

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

AB-9989

File: 48-557062; Reg: 23092870

KAREN JOYCE MIER,
dba Club 2 Me
4738 J Street
Sacramento, CA 95819,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: February 9, 2024
Sacramento, CA/Videoconference

ISSUED FEBRUARY 14, 2024

Appearances: *Appellant:* Ron Peters, of Law Office of Ron Peters, as counsel
for Karen Joyce Mier,

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

OPINION

Karen Joyce Mier, doing business as Club 2 Me (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ sustaining an accusation against her for selling alcohol to a person under the age of 21, in violation of Business and Professions Code² section 25658(a), and for permitting a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein,

¹ The decision of the Department under Government Code section 11517(c), dated September 28, 2023, is set forth in the appendix.

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

in violation of section 25665. Despite the violations, the Department declined to impose a penalty against appellant's license.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on November 9, 2015. There is no prior record of departmental discipline against appellant's license.

On January 9, 2023, the Department filed a four-count accusation against appellant charging:

Count One

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, at said premises, sold, furnished, gave, or caused to be sold, furnished, or given, an alcoholic beverage, to wit: vodka, to Maren Hanchen, an individual under the age of 21 years in violation of Business and Professions Code section 25658(a),^[fn]

Count Two

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, at said premises, sold, furnished, gave, or caused to be sold, furnished, or given, an alcoholic beverage, to wit: beer, to Conner Moss, an individual under the age of 21 years in violation of section 25658(a),

Count Three

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, permitted Maren Hanchen, a person under the age of 21 years, to enter and remain in the licensed premises without lawful business therein, in violation of section 25665,

Count Four

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, permitted Conner Moss, a person under the age of 21 years, to enter and remain in the licensed premises without lawful business therein, in violation of section 25665. (Exhibit D-1.)

At the administrative hearing held on April 4, 2023, the parties offered documentary evidence and testimony. Department agents Kyle Carpenter and Robert Ronner testified

on the Department's behalf. Huey Tidwell (Tidwell), bartender at the licensed premises, testified for appellant. Evidence established that Department agents were investigating the licensed premises on August 4, 2022, after receiving an anonymous complaint of minors being served and consuming alcoholic beverages there. At approximately 9:10 p.m., two Department agents entered the licensed premises in an undercover capacity while additional agents remained outside watching the front entrance.

The licensed premises is a small venue and at the time the officers entered, there were fewer than ten people inside. After entering, the agents purchased drinks and posed as patrons. At approximately 9:20 p.m., the outside agents observed a youthful looking male, later identified as Conner Lawrence Moss (Moss), and two youthful looking females, later identified as Maren Rose Hanchen (Hanchen) and Kaitlynn Alexis Gillmore (Gillmore) enter the licensed premises. These outside agents texted this information to the agents inside the licensed premises. The agents inside saw Moss, Hanchen, and Gillmore and watched them. The three individuals stood out because most of the other patrons in the licensed premises were significantly older.

The agents observed the bartender, later identified as Tidwell, serve alcoholic beverages to Moss, Hanchen, and Gillmore. Tidwell appeared to be the only employee working that evening. On this occasion, Tidwell did not have any of the three individuals present identification.

Tidwell appeared to serve Moss a beer and served Hanchen and Gillmore mixed drinks of an unknown type. The three socialized together and after consuming their first drinks, stepped outside briefly. Upon returning, the agents witnessed Tidwell serving Moss another beer and heard the females order vodka and cranberry mixed drinks. Tidwell mixed the drinks ordered by the females and served them. After the drinks were

served, the Department agents inside the licensed premises signaled the outside agents to come inside and contact Moss, Hanchen, and Gillmore.

Agent Renner was one of the agents that entered and contacted the three individuals. Renner identified himself as law enforcement and asked Moss, Hanchen, and Gillmore for their identifications. All three handed Renner their purported California driver's licenses showing them to be over 21 years of age. Agent Renner told them he was going to confirm the validity of the licenses with the California Highway Patrol (CHP). Agent Renner was told by CHP dispatch that only Gilmore's identification appeared valid and corresponded with her. Hanchen's purported license corresponded with a 56-year-old female, and Moss' license did not correspond to any existing numbers in the CHP record system.

Since Gillmore was confirmed to be over 21 and presented valid identification, she was allowed to leave. Agent Renner confronted Moss and Hanchen about the discrepancies and expressed his belief that the licenses were fake. Both admitted that the licenses were fake and that they had ordered the purported licenses via the internet. After receiving accurate identifying information from Moss and Hanchen, Agent Renner was able to confirm their identifications via CHP dispatch. The information on the fraudulent licenses and the images correspond to Moss and Hanchen, except for the fictional dates of birth that portrayed them as being over 21 years old. Hanchen also confirmed that the mixed drinks she was served contained vodka. Both Moss and Hanchen were 20 years old on August 4, 2022.

The agent also spoke with Tidwell about the service of alcoholic beverages to Moss and Hanchen. Tidwell is the primary bartender of the licensed premises, and he

has also served as its manager since 2011. Tidwell told the agents that he believed he had checked Moss and Hanchen for identification.

Tidwell testified at the hearing that he recognized Moss and Hanchen when they came into the licensed premises on August 4, 2022, because they had recently been in on prior occasions. Moss, in particular, was a regular because Tidwell had multiple conversations with him and was aware he worked in a nearby restaurant. Tidwell was also aware that Moss and Hanchen were in a dating relationship.

The licensed premises scans any identification presented by new patrons and uses a computer system to capture and store information from prior checks. Appellant introduced evidence that information on Moss and Hanchen had been scanned and captured after the presentation of purported California driver's licenses beginning on June 29, 2022. The identifications they presented showed them to be over 21 years of age. Tidwell believed Moss and Hanchen's identifications were genuine and the identifications presented also populated their computer system with typical California driver's license identifying information after scanning. The information scanned into the computer system from the identifications they presented also corresponded to the information on the fraudulent identifications seized by Department agents from Moss and Hanchen on August 4, 2022.

The identifications used by Moss and Hanchen appear to be alarmingly high-quality reproductions of authentic, state of California issued driver's licenses. In addition to appearing authentic in terms of fonts, color saturation and graphics, both identifications also have detailed holographic and texture features that mimic genuine California driver's license identifications. The identifications also populated identifying information in the

licensed premises' computer system after scanning when they were presented by Moss and Hanchen on prior occasions (exhs. L-1, L-2, and L-3).

On April 26, 2023, the administrative law judge (ALJ) issued a proposed decision recommending that the accusation be dismissed. The ALJ found that:

While the Department has met its burden of proof that there were violations of sections 25658(a) and 25665 as alleged in the four counts of the Accusation, the Respondent has established a complete defense under section 25660. Specifically, the Respondent has established that Tidwell made a sufficient inquiry as to whether Moss's and Hanchen's identifications were bona fide evidence of majority and identity such that Tidwell's reliance upon them on August 4, 2022, was objectively reasonable. (Findings of Fact ¶¶ 1-9)

(Proposed Decision, p. 7, ¶ 14.)

On May 10, 2023, the Director of the Department notified all parties and requested comments on whether it should adopt or reject the ALJ's proposed decision. Attorneys for the Department responded on May 19, 2023 urging the Department to reject the proposed decision. There is no indication from the record that appellant responded to the Department's request for comments.

On June 12, 2023, the Department declined to adopt the proposed decision. The Department issued a notice pursuant to Government Code section 11517(c)(2)(E)(i) requesting written argument from the parties, and asked the party to address two specific questions:

- 1) Is a prior showing of a legitimate fake ID to purchase alcoholic beverages weeks prior to the transaction upon which the accusation is based enough to meet the burden established pursuant to 25660?
- 2) If the above is no, should evidence of a prior showing of a legitimate ID and proof of clerk's knowledge of the prior showing completely mitigate the penalty of the violation?

Appellant submitted written argument on September 13, 2023, while the Department submitted its brief on September 14, 2023.

On September 28, 2023, the Department issued its decision under Government Code section 11517(c) sustaining the four counts of the accusation. The Department found that appellant failed to satisfy its burden of proof to establish a defense under section 25660 because “there was no demand and inspection in connection with the transaction for which the violations occurred.” (Conclusions of Law, ¶ 20.) Nevertheless, the Department declined to impose a suspension against appellant’s license in consideration of “the totality of circumstances and in the interest of justice.” (Decision, at p. 10.)

Appellant filed a timely appeal contending the Department erred in rejecting her section 25660 defense.

DISCUSSION

Appellant contends the Department erred in rejecting their section 25660 defense. (Appellant’s Opening Brief (AOB), at pp. 3-4.) Specifically, appellant argues that Tidwell reasonably relied on the minors’ fake identifications. (*Ibid.*) Appellant further contends that there was no “administrative, statutory or case law that specifically addresses the facts presented in this case.” (*Id.* at p. 4.)

In its Reply Brief, the Department argues that appellant failed to meet her burden to establish a section 25660 defense. (Department’s Reply Brief (“DRB”), at p. 7.) Most pertinently, the Department contends that Tidwell did not inspect the false identifications “at or about the time of the sale” in order to satisfy section 25660. (*Ibid.* at p. 8.)

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-issued] 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*).)

Nevertheless, “it cannot be construed to reach an absurd and unjust result.” (*Masani, supra* at p. 1445.)

In *Farah v. Alcoholic Beverage Control Appeals Board* (1958) 159 Cal.App.2d 335, 338 (*Farah*), the court of appeal determined whether a licensee could establish a defense under section 25660 when it sold an alcoholic beverage to a 19-year-old patron, but relied on a false identification produced by the patron two or three weeks prior to the sale in question. In determining that the licensee did not establish a defense, the court cited the language of section 25660, which required that a licensee “demanded and was shown [identification], *immediately prior* to furnishing any alcoholic beverage to a person under the age of 21 years of age” (*Id.* at p. 337 [emphasis in original].) The court held that being shown identification “two or three weeks before the sale is not ‘immediately prior’ to the sale in question.” (*Id.* at p. 339.)

However, as the Department points out, section 25660 was amended in 1959 and the “immediately prior” language was changed. The *Lacabanne* court interpreted the amended section 25660 to require that the identification be shown “at or about the time of

the sale.” (*Lacabanne, supra* at p. 189.) *Lacabanne* itself involved the sale to a minor who was not asked for identification while purchasing alcohol but showed a false identification to gain entrance to the licensed premises, which only permitted individuals over the age of 21 years old. (*Id.* at p. 185-86.) The court held in *Lacabanne* that:

[W]here the minor patron has exhibited to one employee on entry, and at all times thereafter has on his person, what is found to be bona fide evidence of majority and identity, the licensee may assert reliance on the original demand and exhibition in selling, furnishing or permitting the consumption of an alcoholic beverage by that minor following that entry; and that such defense is not lost because a second employee pursued an inadequate inquiry before serving the minor.

(*Id.* at p. 193.) In short, there is scant legal guidance to instruct on any temporal limits under section 25660 between the time a purported government identification is shown and the sale of an alcoholic beverage.

Additionally, 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 rejected appellant’s section 25660 defense because “the most recent inspection happened over a month prior to the sale here, there was no demand and inspection in connection with the transaction for which the violations

occurred.” (Conclusions of Law, ¶ 20.) The evidence established that Moss and Hanchen’s false identifications had been scanned into appellant’s system on June 29, 2022. (Findings of Fact, ¶ 8.) Tidwell recognized Moss and Hanchen when they came in on August 4, 2022, because they had recently been in on prior occasions. (*Ibid.*) Moss, in particular, was a regular because Tidwell had multiple conversations with him and was aware he worked in a nearby restaurant. (*Ibid.*) In regards the false identifications, the Department found:

In this matter, the false driver licenses had the basic required objective elements set forth in section 25660. They did not, on their face, appear to be obviously fraudulent or counterfeit driver licenses. Tidwell relied on his own previous inspections of them when he later sold alcoholic beverages to Moss and Hanchen on August 4, 2022, without again reviewing them.^[fn] Based on the evidence presented, Tidwell reasonably relied on Moss’ and Hanchen’s false driver licenses as proof of their age on prior occasions when he sold alcoholic beverages to them.

(Conclusions of Law, ¶ 20.)

Based on the above, the Department’s decision must be reversed. Its finding that the inspection of Moss and Hanchen’s identifications was not “at or about the time of the sale” is based solely on the amount of days between June 29, 2022 and August 4, 2022. The decision ignores every other piece of evidence admitted in the case, namely, that: 1) Tidwell had numerous interactions with both Moss and Hanchen between June 29, 2022 and August 4, 2022, 2) Moss, especially was a regular customer that Tidwell particularly remembered because he worked at a nearby restaurant, and 3) Tidwell was so familiar with Moss and Hanchen that he knew they were in a dating relationship.

Further, there is no evidence in the record that a second inspection closer in time to the sale would have revealed that Moss and Hanchen’s identifications were false. This is especially true when Moss and Hanchen could have shown the same credible false

identifications that Tidwell reasonably relied on. (See *Lacabanne, supra* at p. 191 [“This is particularly true in this case where the patron possessed, had shown, and could have again exhibited a driver's license ... to show he was over the age of 21 years.”].) Given this fact, in addition to the quality of the false identifications and Tidwell’s familiarity with both Moss and Hanchen, requiring a second inspection closer in time to the sale would lead to an absurd and unjust result.

ORDER

The decision of the Department is reversed.³

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

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

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 *et seq.* 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:**

Karen Joyce Mier
DBA: Club 2 Me
4738 J Street
Sacramento, California 95819

Licensee(s).

File No.: 48-557062

Reg. No.: 23092870

The above-entitled matter having regularly come before the Department on September 28, 2023, for decision under Government Code Section 11517(c) and the Department having considered its entire record, including the transcript of the video hearing held on April 4, 2023, before Administrative Law Judge Alberto Roldan, and the written argument of the Department (no written argument of Respondent having been received), and good cause appearing, the following decision is hereby adopted:

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

Ronald Peters, Attorney, represented the respondent, Karen Joyce Mier (Respondent) at hearing. Upon review, the Department received notice that attorney C.W.H. "Kip" Solinsky was assisting Mr. Peters in this matter.

The Department seeks to discipline the Respondent's license in a four count Accusation on the grounds that:

Count One

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, at said premises, sold, furnished, gave, or caused to be sold, furnished, or given, an alcoholic beverage, to wit: vodka, to Maren Hanchen, an individual under the age of 21 years in violation of Business and Professions Code section 25658(a),¹

Count Two

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, at said premises, sold, furnished, gave, or caused to be sold, furnished, or given, an alcoholic

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

Karen Joyce Mier
DBA: Club 2 Me
File: 48-557062
Registration: 23092870
Page 2

beverage, to wit: beer, to Conner Moss, an individual under the age of 21 years in violation of section 25658(a),

Count Three

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, permitted Maren Hanchen, a person under the age of 21 years, to enter and remain in the licensed premises without lawful business therein, in violation of section 25665,

Count Four

On or about August 4, 2022, the Respondent, through their agent or employee, Huey Tidwell, permitted Conner Moss, a person under the age of 21 years, to enter and remain in the licensed premises without lawful business therein, in violation of section 25665. (Exhibit D-1)

As to each count, the Department further alleged that there is cause for suspension or revocation of the license of the Respondent in accordance with section 24200 and sections 24200(a) and (b). The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution, and sections 24200(a) and (b). (Exhibit D-1)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued on April 4, 2023. Additional evidence stipulated to by both parties (Exhibit L-3) was received on April 7, 2023, when the matter was submitted for decision.

FINDINGS OF FACT

1. The Department filed the Accusation on January 9, 2023. On November 9, 2015, the Department issued the Respondent its most recent type 48, on-sale general public premises license for the above-described location (the Licensed Premises). (Exhibit D-1) There is no record of prior Department discipline against the Respondent's license.
2. On August 4, 2022, Department agents were investigating the Licensed Premises after the Department had received an anonymous complaint of minors being served and consuming alcoholic beverages there. At approximately 9:10 p.m., two Department agents entered the Licensed Premises in an undercover capacity while additional agents remained outside watching the front entrance. The Licensed Premises is a small venue and at the time the officers entered, there were fewer than 10 people inside. After entering, the agents purchased drinks and posed as patrons. At approximately 9:20 p.m., the outside agents observed a youthful looking male and two youthful looking females enter the Licensed Premises. The two agents who were inside of the Licensed Premises were texted this information. They saw the three and began to watch them. They stood out because most of the other patrons in the Licensed Premises were significantly older.

3. The agents inside the Licensed Premises saw the three individuals served drinks by the bartender, an individual who was later identified as Huey Tidwell (Tidwell). Tidwell appeared to be the only employee working that evening. On this occasion, Tidwell did not have the three individuals present identification. The male was served what appeared to be a beer and the two females were served mixed drinks of an unknown type. They socialized together and after consuming their first drinks, they stepped outside briefly. Upon returning, the agents saw the male served what appeared to be another beer by Tidwell and they heard the females order vodka and cranberry mixed drinks from Tidwell. They then saw Tidwell mix the drinks and serve them to the females. After the second round of drinks was served by Tidwell, the Department agents in the interior signaled the outside agents to come inside and contact the male and the two females.

4. Department Agent R. Renner (Renner) was one of the agents that entered and contacted the three individuals. Renner was in a tactical vest that identified him as a law enforcement officer, and he identified himself as a Department agent when he first spoke with the three individuals. The individuals were later identified as Maren Rose Hanchen (Hanchen), Kaitlynn Alexis Gillmore (Gillmore), and Conner Lawrence Moss (Moss). Renner asked all three for their identification. All three handed him purported California driver's licenses that showed them to be over 21 years of age. Renner told them he was going to confirm the validity of the licenses with the California Highway Patrol (CHP) and check if any of them had outstanding warrants. Renner did so and was advised by CHP dispatch that only Gillmore's identification appeared valid and corresponded with her. Hanchen's purported license corresponded with a 56-year-old female and Moss's license did not correspond to any existing numbers in the CHP record system.

5. Gillmore, after she was confirmed to be over 21 and to have presented a valid identification, was allowed to leave. Renner confronted Moss and Hanchen about the discrepancies and expressed his belief that the licenses were fake. Both admitted that the licenses were fake and that they had ordered the purported licenses via the internet. After receiving accurate identifying information from Moss and Hanchen, Renner was able to confirm their identifications via CHP dispatch. The information on the fraudulent licenses and the images corresponded to Moss and Hanchen, except for the fictional dates of birth that portrayed them as being over 21 on August 4, 2022. Hanchen also confirmed that the mixed drinks she was served contained vodka.

6. Hanchen's fraudulent identification showed her date of birth as June 29, 1999, when her actual date of birth is June 29, 2002. This made her 20 years old on August 4, 2022. Moss's fraudulent identification showed his date of birth as February 14, 2000, when his actual date of birth is February 14, 2002. This made him 20 years old on August 4, 2022. At hearing, certified Department of Motor Vehicle (DMV) documents showing the correct age and images of Hanchen and Moss were received in evidence. (Exhibit D-2) The images corresponded to the individuals that were detained as Hanchen and Moss. Hanchen and Moss were also photographed at the scene prior to being issued citations. (Exhibits D-3 and D-4)

7. Agents spoke with Tidwell about the service of alcoholic beverages to Moss and Hanchen. Tidwell is the primary bartender of the Licensed Premises, and he has also served as its manager

since 2011. Tidwell told the agents that he believed he had checked them for identification. The Licensed Premises scans any identification presented by new patrons and uses a computer system to capture and store information from prior checks. Tidwell did not assert that the drinks served to Hanchen and Moss were non-alcoholic, even though he was made aware that the investigation by the agents involved whether Hanchen and Moss, as minors, were served alcoholic beverages.

8. On August 4, 2022, Tidwell was given an opportunity to show the agents that Moss's identification was in the system as having been checked on at least one prior occasion, but he was not given an opportunity to show that Hanchen's identification had been checked previously, as well. Tidwell testified in this matter. Tidwell recognized Moss and Hanchen when they came in on August 4, 2022, because they had recently been in on prior occasions. Moss, in particular, was a regular because Tidwell had multiple conversations with him and was aware he worked in a nearby restaurant. Tidwell was also aware that Moss and Hanchen were in a dating relationship. Tidwell also testified to printouts of the data capture system used by the Licensed Premises. The Respondent introduced into evidence that information on Moss and Hanchen had been scanned and captured after the presentation of purported California driver's licenses beginning on June 29, 2022. The identifications they presented showed them to be over 21 years of age. Tidwell believed these identifications to be genuine and the identifications presented also populated their computer system with typical California driver's license identifying information, after scanning. The information scanned into the computer system from the identifications they presented also corresponded to the information on the fraudulent identifications seized by Department agents from Moss and Hanchen on August 4, 2022. (Exhibits L-1, L-2 and L-3)

9. The identifications recovered by the Department agents on August 4, 2022, appear to be alarmingly high-quality reproductions of authentic, state of California issued driver's licenses. In addition to appearing authentic in terms of fonts, color saturation and graphics, both identifications also have detailed holographic and texture features that mimic genuine California driver's license identifications. As noted earlier, the identifications also populated identifying information in the Licensed Premises' computer system after scanning when they were presented by Moss and Hanchen on prior occasions. (Exhibits L-1, L-2 and L-3)

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.

Karen Joyce Mier
DBA: Club 2 Me
File: 48-557062
Registration: 23092870
Page 5

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. Section 25660 provides that:

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

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

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

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

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

5. Section 25665 provides that: Any licensee under an on-sale license issued for public premises, as defined in Section 23039, who permits a person under the age of 21 years to enter and remain in the licensed premises without lawful business therein is guilty of a misdemeanor. Any person under the age of 21 years who enters and remains in the licensed public premises without lawful business therein is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200), no part of which shall be suspended.

6. Cause for suspension or revocation of the Respondent's license does exist under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b). The Department has established that on August 4, 2022, the Respondent's employee, Tidwell, inside the Licensed Premises, sold alcoholic beverages to Moss and Hanchen, persons under the age of 21, in violation of Business and Professions Code section 25658(a) as alleged in Counts 1 and 2 of the Accusation. The Department has also established that on August 4, 2022, the Respondent's employee, Tidwell, permitted Moss and Hanchen, persons under the age of 21 years, to enter and remain in the Licensed Premises without lawful business therein, in violation of section 25665 as alleged in Counts 3 and 4 of the Accusation. (Findings of Fact ¶¶ 1-9)

7. The evidence established that on August 4, 2022, Moss and Hanchen were 20 years old, and they purchased a beer and a vodka mixed drink, both alcoholic beverages, in the Licensed Premises, a location subject to the responsibilities of an establishment holding a type 48, on-sale

general public premises license. Because of the nature of this license, Moss and Hanchen were not permitted to be in the Licensed Premises as patrons. Moss and Hanchen entered and remained for an extended period and purchased two rounds of alcoholic beverages from the Respondent's employee, Tidwell. On that date, Tidwell did not ask for identification, because he recognized them and relied on their previous presentation of identification. On multiple prior occasions in the weeks prior to the investigation, Moss and Hanchen presented, in the Licensed Premises, the fraudulent identifications that were seized from them on August 4, 2022. Moss and Hanchen used fraudulent California driver's license identifications with fake dates of birth, rather than their own identifications. After looking at the identifications presented by Moss and Hanchen and scanning the identifying information from the purported licenses into the Licensed Premises database, Tidwell subjectively concluded that Moss and Hanchen were over 21 years old, as stated on the fake identifications, even though Moss and Hanchen were both actually 20 years old. Moss and Hanchen appeared consistent with their actual chronological ages, but their appearance was also not inconsistent with the ages on the purported licenses. (Findings of Fact ¶¶ 1-9)

8. The Respondent has offered testimony and evidence in support of the assertion that Tidwell reasonably relied on the purported California driver's licenses presented by Moss and Hanchen that showed them to be over 21 years of age and that the provisions of section 25660 should apply as a defense to all four counts in the Accusation. Section 25660 provides a defense to any person who demanded, was shown, and acted in reasonable reliance upon bona fide evidence of majority in connection with transactions prohibited by section 25665 (permitting a minor to enter and remain in a public premises), section 25658(a) (sale of alcohol to a minor), or section 25658(b) (permitting a minor to consume alcohol in an on-sale premises).

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

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

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

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

10. In this matter, it is undisputed that the identifications presented by Moss and Hanchen depicted their images and that the age information on the identifications depicted them as being over the age of 21. It is also undisputed that the identifications were fabrications and were not a “document issued by a federal, state, county, or municipal government.” The remaining questions are whether the identifications were demanded, shown and relied upon in connection with one of the transactions specified in section 25660, and whether the identifications presented by Moss and Hanchen were something that Tidwell could have reasonably relied on because the identifications *appeared* to be bona fide government-issued identifications. (Findings of Fact ¶¶ 1-9)

11. Tidwell requested and was shown identifications by Moss and Hanchen in the weeks prior to August 4, 2022, and he documented his checking of the identifications they presented so there was a record of his review. Tidwell looked at the identifications. Since Department agents recovered the purported licenses used, there is direct evidence that these licenses were effective counterfeits that were very convincing. Further, he scanned the purported licenses into the Licensed Premises register in making his inquiry as to whether Moss and Hanchen were older than 21. The purported licenses were programmed with fraudulent information that allowed them to mimic the ability of a genuine California Driver’s License to populate a computer database with identifying information. (Findings of Fact ¶¶ 1-9)

12. Part of the analysis required under the law requires Tidwell to determine the bona fides of the identifications. Tidwell credibly testified that he subjectively concluded that Moss and Hanchen were over 21 because of the purported licenses they presented during their prior visits. His conclusion was based on his review of the identification features and a conclusion that they were Moss’s and Hanchen’s bona fide California driver’s licenses. (Findings of Fact ¶¶ 4-10)

13. As noted above, the purported licenses were quite sophisticated. Tidwell subjectively relied on the identifications as real, and it was objectively reasonable for him to do so. The purported licenses looked genuine to him because, objectively, they looked and functioned like real California driver’s licenses. Under the circumstances of this case, Tidwell took the necessary actions to allow the application of the defense under section 25660 during the previous examination of the presented licenses. (Findings of Fact ¶¶ 1-9)

14. In 1959, section 25660 was amended to remove a requirement that the checking of the identification occur contemporaneously with or immediately prior to the unlawful sale at issue for a defense under section 25660 to apply. The California Attorney General, in its opinion at 36 Ops. Cal. Atty. Gen. 124 (1960), opined that section 25660 no longer required that the checking of a bona fide identification occur immediately prior to the selling or furnishing of the alcoholic beverage at issue for the defense to apply. That conclusion was based on the legislature’s amendment deleting that very time-based requirement, “immediately prior”, from the statute’s text. The Attorney General’s opinion concluded by stating: “Thus, the evidence of majority and identity need no longer to be shown *immediately prior* to the alleged offense to constitute a valid defense.” (*Id.* at p. 126.)

15. As to the weight or significance to be given a formal opinion of the Attorney General, in *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal. App. 4th 91, 105, the court stated:

While not binding, an opinion of the Attorney General is entitled to considerable weight. (*Ennabe v. Manosa* (2014) 58 Cal.4th 697, 716, fn. 14 [168 Cal. Rptr. 3d 440, 319 P.3d 201].) Absent controlling authority, an Attorney General opinion as to the construction of a statute ““is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of [the statute] and would have taken corrective action if it disagreed with that construction.”” (*Ibid.*; see *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1013 [90 Cal. Rptr. 2d 236, 987 P.2d 705]; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 103–104 [61 Cal. Rptr. 2d 134, 931 P.2d 312].)

16. The Attorney General Opinion was discussed by the Court of Appeal in *Lacabanne Properties, Inc. v. Dept. of Alcoholic Beverage Control* (1968) 261 Cal.App.2d 181. That case involved the sale of alcohol to a minor in an on-sale premises. The issue was whether the section 25660 defense applies when a bartender relies upon the demand and inspection of identification by a doorperson at the time the customer enters the premises. In considering this issue, the Court stated (at pp. 189-190), “The cases interpreting section 25660, Business and Professions Code, have generally set forth three tests by which to measure the conduct of the licensee in determining whether there has been a compliance with the provisions of the section. [¶] First, the licensee who makes a diligent inspection of the documentary evidence of majority and identity offered by the customer **at or about the time of the sale** is entitled to rely upon its apparent genuineness. [Citations.] [¶] Second, a licensee must exercise the caution which would be shown by a reasonable and prudent person in the same or similar circumstances. [Citation.] [¶] Third, a licensee must make the inspection of the documentary evidence and his appraisal of the physical appearance of the customer ‘immediately prior’ to the sale. [Citation.]” (Quoting from *Farah v. Alcoholic Beverage etc. Appeals Board*, (1958) 59 Cal.App.2d 335, 339; emphasis added.) With respect to the Attorney General Opinion, the Court observed that, “The opinion does not discuss whether the use of the phrase ‘in any transaction etc.’ requires the licensee to prove that the evidence was demanded and shown in connection with the particular transaction which is the basis of the proceedings against him.” (*Lacabanne, supra*, 261 Cal.App.2d 181, 190.)

17. In considering what may constitute “the transaction” for purposes of section 25660, the Court held that, “The fact that permitting the entry and permitting the consumption may be separate offenses (see *Harris v. Alcoholic Beverage etc. Appeals Board, supra*, 197 Cal.App.2d 182, 187) does not necessarily mean that they are separate transactions when, as here, the entry is immediately followed by the sale, furnishing and consumption of the alcoholic beverage. If there is no duty to make a second demand before serving the minor, the fact that the second employee made an inadequate inquiry should not defeat the right of the licensee to rely on the original determination that the patron had shown the evidence required by law.” (*Id.*, at p. 191.)

18. In *Lacabanne*, the Court essentially determined that “transaction” means more than an individual sale or service of alcohol and can encompass the totality of the time during which a

minor may be inside the licensed premises and interacting with the licensee and employees or agents. This is a significant consideration here for two reasons. First, the Court considered that the “any transaction” language of the statute has continuing relevance and application notwithstanding the amendment removing the “immediately prior to” requirement. Second, it noted that when looking at what reasonably constitutes the “transaction,” there must be some rational temporal nexus to the evaluation of identification and the actual sale or service of alcohol (i.e., that it occurred “at or about the time” of the sale or furnishing of alcohol).

19. The ABC Appeals Board addressed a similar factual situation as that presented in the instant case, albeit in connection with an off-sale transaction, in *7 Eleven, Inc. v. Department of Alcoholic Beverage Control* (2011) AB-9081, where the false identification was displayed by the minor on prior occasions at the involved licensed premises. It concluded a defense under section 25660 could be based upon an inspection of a false identification that was done on a date or dates prior to the date of the violation at issue. While Appeals Board opinions are not precedential, they can provide guidance in factually similar cases. In holding that the section 25660 defense was established, the Appeals Board concluded by observing that, “Having found that the clerk reasonably relied on the false identification on multiple prior occasions, and under the facts in this case, where the minor was memorable and well-known to appellants, and the actual fake ID was available for examination, we believe a defense was established.” It is the Department’s position that, while the end result in that case may have been appropriate (as explained further below), the conclusion that the affirmative defense had been established is contrary to the plain language of section 25660 and the rationale of the Court of Appeal in *Lacabanne*.

20. In this matter, the false driver licenses had the basic required objective elements set forth in section 25660. They did not, on their face, appear to be obviously fraudulent or counterfeit driver licenses. Tidwell relied on his own previous inspections of them when he later sold alcoholic beverages to Moss and Hanchen on August 4, 2022, without again reviewing them.⁵ Based on the evidence presented, Tidwell reasonably relied on Moss’ and Hanchen’s false driver licenses as proof of their age on prior occasions when he sold alcoholic beverages to them. However, because the most recent inspection happened over a month prior to the sale here, there was no demand and inspection in connection with the transaction for which the violations occurred. Having failed to establish one of the three tests identified by the *Lacabanne* Court required for the affirmative defense to apply, respondent has failed to satisfy its burden of proof as to such defense.

21. Notwithstanding the failure to establish an affirmative defense, it is still appropriate here to determine whether any discipline, or what level of discipline, is warranted when considering the totality of the circumstances. In cases such as this in which it is asserted that there was a reasonable inspection of a bona fide identification on prior occasions, if a licensee presents

⁵ In this instance, part of Tidwell’s reliance was based upon respondent’s use of an electronic scanner to help check identifications but possibly also under a mistaken belief that the scanner could determine the authenticity of the identification as opposed to merely reading what was programmed on the identification’s magnetic strip.

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Page 10

sufficient evidence to show that it was reasonable to believe the minor was in fact over the age of 21 based upon those prior inspections, it may be more appropriate, depending upon all of the circumstances, to impose a substantially mitigated level of discipline (if any at all). In the instant case, upon consideration of the totality of circumstances, the respondent did establish that the minors were well-known customers and were recognized by the Tidwell regarding the sale in question, and the minors had good quality fake identifications that the licensee had inspected on multiple prior occasions. Had the licensee inspected the identifications on this occasion, it would have been reasonable for him to have relied upon them when making the sale. In addition, the Respondent has been licensed without prior discipline for almost seven (7) years at the time of the violations, which is worthy of mitigation itself.

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

ORDER

Counts 1 through 4 of the accusation are sustained. However, considering the totality of circumstances and in the interest of justice, no penalty is imposed.

Sacramento, California

Dated: September 28, 2023



Joseph McCullough
Director

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005 or visit its website at www.abcab.ca.gov.