

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

AB-9969

File: 20-463177; Reg: 22092564

HMZ, INC.,
dba Arco AM/PM
1753 Truman Street
San Fernando, CA 91340-3143,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: September 15, 2023
Sacramento, CA / Telephonic

ISSUED SEPTEMBER 19, 2023

Appearances: *Appellant:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as
counsel for, HMZ, Inc.

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

OPINION

HMZ, Inc., doing business as Arco AM/PM (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department)¹ suspending its license for 10 days (with all 10 days stayed for a period of one year, provided no further cause for discipline arises during that time) because its clerk sold an alcoholic beverage to a

¹ The decision of the Department, dated May 2, 2023, is set forth in the appendix.

police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).²

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on February 21, 2008.

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

On September 3, 2022, the Department filed a single-count accusation charging that appellant's clerk, Alfonso Chino (the clerk), sold an alcoholic beverage to 17-year-old Sivarith Vichidnak (the decoy) on December 22, 2021. Although not noted in the accusation, the decoy was working for the San Fernando Police Department (SFPD) at the time.

At the administrative hearing held on January 24, 2023, documentary evidence was received, and testimony concerning the sale was presented by the decoy and by SFPD Sergeant Jorge Cervantes. Appellant presented no witnesses.

Testimony established that on December 22, 2021, the decoy entered the licensed premises. He selected a can of Bud Light beer and took it to the register where the clerk scanned it and then asked for the decoy's identification (ID). The decoy handed the clerk his California driver's licence which showed his correct date of birth, indicating that he was 17 years old, and contained a red stripe stating "AGE 21 IN 2025". (Exh. 3; Findings of Fact (FF) ¶ 6.)

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

The clerk swiped the ID through the register several times and each time the register beeped. The clerk entered something into the register and completed the sale. He later explained that he entered the decoy's birth date, but mis-typed 2004 as 2024, which (somehow) allowed the sale to go through. (FF ¶¶ 6, 8.) No evidence was presented to explain how typing a future date as a birth date could permit this.

The decoy exited the premises, then returned with SFPD officers. Sgt. Cervantes identified himself to the clerk and explained the violation. Sgt. Cervantes asked the decoy who sold him the beer. The decoy pointed out the clerk and said "he did." A photo of the clerk and decoy was taken (exh. 4) and the clerk was issued a citation. (FF ¶ 7.)

Following the hearing, the administrative law judge (ALJ) issued a proposed decision on March 21, 2021, sustaining the accusation and recommending a penalty of ten days' suspension, with the execution of all ten days stayed for a period of one year, provided no further cause for discipline arises during that time. The Department adopted the proposed decision in its entirety on April 28, 2023 and certificate of decision was issued four days later.

Appellant then filed a timely appeal contending: (1) the Department failed to show good cause that continuation of appellant's license would harm the public's welfare or morals, (Appellant's Opening Brief (AOB) at p. 5), (2) the licensee should not be held responsible for a one-time violation consisting of a single employee's circumvention of reasonable safeguards. (*Id* at pp. 6-7; Appellant's Closing Brief (ACB) at pp. 2-3.), and (3) the penalty should be reduced or eliminated.

DISCUSSION

I

PUBLIC WELFARE AND MORALS

Appellant maintains the Department failed to show good cause that continuation of appellant's license would harm the public's welfare or morals — in other words, that the charge in the accusation is not supported by substantial evidence absent such showing. The single count of the accusation charges:

By reason of the following facts, there is cause for suspension or revocation of the license(s), in accordance with Section 24200 and Sections 24200(a) and (b) of the Business and Professions Code. It is further alleged that the continuance of the license 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. The facts which constitute the basis for the suspension or revocation by the Department are as follows:

On or about December 22, 2021, respondent-licensee's agent or employee, Alfonso Chino, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: beer, to S.V., a person under the age of 21 years, in violation of Business and Professions Code Section 25658(a).

(Exh. 1.)

Appellant contends:

. . . although the Department does have broad powers to protect the public welfare and morals by imposing discipline on licensees who are engaging in conduct which is likely to harm it, this power must remain linked to "situations," . . . where there is some evidence of actual harm being done to the public welfare or morals.

(ACB at p. 2.) We disagree.

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 [28 Cal.Rptr.74].)*

Therefore, when the Board examines a decision of the Department, to determine whether it is supported by substantial evidence, it leads us to consider, 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.)

Article XX, section 22 of the California Constitution authorizes the Department to take disciplinary action to protect the public:

The department shall have the power, in its discretion, to deny, suspend, or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals.

This general authority, however, does not mean that every violation must be specifically proven to be contrary to public welfare or morals. The criteria for establishing good cause for discipline has been explained as follows:

In order to establish good cause for suspension or revocation of an alcoholic beverage license due to violations of law that do not involve moral turpitude, there must be a rational relationship between the offense and the operation of the licensed business in a manner consistent with public welfare and morals or there must be evidence that the offense had an actual effect on the conduct of the licensed business.

(*H.D. Wallace & Associates, Inc. v. Dept. of Alcoholic Bev. Control* (1969) 271 Cal.App.2d 589, 593-594 [76 Cal.Rptr. 749].)

In contrast to the position appellant would have us take, previous courts have found that specific findings need not be made on whether conduct charged in an accusation is deleterious to public welfare and morals. In *Schieffelin*, the court found:

To the extent that Schieffelin argues that the Department failed to make a specific finding that its conduct was injurious to public welfare or morals, we note that **both the California Supreme Court and this court have held that a finding that a licensee has violated provisions of the Alcoholic Beverage Control Act is tantamount to a finding of injury to public welfare and morals.** (*Martin v. Alcoholic Bev. etc. Appeals Bd.* (1959) 52 Cal.2d 287, 291 [341 P.2d 296]; *Mercurio v. Dept. Alcoholic etc. Control* (1956) 144 Cal. App. 2d 626, 631 [301 P.2d 474] (*Mercurio*).

In *Mercurio*, this court held that a finding that licensees had violated a Department rule was in effect a finding that the licensees' acts were contrary to public welfare and morals because the rule itself was an articulation of acts which the Department found to be contrary to public welfare and morals. (*Ibid.*)

Similarly, the Legislature has already determined that the Alcoholic Beverage Control Act is intended “for the protection of the safety, welfare, health, peace, and morals of the people of the State” and that the act involves “in the highest degree” the “moral well-being” of the state and its people. (See Business and Professions Code Section 23001.)^[fn.]

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2005), 128 Cal.App.4th 1195, 1217 [27 Cal.Rptr.3d 766] (*Schieffelin*), emphasis added.)

In the case before us, the ALJ found as follows:

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 December 22, 2021, the Respondent's employee, Alfonso Chino, inside the Licensed Premises, sold an alcoholic beverage to Sivarith Vichidnak, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-11.)

(Decision, at p. 3.) We have reviewed the entire record and it supports the ALJ's findings and conclusions. Nothing more is required to establish that substantial evidence supports this decision.

II

LICENSEE'S RESPONSIBILITY & THE PENALTY

Appellant maintains the licensee should not be held responsible for a one-time violation consisting of a single employee's circumvention of reasonable safeguards. It argues that imputation of the knowledge and actions of an employee to the employer "dates from the 1950's when the Court of Appeal, seemingly-presuming that licenses would be held and exercised by individuals rather than corporate entities . . ." (AOB at p. 6.)

We disagree with appellant's interpretation of the cases on this subject. Both this Board and the courts have consistently found that a licensee may be held liable for the actions of his agents or employees — whether that licensee is an individual or a corporation.

The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and as a matter of general law the knowledge and acts of the employee or agent are imputable to the licensee. [Citation.]

(*Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 180 [17 Cal.Rptr. 315].)

The *Laube* court noted:

A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly.

(*Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779].)

Similarly, in *Reimel* the court stated:

[A] licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations. There is no requirement . . . that the licensee have knowledge or notice of the facts constituting its violation. [Citations.]

(*Reimel v. Alcoholic Bev. Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522 [60 Cal.Rptr. 641], internal quotations omitted.)

The doctrine of *respondeat superior* provides that an employer or principal is vicariously liable for the wrongful conduct of his or her employees or agents committed within the scope of the employment or agency. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106].) And, it is well-settled in alcoholic beverage case law that an agent or employee's on-premises knowledge and misconduct is imputed to the licensee/employer. (See *Yu v. Alcoholic Bev. Control Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Kirby v. Alcoholic Bev. Control Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291].)

Indeed, earlier in *Laube*, the court observed that:

[T]he element of the licensee's knowledge of illegal and improper activity on his or her premises . . . may be either actual knowledge or constructive knowledge imputed to the licensee from the knowledge of his or her employees.

(*Laube, supra*, 2 Cal.App.4th at p. 367, citing *Fromberg v. Dept. of Alcoholic Bev. Control* (1959) 169 Cal.App.2d 230, 233-234 [337 P.2d 123].)

In short, there is no corporate exception to the doctrine of *respondeat superior* such as appellant urges us to create.

Similarly, we reject appellant's implication that the penalty in this matter somehow stems from a "refusal to credit licensee preventative measures" and its urging to disregard the holdings in previous cases such as *Reimel*. (AOB at p. 7; ACB at pp. 2-3.) The all-stayed penalty of ten days' suspension in this matter is significantly mitigated from the standard penalty of 15 days' suspension, and comports with the guidelines in rule 144. (Cal. Code Regs., tit. 4, § 144.)

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].)

Appellant's 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, and, if it is reasonable, the Board's inquiry ends there. The Board is simply not empowered to reach a contrary conclusion from that of the Department — and substitute its own judgment — when, as here, the penalty is reasonable and the decision is supported by substantial evidence.

ORDER

The decision of the Department is affirmed.³

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

³ This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 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:**

HMZ INC.
ARCO AM/PM
1753 TRUMAN ST.
SAN FERNANDO, CA 91340-3143

OFF-SALE BEER AND WINE - LICENSE

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

VAN NUYS DISTRICT OFFICE

File: 20-463177

Reg: 22092564

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 April 28, 2023. 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.

Sacramento, California

Dated: May 2, 2023



Matthew D. Botting
General Counsel

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Alcoholic Beverage Control
Office of Legal Services

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

IN THE MATTER OF THE ACCUSATION AGAINST:

HMZ Inc.	}	File: 20-463177
dba Arco AM/PM	}	
1753 Truman St.	}	Reg.: 22092564
San Fernando, California 91340-3143	}	
	}	License Type: 20
Respondent	}	
	}	Word Count: 8,000
	}	
	}	Reporter:
	}	Alyssa Fulmer
	}	Kennedy Court Reporters
	}	
<u>Off-Sale Beer and Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at by videoconference on January 24, 2023.

Alanna K. Ormiston and Erica M. Navarro, Attorney, represented the Department of Alcoholic Beverage Control.

Adam N. Koslin, attorney-at-law, represented respondent HMZ Inc.

The Department seeks to discipline the Respondent's license on the grounds that, on or about December 22, 2021, the Respondent, through its agent or employee, sold, furnished, or gave alcoholic beverages to Sivarith Vichidnak, 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 January 24, 2023.

FINDINGS OF FACT

1. The Department filed the accusation on September 3, 2022.

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 Respondent for the above-described location on February 21, 2008 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. Sivarith Vichidnak was born on August 7, 2004. On December 22, 2021, he participated in a minor decoy operation conducted by the San Fernando Police Department. On that date he was 17 years old.
5. Vichidnak appeared and testified at the hearing. On December 22, 2022, he was 5'5" tall and weighed 120 pounds. He wore a red shirt with stripes, a black jacket, black pants, and black shoes. His hair was short on the sides and longer on top. He wore a mask while inside the Licensed Premises. (Exhibits 2 & 4.) At the hearing his appearance was the same, except that he was five pounds heavier and his hair was shorter.
6. On December 22, 2021, Vichidnak entered the Licensed Premises. He selected a can of Bud Light beer and took it to the register. The clerk, Alfonso Chino, scanned the beer and asked to see his ID. Vichidnak handed his California driver license (exhibit 3) to Chino, who swiped it through the register. The register beeped. Chino tried to swipe the ID a couple more times before entering something into the register. Vichidnak paid for the beer, Chino bagged the beer, then Vichidnak exited.
7. Vichidnak re-entered the Licensed Premises with various officers. Sgt. Cervantes contacted Chino, identified himself, and explained the violation. Sgt. Chino asked Vichidnak to identify the person who sold him the alcohol. He pointed to Chino and said that he did. A photo of the two of them was taken (exhibit 4), after which Chino was cited.
8. Chino told Sgt. Cervantes that he had swiped Vichidnak's ID, but the register would not authorize the sale. Accordingly, he manually entered Vichidnak's date of birth. Sgt. Cervantes determined that Chino made an error when he entered the year, typing 2024 instead of 2004. The register allowed the sale to proceed. Sgt. Cervantes could not determine how the register allowed the sale to occur with a birth date which was a few years into the future.
9. December 22, 2021 was one of the first times that Vichidnak acted as a decoy.
10. A number of signs are posted inside the Licensed Premises indicating that they check ID. These signs are located on the cooler door and on the counter. Sgt. Cervantes testified that Chino was cooperative throughout their investigation. He also testified that this was one of the better locations in the City of San Fernando.

11. Vichidnak's appearance was consistent with his actual age, 17 years old. Based on his overall appearance, i.e., his physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and conduct in the Licensed Premises on December 22, 2021, Vichidnak displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to Chino.

12. 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 December 22, 2021, the Respondent's employee, Alfonso Chino, inside the Licensed Premises, sold an alcoholic beverage to Sivarith Vichidnak, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-11.)

PENALTY

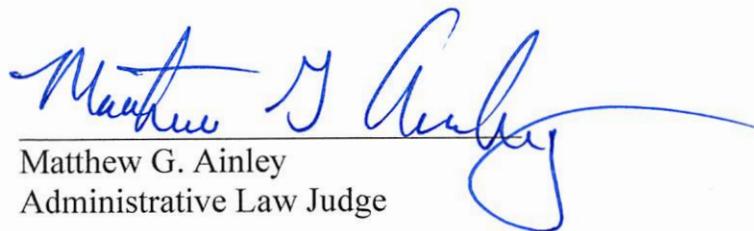
The Department requested that the Respondent's license be suspended for 15 days, with all 15 days stayed in light of the Respondent's lengthy discipline-free history. The Respondent emphasized that the discipline-free history is a testament to how well its efforts (e.g., signs, age verification as part of point of sale process) have worked. It also focused on the fact that this sale was the result of a mistake which is unlikely to be

repeated. As such, the Respondent recommended a minimal penalty, if any. The penalty recommended herein complies with rule 144.²

ORDER

The Respondent's off-sale beer and wine license is hereby suspended for 10 days, with execution of all 10 days of the suspension stayed, upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within one year from the effective date of this decision; that should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in his or her discretion and without further hearing, vacate this stay order and reimpose the stayed penalty; and that should no such determination be made, the stay shall become permanent.

Dated: March 21, 2023


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date: <u>04/28/23</u> _____

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