's testimony:

Q: What did you ask [Santos] next?

A: I asked him if he was 21 or older essentially.

Q: What was his answer?

A: He indicated that he was 18.

Q: Fair to say, Santos was cooperative with you?

A: Yes.

(Reporter's Transcript, at p. 44:2-7.)

Despite appellant's failure to timely object, the Department still considered Santos' statement about his age as an exception to the hearsay rule under California Evidence Code section 1230:

9. [...] Evidence Code section 1230 provides that "Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the

declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, ...that a reasonable man in his position would not have made the statement unless he believed it to be true." Santos' statement to Agent Garcia that he was 18 years old on July 3, 2021, is reliable because a reasonable person in Santos' position would not have admitted to being 18 years of age, and subject himself to misdemeanor criminal charges for illegally purchasing alcoholic beverages.

(Conclusions of Law, ¶ 9.)

Here, we cannot say the Department erred in considering Agent Garcia's testimony that Santos was only 18 years old. It is well-settled that failure to make a specific, timely objection to inadmissible evidence forfeits the right to appellate review of the matter. (Cal. Evid. Code § 353(a); *SCI Calif. Funeral Services, Inc. v. Five Bridges Found.* (2012) 203 Cal.App.4th 549, 563-64, 137 Cal.Rptr.3d 693, 706.) The record is clear that appellant did not object to Agent Garcia's testimony as to what Santos told him regarding his age. Therefore, this Board is without authority to consider the matter here on appeal.⁴

III. EVIDENCE OF SANTOS' AGE

Finally, appellant argues that the Board must reverse the Department's decision against it since "there is no credible evidence confirming Santos' age, and thus, there is no credible evidence confirming that a sale to a minor occurred at the Licensed Premises ..." (AOB, at p. 8.) However, appellant fails to cite any legal authority

⁴ It is also worth noting that appellant failed to respond to, or even acknowledge, the Department's argument that appellant waived its objection at the administrative hearing in its closing brief. It was appellant's duty to show the Board that some error existed. Without such assistance, the Board may treat unsupported and unasserted contentions as waived or forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal. App. 4th 836, 852 [57 Cal. Rptr. 3d 363, 377] ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived."])

requiring the Department to provide credible evidence to “confirm” a minor’s age. As stated above, the Board must uphold the Department’s decision so long as the findings are supported by substantial evidence. (*Masani, supra*, at p. 1437.)

Here, Agent Garcia testified that Santos told him he was only 18 years old. Agent Flores testified that he observed the clerk sell Santos a 12-pack of Modelo beer. This constitutes substantial evidence that appellant’s clerk sold an alcoholic beverage to a minor, which is a violation of Business and Professions Code section 25658(a). (See Cal. Evid. Code § 140, Law Rev. Comm’n Comment; *People v. Armstrong* (1991) 232 Cal. App. 3d 228, 233-34, 283 Cal. Rptr. 429, 431 & fn. 6 [any evidence of record is sufficient to support a judgment on appeal].) For all the above reasons, the Department’s decision must stand.

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.

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:**

CANYON CREST WINE & SPIRITS, INC.
CANYON CREST LIQUOR
1350 MASSACHUSETTS AVENUE
RIVERSIDE, CA 92501

OFF-SALE GENERAL - LICENSE

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

RIVERSIDE DISTRICT OFFICE

File: 21-568991

Reg: 22091932

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on October 7, 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 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 December 5, 2022, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: October 25, 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:

Canyon Crest Wine & Spirits, Inc.	}	File: 21-568991
Dbas: Canyon Crest Liquor	}	
1350 Massachusetts Avenue	}	Reg.: 22091932
Riverside, California 92507	}	
	}	License Type: 21
Respondent	}	
	}	Word Count: 13,258
	}	
	}	Kennedy Court Reporter:
	}	MikylaLux
	}	
	}	
<u>Off-Sale General License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter in Riverside, California, on July 26, 2022.

John Newton, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Nadim Samaan, CEO of Canyon Crest Wine & Spirits, Inc., represented the Respondent.

The Department seeks to discipline the Respondent's license on the grounds that, on or about July 3, 2021, the Respondent, through its agent or employee, Fadi Samaan, at said premises, sold, furnished, gave or caused to be sold, furnished or given, alcoholic beverages, to-wit: a 12-pack of Modelo beer cans, to Santos Figueroa, 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 July 26, 2022.

FINDINGS OF FACT

1. The Department filed the accusation on March 1, 2022.

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

2. The Department issued a type 21, off-sale general license to the Respondent for the above-described location on July 20, 2016 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. . On July 3, 2021, Department Agents Holsapple, Garcia and Flores were parked in their state vehicles ² near the Licensed Premises to conduct a random spot check and observe for any administrative and criminal violations. The agents were conducting general alcoholic beverage enforcement in the area. Agent Holsapple observed a youthful appearing male park his vehicle next to Agent Holsapple's vehicle. The youthful appearing male was later identified as Santos Figueroa (hereinafter referred to as Santos ³). Santos exited his vehicle and walked toward the front entrance of the Licensed Premises. Agent Holsapple advised Agent Flores of his observations. Santos entered the Licensed Premises. Shortly thereafter, at approximately 7:40 p.m., Agent Flores, who was in a plain clothes capacity ⁴, exited his vehicle and followed Santos into the Licensed Premises. Santos appeared youthful to Agent Flores.
5. Santos was born on August 27, 2002. On July 3, 2021, Santos was 18 years old. He wore a red t-shirt, blue jeans and white tennis shoes. (Exhibit 2 - color photo of Santos.) Once inside the Licensed Premises, Santos walked straight to the alcoholic beverage coolers, selected a 12-pack of 12-ounce Modelo beer cans, which are alcoholic beverages, and walked straight to the sales counter where he waited in line behind a customer who was being assisted by the clerk. There was a male clerk behind the sales counter, Fadi Samaan (hereinafter referred to as clerk Fadi ⁵). Shortly thereafter, Santos approached and placed the 12-pack of Modelo beer (Exhibit 5) on the sales counter. Santos handed a fraudulent United States Permanent Resident card (Exhibit 4) to clerk Fadi, who retrieved the card, looked at it for a of couple seconds, and immediately handed it back to Santos. Clerk Fadi proceeded with the sale of the alcohol to Santos, who paid cash for the alcohol.
6. Agent Flores posed as a customer and witnessed the above-described transaction with a clear, unobstructed view. As clerk Fadi looked at the fake ID, Agent Flores observed clerk Fadi's facial expression to appear confused and unsure. After Santos paid for the alcohol Agent Flores exited the premises and informed Agents Garcia and Holsapple of

² Agents Garcia and Flores were in one vehicle and Agent Holsapple was in a second vehicle.

³ The minor's first name is used to be consistent with the use of his first name during the hearing.

⁴ For purposes of identifying Agent Flores in the surveillance video (Exhibit 6), Agent Flores wore a black t-shirt, red baseball cap, and blue jeans.

⁵ The clerk's first name is used to avoid confusion with Respondent's CEO who has the same last name as the clerk. There was no evidence of any familial relationship between the clerk and Respondent's CEO.

the sales transaction. In the meantime, Santos received change and exited the store with the said alcohol. (Exhibit 6-DVD surveillance video.)

7. After Santos walked out of the store, Agents Holsapple, Flores and Garcia contacted Santos, approximately 10 feet from the entrance of the store, and identified themselves as police officers, displaying their Department issued dome badges. Agent Holsapple was wearing his tactical belt with Department issued weapon, gear and a ballistic vest with "POLICE" in bold lettering on the front and back of the vest. Agent Flores, speaking in English to Santos, told Santos he appeared youthful and asked to check his identification (ID). Santos appeared not to completely understand. Agent Garcia, who speaks fluent Spanish, asked Santos if he preferred to speak in English or Spanish. Santos said he preferred Spanish because his English was limited. Agent Garcia spoke in Spanish to Santos and began asking Santos questions. He asked if Santos purchased the 12-pack of Modelo beer, to which Santos verbally replied that he did and nodded his head in the affirmative. When Agent Garcia looked at Santos, Santos appeared very youthful to Agent Garcia, who estimated Santos to be between the ages of 17 and 19. Agent Garcia told Santos he appeared youthful to have alcohol in his possession, that the officers wanted to confirm his age and confirm he is of the legal age to purchase alcohol. Agent Garcia asked Santos if he was 21 years of age or older. Santos paused and did not initially reply. Agent Garcia repeated the question a second time. Santos appeared nervous and did not respond. Agent Garcia observed that Santos was most likely nervous because he was being contacted by police officers. Agent Garcia reassured Santos there was nothing to worry about, that they just needed to confirm his age. Santos then truthfully said he was 18 years old. Santos was cooperative with the agents during their interview of him.

8. Santos consented to a search of his person. Agent Flores searched Santos and retrieved a wallet from Santos' pant pocket. Agent Flores searched the wallet and retrieved therefrom, what immediately appeared to him to be, a fraudulent United States Permanent Resident card. Agent Flores, in briefly looking at the card, noticed the plastic was peeling on the card corners and the signature under the photograph appeared to be a computer-generated font signature, which a valid ID would not have. Santos had no other ID on his person. Agent Flores handed the ID card to Agent Garcia.

9. Immediately upon review of the ID card, Agent Garcia noticed that the card was fraudulent based on his personal experience. Agent Garcia has some familiarity with how a valid permanent resident card should appear because his father has a permanent resident card. The initial thing that jumped out to Agent Garcia, as obviously wrong with the card, was the overall look of the card, in that it was an older version of the permanent resident card. Based on Santos' age, he should have had the newer version issued to him. Secondly, Agent Garcia noticed the lack of quality and lack of precision of the card. Agent Garcia's father's permanent resident card has a goldish-hued, reflective hologram

on the front of the card and on the film on the back of the card. Santos' card had no hologram on either side, and the colors on the front of the card were very flat and dull. On the back of Santos' card, the date and location of birth were printed directly onto the card and not within the film as would appear on a valid permanent resident card. Agent Garcia also noticed chips on the edges of the card.

10. Based on Agent Garcia's Department training and experience, he immediately recognized Santos permanent resident card was obviously fraudulent because it had no physical descriptors as required by Business and Professions Code section 25660. For an ID, which is issued by a federal, state, county, or municipal government or agency, to be considered a bona fide ID it must contain the name, date of birth, physical descriptors, and picture of the person. Santos' card had no physical descriptors, for example, it had no eye or hair color, and no height or weight listed. Santos' card only had his picture and a date of birth of August 27, 1997, which would have made Santos 23 years old at the time.

11. Agent Garcia asked Santos if his permanent resident card was fraudulent. Santos said the card was fake and acknowledged that it belonged to him. Santos further acknowledged it was the card he showed to clerk Fadi, and with which he used to purchase the 12-pack of Modelo beer. Agent Garcia seized Santos' permanent resident card. (Exhibit 4.)

12. Agent Garcia and Santos walked back into the Licensed Premises and stood near the front of the store. Agent Garcia asked Santos to point out the clerk who sold him the beer. Santos pointed at clerk Fadi, indicating he was the clerk who sold him the 12-pack of Modelo beer. Agent Garcia and Santos exited the store. Agent Garcia took a photograph of Santos. (Exhibit 2.) At some point Santos consented to a search of his vehicle. The agents found an employee Amazon card with Santos' name and no other descriptors. Agent Garcia ran Santos' name through the CHP dispatch and CLETS, a law enforcement criminal database, but came up with nothing. Agent Garcia surmised that it was due to Santos being undocumented. Santos gave the agents his telephone number and resident address. Agent Garcia issued a citation to Santos. At some point Santos' uncle arrived at the scene. Agent Garcia released Santos and turned over Santos' vehicle in the care of Santos' uncle, who had provided a valid driver's license.

13. Agents Garcia and Holsapple walked back inside the Licensed Premises, made contact with clerk Fadi, and identified themselves as police officers, both verbally and with their Department issued dome badges. Agent Garcia asked clerk Fadi if he recognized Santos, with whom Agent Garcia had just previously walked in. Clerk Fadi said he did recognize Santos as the person to whom he had sold alcohol. Agent Garcia asked clerk Fadi if Santos appeared underage. Clerk Fadi said Santos did appear underage to him. Clerk Fadi added an explanation that there are various people who shop

at the premises and use out of state licenses, who appear youthful to him, but he tries not to judge people by their appearances. Agent Garcia asked clerk Fadi if he suspected Santos' ID to be fraudulent. Clerk Fadi said he had a suspicion Santos' permanent resident card was a fake and reiterated that he did not judge people by their appearances. Agent Garcia took a photograph of clerk Fadi and issued him a citation. (Exhibit 3 - color photograph of clerk Fadi.) Agent Garcia found clerk Fadi to be very cooperative during the investigation and he showed signs of regret for having sold alcohol to Santos.

14. Clerk Fadi did not appear at the hearing. There was no evidence clerk Fadi was disciplined for the said violation. There was no evidence of documented training of Respondent's employees relating to alcoholic beverage and age-restricted sales.

15. The Department attempted to subpoena Santos for the hearing at the address he provided but he was no longer residing there. Agent Flores made multiple calls to the telephone number Santos had provided the agents, but the call would not go through. The Department was not able to subpoena Santos as a witness for the hearing.

16. 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 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 July 3, 2021, Respondent's employee, clerk Fadi Samaan, inside the Licensed Premises, sold alcoholic beverages, to-wit: a 12-pack of Modelo beer, to Santos Figueroa, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact, ¶¶ 4-13.)

5. 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, in making 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).

6. The defense offered by this section is an affirmative defense. As such, 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.⁶ To provide a defense, reliance on the document must be reasonable, that is, the result of an exercise of due diligence. This section applies to identifications actually issued by government agencies as well as those which purport to be.⁷ A licensee or his or her employee is not entitled to rely upon an 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.⁸ The defense offered by section 25660 is not established if the appearance of the minor does not match the description on the identification.⁹ Thus, reasonable reliance cannot be established unless the appearance of the person presenting identification indicates that he or she could be 21 years of age and the seller makes a reasonable inspection of the identification offered.

7. In the present case, the Respondent failed to meet its burden of proof in establishing pertinent elements of the affirmative defense. Clerk Fadi did not act in reliance upon Santos' fraudulent permanent resident card, which had obvious defects and did not appear to be a bona fide government-issued ID. While clerk Fadi did not make a due diligent inspection of the permanent resident card offered, even after his brief two second review of it, clerk Fadi had a suspicion Santos' card was fake. Any clerk who is properly trained in recognizing a fraudulent ID would notice the obvious flaws in the card, including, the lack of physical descriptors, the plastic peeling on the card comers, the chips on its edges, the computer-generated font signature, and lack of holograms.

8. Furthermore, Santos' appearance did not indicate that he could have been 21 years of age. Santos' personal appearance demonstrated above mere suspicion that he was not the

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

legal owner of the permanent resident card. The agents sworn, direct testimony credibly maintained that on July 3, 2021, Santos appeared to all three of the agents to have a youthful appearance, so much so that it caused Agent Holsapple to advise Agent Flores to follow Santos into the Licensed Premises. Santos appeared very youthful in-person, in front of clerk Fadi, as evidenced by the credible testimony of the agents, the video surveillance and the photograph taken of Santos after the said violation. (Exhibits 2 and 6.) Even clerk Fadi thought Santos appeared underage. But clerk Fadi pointed out to the agents that it was his custom not to judge customers by their appearances. In fact, clerk Fadi, as any clerk who sells alcoholic beverages, should, at least initially, judge customers by their appearance to determine if they are of legal age to purchase alcohol, and subsequently verify their age. Santos in no way could pass for 21 years of age, let alone 23 years old as the date of birth on the ID claimed. Agent Garcia credibly testified that Santos appeared "very youthful" to him, between the ages of 17 and 19.

9. The Respondent argued that since the agents were not able to verify Santos' age by means other than Santos' admission, that his true age is unknown. This argument is rejected. As pointed out by the Department, Evidence Code section 1230 qualifies the statement of Santos' age as an exception to the hearsay rule, specifically as a declaration against interest. Evidence Code section 1230 provides that "Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, ... that a reasonable man in his position would not have made the statement unless he believed it to be true." Santos' statement to Agent Garcia that he was 18 years old on July 3, 2021, is reliable because a reasonable person in Santos' position would not have admitted to being 18 years of age, and subject himself to misdemeanor criminal charges for illegally purchasing alcoholic beverages.

PENALTY

The Department requested the Respondent's license be suspended for a period of 15 days and argued that any mitigation is outweighed by the aggravation, including the manner in which the sale occurred, as well as no evidence of documented training of Respondent's employees.

The Respondent requested no penalty be assessed based on its discipline-free history since 2016.

In assessing an appropriate measure of discipline, the Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144, commonly referred to as rule 144. Under rule 144, the presumptive penalty for a first violation of selling or furnishing an alcoholic beverage to a minor in violation of section

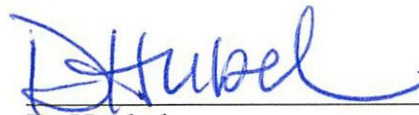
25658 is a 15-day license suspension. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors.

Although any period of discipline-free operation is always worth noting, the Respondent's approximate four-year, 11-month discipline-free history is outweighed by the aggravation in this matter. There was no evidence of any other mitigation presented by the Respondent. For example, there was no evidence of documented training, or positive action taken by the Licensee to correct the problem in this matter. This is of grave concern, given clerk Fadi's admission that he routinely chooses not to judge customers by their appearance. Also of concern is the lack of evidence whether Respondent has an ID Checking Guide for its clerks or provides training on how to spot fraudulent IDs, given the admitted abundant number of youthful appearing customers and numerous out-of-state IDs presented at its premises. Aggravation is warranted due to Santos's youthful appearance and actual age at the time of the violation, as well as the quantity of alcohol sold to the youthful appearing minor. The penalty recommended herein complies with rule 144.

ORDER

The Respondent's off-sale general license is hereby suspended for a period of 15 days.

Dated: August 31, 2022



D. Huebel
Administrative Law Judge

☒ Adopt
☐ Non-Adopt: _____
By: _____
Date: _____