

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

AB-9994

File: 47-551327; Reg: 23093065

KOIN ENTERPRISES, INC.,
dba Octave 18
7241 Orangethorpe Avenue
Buena Park, CA 90621-3311,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Hubel

Appeals Board Hearing: April 12, 2024
Sacramento, CA/Videoconference

ISSUED APRIL 16, 2024

Appearances: *Appellant:* John Gulino, of Gulino Law Office, as counsel for Koin Enterprises, Inc.,

Respondent: Trisha Pal, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Koin Enterprises, Inc., doing business as Octave 18 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking its license, with revocation stayed for three years, upon the condition that no cause for disciplinary action occurs during the stay. Appellant's license was also suspended for 20 days, and the following condition was imposed on its license:

No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise

¹ The decision of the Department, dated November 4, 2023, is set forth in the appendix.

spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitously or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers.

The Department found that appellant permitted an individual to solicit or encourage others to buy her drinks in the licensed premises, in violation of California Business and Professions Code² section 24200.5(b) and employed or knowingly permitted an individual to loiter in or about the licensed premises for the purpose of begging or soliciting patrons or customers in such premises to purchase alcoholic beverages for the individual in violation of section 25657(b).³

I. FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general eating place license was issued on January 23, 2015. There is no prior record of departmental discipline against the license.

On March 22, 2023, the Department filed a nine-count accusation against appellant. The Department filed a first amended accusation on August 10, 2023.

Oral evidence, documentary evidence, and evidence by oral stipulation on the record were received at the administrative hearing held on August 23, 2023. Buena Park Police Department (BPPD) Sergeant⁴ Connor Lee, and Department agents Duc Hoang and Eric Gray testified for the Department. Appellant did not present any witnesses.

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

³ The Department's accusation included seven other counts alleging various violations of the Alcoholic Beverage Control act which were all dismissed in the decision.

⁴ Sergeant Lee is referred to as Corporal Lee in the decision, which was his rank at the time of the investigation. We refer to Sergeant Lee by his current rank.

A. March 4, 2022

On March 4, 2022, Department Agent Hoang and Sergeant Lee, along with another BPPD officer, entered the licensed premises in an undercover capacity to conduct an investigation based on complaints of alleged violations of drink solicitation and narcotics activities. The licensed premises consists of approximately 20-30 various sized private karaoke rooms, with a counter at the entrance. A waitress greeted the officers at the front counter.

Sergeant Lee, who speaks fluent Korean and was born and raised in Korea, spoke to the waitress in Korean. He asked the waitress if there was a room available. The waitress escorted the officers to room number two. The room was equipped with karaoke equipment, disco lighting, a bench-like sofa and a long rectangular coffee table. Once in the room, Sergeant Lee ordered a bottle of Jameson Irish Whiskey and for three “dowoomees.”

Sergeant Lee testified that it is very common in Korean culture for adult Korean males to ask if there are any dowoomee available to accompany the male patrons while in a bar. “Dowoomee” translates to female assistant who comes into the room to serve as companions, make the environment livelier by sparking up conversation, and encourage consumption of alcoholic beverages by making sure the male patrons’ beverages do not go below half full. Dowoomees will top off a patron’s alcoholic beverage and make sure its full, as well as serving themselves alcohol and consuming alcohol with the male patrons.

The waitress told Sergeant Lee that there were three dowoomees available. Sergeant Lee asked that one of the dowoomees speak English for Agent Hoang. The

waitress confirmed that an English-speaking dowoomee would be available and she left the room.

Within ten minutes, a male waiter walked into the officers' room with three dowoomees. The dowoomees introduced themselves and sat down next to each of the officers. The male waiter delivered a Jameson Whiskey bottle and six pairs of glasses (one shot glass and one whiskey glass) for each of the six people in the room. The three dowoomees immediately placed both a whiskey and a shot glass in front of themselves and each of the officers. The dowoomees began pouring whiskey into the glasses.

The dowoomee who sat next to Sergeant Lee was a Korean female in her 40s wearing a black dress and identified in the accusation as Jane Doe #1. Jane Doe #1 asked Sergeant Lee if he would buy her Soju, an alcoholic beverage, which he agreed. The waiter took the order from Sergeant Lee, left the room, and later returned with a Cham I-Sul Fresh Soju to Jane Doe #1.

The dowoomee who sat next to Agent Hoang was a Korean female wearing a V-neck, form-fitting black dress and introduced herself as Vanessa. Vanessa used a napkin to clean out Agent Hoang's glass and asked him how he liked his whiskey. Agent Hoang told Vanessa that he liked his whiskey with ice, and Vanessa poured herself and Agent Hoang a glass. Agent Hoang and Vanessa consumed the whiskey and engaged in conversation for over an hour. During that time, Vanessa monitored Agent Hoang's glass and as soon as it was almost empty, she would refill his glass and her own.

The third dowoomee was later identified as Joung Bun Kim (Kim). The dowoomees spent approximately two hours with the officers in the room, engaging in conversation, monitoring, and refilling the officers' glasses, as well as their own. The officers and dowoomees all consumed the bottle of Jameson Whiskey. At the end of the

two hours, a waitress brought a receipt for the purchase of the alcoholic beverages and the room fee.

The receipt reflected charges for one Jameson Combo at \$210, one Cham I-Sul Fresh Soju at \$13.99, and the room fee at \$31.50. The receipt also included \$17.36 tax and \$45.99 for tip, totaling \$318.84 (exh. 2). Sergeant Lee paid the bill and then negotiated with the dowoomees a price for their services. Sergeant Lee paid each dowoomee \$200 and they all left the room.

B. March 19, 2022

On March 19, 2022, Agent Hoang and Sergeant Lee returned to the licensed premises undercover and in plain clothes. Immediately upon entering, Sergeant Lee was greeted by a male waiter standing behind the front counter. Sergeant Lee, speaking in Korean, asked the waiter if there was a room available. The waiter told Sergeant Lee there was a room available and escorted the officers to a private karaoke room. Once inside the room, Sergeant Lee ordered a bottle of Macallan 12 Whiskey and asked the waiter if there were any dowoomees available for the two of them. The waiter told Sergeant Lee that dowoomees would be made available.

Within ten minutes, two dowoomees entered the officers' karaoke room. Sergeant Lee and Agent Hoang recognized one of the dowoomee as Kim, who was a dowoomee for the officers on their prior visit to the licensed premises. Kim sat down next to Agent Hoang and introduced herself as "Joy."

The waiter delivered the Macallan 12 Whiskey with four pairs of glasses (one shot glass and one whiskey glass), water bottles, cans of soda, and a fruit platter with dry nuts. The dowoomees immediately placed both a whiskey and a shot glass in front of each officer and dowoomee, and then began pouring the whiskey into the glasses. The officers

and dowoomees began drinking the whiskey. The dowoomees called for a toast periodically and refilled the glasses of the officers, as well as their own glasses.

The dowoomees stayed with the officers in the private karaoke room for approximately 90 minutes. At some point, the waiter gave Sergeant Lee a bill, which he paid without question. Sergeant Lee also paid the dowoomees for their services. The dowoomees told Sergeant Lee that they would charge them the full two-hour price of \$200 per dowoomee since they were with the officers for over an hour.

Thereafter, an outside team of officers entered the licensed premises and escorted Sergeant Lee and Agent Hoang out of the premises to maintain their undercover status. Agent Gray, who was part of the team of officers who entered the licensed premises, interviewed the other dowoomee, identified as Michelle Soojung Park (Park). Park gave Agent Gray permission to search her purse, and Agent Gray found two, one-hundred-dollar bills. Agent Gray took photographs of the bills, and confirmed they were the bills Sergeant Lee had given to Park (exh. 5).

On October 2, 2023, the administrative law judge (ALJ) issued a proposed decision recommending that counts one and five be sustained, and that appellant's license be revoked, with revocation stayed for three years so long as no disciplinary action occurs during that timeframe. The ALJ also recommended that a condition be added and imposed upon appellant's license that:

No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitously or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers.

On October 17, 2023, the Department sent a Notice to all parties requesting comments on whether the Department should adopt the proposed decision. The record

does not indicate that the Department received any comments from the parties. The Department adopted the proposed decision on November 14, 2023, and issued a certificate of decision the same day.

Appellant filed a timely appeal contending that the Department's decision is not supported by substantial evidence.

II. DISCUSSION

This Board is required to defer to the Department's findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *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.]"]; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] ["When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department."].) "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.)

A. Count One

Appellant contends that the Department's finding that it permitted Jane Doe #1 to solicit or encourage the officers to buy her drinks under a "commission, percentage or, salary, or other profit-sharing plan, scheme, or conspiracy" is not supported by substantial

evidence. (Appellant's Opening Brief (AOB), at pp. 7-11.) Appellant argues that Jane Doe #1 was paid by Sergeant Lee, not appellant. (*Id.* at p. 9.) Further, appellant asserts that there is no evidentiary showing of a nexus between the drink solicitation and compensation from appellant or its employees. (*Ibid.*)

Section 24200.5(b) states that the Department shall revoke a license:

If the licensee has employed or permitted any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy.

Count One of the accusation alleged that:

On or about March 4, 2022, [appellant] permitted an individual, to wit: Jane Doe #1, to solicit or encourage others, directly or indirectly, to buy her drinks in the licensed premises under a commission, percentage, salary, or other profit-sharing plan, scheme or conspiracy, in violation of [...] section 24200.5(b).

The Department sustained Count One, and rejected appellant's argument that there was no evidence that Jane Doe #1 was an employee and compensated by a commission, percentage, salary, or other profit-sharing plan:

[Section 24200.5(b)] does not state that the payment to the female cannot come from the undercover agents. In fact, in drink solicitation cases relating to section 24200.5(b) often it is the officer who is paying the drink solicitor, who then keeps her share of the commissioned scheme. [Appellant's] employees were knowingly engaging in a scheme and conspiracy of permitting the dowoomees to be paid by patrons for their companionship in exchange for the dowoomees soliciting or encouraging male patrons to buy the dowoomee a drink in the Licensed Premises, as did Jane Doe #1.

(Conclusions of Law, ¶¶ 8, 10-11.) As stated above, the Board will defer to the Department's findings, so long as they are supported by substantial evidence. (*Southland, supra*, 103 Cal.App.4th at 1087.)

Here, the Board affirms the Department's finding that Jane Doe #1 was permitted by appellant to solicit Sergeant Lee to buy her a drink in the licensed premises under a

commission, percentage, salary, or other profit-sharing plan, scheme or conspiracy.

Section 24200.5(b) does not specify that payment to the solicitor must come from the licensee. In fact, section 24200.5(b) states that such practice is illegal “under *any* commission, percentage, salary, or other profit-sharing plan, scheme or conspiracy.”

(Emphasis added.) The use of the word “any” would encompass a “commission, percentage, salary, or other profit-sharing plan, scheme or conspiracy” from all sources, including the patron.

Further, the payment by Sergeant Lee to Jane Doe #1 is imputable to appellant. In *Laube v. Stroh* (1992) 2 Cal. App. 4th 364, 379 [3 Cal. Rptr. 2d 779], the court stated:

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. Once a licensee knows of a particular violation of the law, that duty becomes specific and focuses on the elimination of the violation. Failure to prevent the problem from recurring, once the licensee knows of it, is to “permit” by a failure to take preventive action.

There is substantial evidence to support the Department’s finding that appellant knew dowoomees, including Jane Doe #1, were being paid to solicit drinks from patrons. Sergeant Lee testified that he requested three dowoomees from the waitress at the front desk, and the waitress said they would be made available. Appellant’s waiter brought three dowoomees, including Jane Doe #1, into the undercover officers' private karaoke room. While the waiter was still in the room, Jane Doe # 1 asked Sergeant Lee to buy her a Soju, an alcoholic beverage. Sergeant Lee agreed and immediately ordered the Soju from the waiter. The waiter brought Jane Doe #1 a Soju and charged Sergeant Lee for her drink.

Further, Sergeant Lee paid Jane Doe #1 \$200 for her services. Sergeant Lee also testified regarding the Korean culture and practice of hiring “dowoomees” to accompany

male patrons while in a Korean bar. Based on the above-stated facts, including all reasonable inferences thereof, there is substantial evidence to support sustaining Count One of the accusation.

B. Count Five

Appellant contends that the Department's finding that it allowed Jane Doe #1 to loiter in or about the licensed premises for the purpose of soliciting a patron to buy them alcoholic beverages is not supported by the evidence. (AOB, at pp. 2-7.) Appellant argues that Jane Doe #1 could not have loitered at the licensed premises since she was invited by the officers to join them. (*Id.* at p. 7.)

Count Five alleged:

On March 4, 2022, [appellant] employed or knowingly permitted "Jane Doe #1" to loiter in or about the licensed premises for the purpose of begging or soliciting patrons or customers in such premises to purchase alcoholic beverages for "Jane Doe #1", in violation of section 25657(b)

As to Count Five, the Department stated:

8. The preponderance of the evidence supports the violations under sections 25657(b) and 24200.5(b). As to section 25657(b), the evidence clearly established that on March 4, 2022, Respondent's employees (both the waitress and waiter) knowingly permitted Jane Doe # 1 to loiter in karaoke room number two with the undercover officers for the purpose of soliciting patrons to purchase an alcoholic beverage for her. Corp. Lee credibly testified to speaking Korean fluently and knowing the very common Korean culture of Korean males to request dowoomees in Korean bars, to serve as companions, make the environment livelier by sparking up conversation, and encourage consumption of alcoholic beverages by making sure the male patrons' alcoholic beverages do not go below half and top them off, as well as serving themselves alcohol and consuming alcohol with the male patrons.

9. When Col. [*sic*] Lee requested three dowoomees from the waitress at the front desk, she said they would be made available and in fact Respondent's waiter brought them into the undercover officers' private karaoke room. While the waiter was still in the room Jane Doe # 1 asked Corp. Lee to buy her a Soju, to which Corp. Lee agreed and immediately ordered the Soju from the waiter. Jane Doe #1 was allowed by

Respondent's employees to loiter in the room with the officers for two hours.

(Conclusions of Law, ¶¶ 8-9.)

The fact that Jane Doe #1 was requested or “invited” by the officers to join them does not negate the Department’s finding that she loitered in the licensed premises for the purpose of soliciting patrons to purchase alcoholic beverages. The case cited by appellant and the Department, *Wright v. Munro* (1956) 144 Cal.App.2d 843 [301 P.2d 997], is instructive.

In *Wright*, a Department agent, Templeton, entered a licensed premises and ordered an alcoholic beverage. (*Wright, supra* at p. 846.) A woman, identified as Janet Hudson (Janet), sat down beside him and asked if he wanted a “drinking companion.” (*Ibid.*) The agent, who did not know Janet, replied: “Sit down.” (*Ibid.*) Janet then motioned to the bartender and told him, “[g]ive me a drink,” without stating what she wanted. (*Ibid.*) The bartender made Janet a drink, and Agent Templeton put some money on the bar. (*Ibid.*) The bartender used the money Agent Templeton put on the bar to pay for Janet’s drink. (*Ibid.*) When Janet was finished with her drink, the bartender asked Agent Templeton if he wanted to “buy the lady another drink”? (*Ibid.*)

Based on the facts, the court found:

The circumstances recounted by Templeman support the inference that the bartender knew that Janet Hudson was loitering on the premises and soliciting drinks from patrons. The bartender's knowledge is, of course, chargeable to the licensees. (*Cornell v. Reilly*, 127 Cal.App.2d 178 [273 P.2d 572].) Janet merely told the bartender “Give me a drink.” He apparently recognized her, knew what she wanted, and served it to her. The subsequent actions of the bartender in returning to the agent and asking him if he wanted to buy the girl another drink is also susceptible of the reasonable inference that the bartender knew that the girl was loitering on the premises for the prohibited purpose. This is corroborated by the actions of the bartender and the girl when the agent returned to the premises. [...] The term “loiter” has a well recognized meaning, and that is “to linger idly by the way, to idle,” “to loaf” or to “idle.” (*Phillips v. Municipal*

Court, 24 Cal.App.2d 453, 455 [75 P.2d 548].) The evidence is susceptible of the reasonable interpretation that Janet Hudson was “loitering” on the premises and that this was known to the bartender.

(*Wright, supra* at pp. 846–47.)

Like in this matter, Agent Templeton, the undercover officer, invited his solicitor to sit and drink with him. This did not preclude the court from finding that the solicitor (Janet) was loitering in the licensed premises for the purpose of soliciting drinks. (*Wright, supra* at p. 847.) In that vein, the Board would have to disregard *Wright* to find that Jane Doe #1 was not loitering simply because she was invited into the officers’ karaoke room. The Board does not have the authority to do so.

In fact, the evidence in this case is “susceptible of the reasonable interpretation” that Jane Doe #1 was loitering on the licensed premises and this was known to appellant’s employees. (*Wright, supra* at p. 847.) Sergeant Lee testified that he requested three dowoomees from the waitress at the front desk, and the waitress said they would be made available. Appellant’s waiter brought three dowoomees into the undercover officers’ private karaoke room. While the waiter was still in the room, Jane Doe #1 asked Sergeant Lee to buy her a Soju, an alcoholic beverage. Sergeant Lee agreed and immediately ordered the Soju from the waiter. The waiter brought Jane Doe #1 a Soju and charged Sergeant Lee for her drink.

A reasonable inference based on the above is that the waiters knew Jane Doe #1 was loitering on the premises for the purpose of being invited to a private karaoke room and soliciting beverages from the patrons therein. The Board “must resolve all conflicts in the evidence in favor of the Department’s decision and indulge in all legitimate and reasonable inferences to support it.” (*Harris v. Alcoholic Beverage Control Appeals Bd.* (1963) 212 Cal. App. 2d 106, 113 [28 Cal. Rptr. 74].) The Board finds there is substantial

evidence to support the Department's finding that appellant permitted Jane Doe #1 to loiter on the licensed premises for the purpose of soliciting its patrons.

ORDER

The decision of the Department is affirmed.⁵

SUSAN 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:**

KOIN ENTERPRISES, INC.
OCTAVE 18
7241 ORANGETHORPE AVENUE
BUENA PARK, CA 90621-3311

ON-SALE GENERAL EATING PLACE - LICENSE

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

SANTA ANA DISTRICT OFFICE

File: 47-551327

Reg: 23093065

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 November 14, 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.

On or after December 26, 2023, a representative of the Department will contact you to arrange to pick up the license certificate.



https://abcab.ca.gov/abcab_resources/

Sacramento, California

Dated: November 14, 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:

KOIN Enterprises, Inc.
Dbas: Octave 18
7241 Orangethorpe Avenue
Buena Park, California 90621-3311

Respondent

} File: 47-551327
}
} Reg.: 23093065
}
} License Type: 47
}
} Word Count: 15,820
}
} Kennedy Court Reporters:
} Shelia McQueen, Court Reporter
} Alex Burke (Video Host)
}
}
} **PROPOSED DECISION**

On-Sale General Eating Place License

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter by video conference on August 23, 2023.

Trisha Pal, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

John J. Gulino, Attorney, represented Respondent, KOIN Enterprises, Inc.

The Department seeks to discipline the Respondent's license on the grounds that:

- (1) On or about March 4, 2022, Respondent permitted an individual, to wit: Jane Doe #1, to solicit or encourage others, directly or indirectly, to buy her drinks in the licensed premises under a commission, percentage, salary, or other profit-sharing plan, scheme or conspiracy, in violation of California Business and Professions Code section 24200.5(b) [count 1];¹
- (2) On March 4, 2022, Respondent employed upon the licensed premises "Jane Doe #1," for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or paid such person a percentage or commission for procuring or

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

- encouraging the purchase or sale of alcoholic beverages on the licensed premises, in violation of section 25657(a) [count 4];
- (3) On March 4, 2022, Respondent employed or knowingly permitted “Jane Doe #1” to loiter in or about the licensed premises for the purpose of begging or soliciting patrons or customers in such premises to purchase alcoholic beverages for “Jane Doe #1”, in violation of section 25657(b) [count 5]; and
 - (4) On March 4, 2022, the Respondent’s agents or employees, permitted “Jane Doe #1,” an employee, to solicit upon the licensed premises, the purchase or sale of a drink intended for her consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143 [count 2];
 - (5) On March 4, 2022, and March 19, 2022, the Respondent’s agents or employees, permitted individuals, employees, to accept upon the licensed premises, a drink which had been purchased or sold there and intended for the individuals’ consumption, in violation of California Code of Regulations, Title 4, Division 1, Section 143 [counts 3, 6, 7, 8, 9.] (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 August 23, 2023.

FINDINGS OF FACT

1. The Department filed the accusation on March 22, 2023. On August 10, 2023, the Department filed a first amended accusation.
2. The Department issued a type 47, on-sale general eating place license to the Respondent for the above-described location on January 23, 2015 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent’s license.

March 4, 2022 (Counts 1-7)

4. On March 4, 2022, Department Agent Hoang, Buena Park Police Department (BPPD) Officer Phang and Patrol Corporal Lee (hereinafter referred to as Corp. Lee) entered the Licensed Premises in a plain clothes/undercover capacity to conduct an investigation based on complaints the Department received of alleged violations at the Licensed Premises of drink solicitation and narcotics activities. The interior of the premises was divided into approximately 20 to 30 various sized private karaoke rooms, with a counter at the entrance. Upon entering, a waitress at the front counter greeted the officers. Corp.

Lee, who speaks Korean fluently and was born and raised in Korea, spoke to the waitress in Korean. He asked the waitress if there was a room available for the three of them (referring to the three agents). The waitress escorted the officers to room number two. The room was equipped with karaoke equipment, disco lighting, a bench-like sofa and a long rectangular coffee table. Once in the room Corp. Lee ordered a bottle of Jameson Whiskey and asked the waitress for three “dowoomees.”

5. Corp. Lee appeared and testified at the hearing. He is familiar with Korean culture and practices. He testified that in the Korean culture it is very common for adult Korean males who go to Korean bars to ask, every time, if there are any dowoomee available to accompany the male patrons while in the Korean bar. Corp. Lee translated “dowoomee” as a female assistant who comes into the room, to serve as companions, make the environment livelier by sparking up conversation, and encourage consumption of alcoholic beverages by making sure the male patrons’ alcoholic beverages do not go below half and top them off, as well as serving themselves alcohol and consuming alcohol with the male patrons.

6. The waitress said there were three dowoomees available. Corp. Lee specifically asked for one dowoomee who speaks English for Agent Hoang, who is English speaking. The waitress confirmed that an English-speaking dowoomee would be made available and she left the room.

7. Within 10 minutes a male waiter walked into room number two with three dowoomees. The dowoomees introduced themselves and sat down next to each of the officers. The male waiter delivered a Jameson Whiskey bottle and six pair of glasses (one shot glass and one whiskey glass for each of the six people in the room; the three officers and three dowoomees). The three dowoomees immediately placed both a whiskey and a shot glass in front of each of the six people in the room, and thereafter the dowoomees began pouring Jameson whiskey into the glasses.

8. The dowoomee who sat next to Corp. Lee was a Korean female in her 40’s wearing a black dress and identified in the accusation as Jane Doe #1. Jane Doe #1 asked Corp. Lee if he would buy her Soju, to which he agreed and ordered the Soju from the male waiter. The waiter left the room and returned, delivering a Cham I-Sul Fresh Soju to Jane Doe #1, who consumed the Soju herself.

9. The dowoomee who sat next to Agent Hoang was a Korean female wearing a V-neck, form-fitting black dress and introduced herself as Vanessa. Vanessa used a napkin to clean out Agent Hoang’s glass and asked him how he liked his whiskey. Agent Hoang asked for ice in his whiskey. Vanessa poured a glass of whiskey for Agent Hoang and for herself, and they both began consuming the whiskey and engaged in small talk for over

an hour. During that time Vanessa monitored Agent Hoang's glass and as soon as it was almost empty, she would refill his glass and her own.

10. The dowoomee who sat next to Officer Phange was a Korean female, later identified as Joung Bun Kim (hereinafter referred to as Kim or dowoomee).

11. The dowoomees spent approximately two hours with the officers in the room, engaging in conversation, monitoring and refilling the officers' glasses as well as their own. The officers and dowoomees all consumed the whiskey from the Jameson Whiskey bottle. At the end of the two hours a waitress brought a receipt for the purchase of the alcoholic beverages and the room fee. The receipt reflected charges for one Jameson Combo at \$210, one Cham I-Sul Fresh Soju at \$13.99, and the room fee at \$31.50, with \$17.36 tax, tip at \$45.99, totaling \$318.84. (Exhibit 2 – black and white copy of receipt.) Corp. Lee paid the \$318.84 bill without question. Corp. Lee then negotiated with the dowoomees a price for their services. He separately paid each dowoomee \$200 and they all left the room.

March 19, 2022
(Counts 8-9)

12. On March 19, 2022, Agent Hoang and Corp. Lee returned to the Licensed Premises in a plain clothes/undercover capacity. Immediately upon entering Corp. Lee was greeted by a male waiter, who was standing behind the front counter. Corp. Lee, speaking in Korean, asked the waiter if there was a room available, to which the waiter said there was. The waiter escorted the officers to a private karaoke room. Once inside the room Corp. Lee, speaking in Korean, ordered a bottle of Macallan 12 Whiskey from the waiter, and asked the male waiter if there were any dowoomee available for the two of them, one of whom speaks English for Agent Hoang. The waiter said the dowoomees would be made available.

13. Within 10 minutes two dowoomees entered the officers' karaoke room. Corp. Lee and Agent Hoang both recognized one of the dowoomee as Kim who had served as a dowoomee for Office Phange when the officers had visited the Licensed Premises on March 4, 2022. Kim sat down next to Agent Hoang and introduced herself as Joy², (who will hereinafter be referred to as Kim or the dowoomee).

14. The waiter delivered the Macallan 12 Whiskey with four pairs of glasses (one shot glass and one whiskey glass for each of the four people in the room; the two officers and the two dowoomees), water bottles, cans of soda and a fruit platter with dry nuts.

² Joy was later identified as and referred to in the accusation in count 8 as Joung Bun Kim.

15. The dowoomees immediately placed both a whiskey and a shot glass in front of each officer and each dowoomee, and thereafter the dowoomees began pouring the whiskey into the glasses. The officers and dowoomees began drinking the whiskey. The dowoomees called for a toast every once in a while, and refilled the glasses of the officer with whom they sat, as well as their own glasses.

16. The dowoomees stayed with the officers in the private karaoke room for approximately one hour and a half. At some point, the waiter gave Corp. Lee a bill, which Corp. Lee paid without question. Corp. Lee turned to pay the dowoomee for their services. The dowoomee said that since they were with the officers for over an hour they had to charge them the full two hour price of \$200 per dowoomee. Corp. Lee paid each dowoomee \$200. Thereafter, the outside team of officers entered the Licensed Premises and escorted Corp. Lee and Agent Hoang out of the premises to maintain their undercover status.

17. Department Agent Hoang appeared and testified at the hearing. Agent Hoang received specialized training relating to drink solicitation cases, including two-week LAPD vice school training, and completed 80 hours training with the LAPD vice unit. Agent Hoang has worked on approximately a dozen Department cases involving drink solicitation violations. Based on Agent Hoang's training and experience and his observations at the Licensed Premises on March 4 and 19, 2022, it was his opinion that the Respondent's business facilitated, organized and permitted the services of the dowoomees on the Licensed Premises for the Respondent's business. It was his further opinion that the dowoomees' services were permitted by the Respondent for the purpose of sitting with and accompanying customers, consuming alcoholic beverages with customers and encouraging customers to drink alcoholic beverages by making drink toasts, and constantly monitoring and refilling the customers' and dowoomees' glasses.

18. Agent Hoang said the Department has trouble investigating drink solicitation cases without the assistance from undercover officers who, like Corp. Lee, speak Korean fluently, are members of the Korean community and are well versed in the Korean culture. Based on Agent Hoang's training and experience with drink solicitation cases involving dowoomees, without the assistance from such Korean undercover officers Agent Hoang finds that licensed premises will not provide a female and her services to the non-Korean undercover officers who request a female.

19. Agent Hoang continued to explain that waiting five to 10 minutes for a female to be brought to the karaoke room is not a long time to wait, because based on his training and experience the females/dowoomees are usually hiding in a back room of the licensed premises or outside in a van and an employee will call the females when a customer

requests them. As for the dowomees brought into the officers' karaoke room(s) at the Licensed Premises, Agent Hoang did not know from where the dowomees came or where they went, whether they were outside the Licensed Premises in a van or elsewhere.

20. Department Agent Gray appeared and testified at the hearing. On March 19, 2022, Agent Gray was part of the outside cover team, made up of BPPD and Department officers all wearing high-profile tactical police vests. The undercover officers text messaged the outside team supervisors to keep them apprised of what was occurring inside the Licensed Premises. At approximately 11:00 p.m. the high-profile team entered the Licensed Premises. Agents Gray, Plotnik and Zaidan entered and walked to the karaoke room that Agent Hoang and Col. Lee were in and saw the two undercover officers seated at a table with the two dowomees. Agent Gray observed the table had various food, appetizer dishes, alcoholic and non-alcoholic beverages, a couple of purses, ice, and a variety of glasses. Agent Gray took photographs of the table, which were admitted as Exhibits 3A and 3B.

21. Agent Gray interviewed Michelle Soojung Park. Agent Gray questioned Ms. Park as to whether Col. Lee had given her \$200 and asked if he could look in her purse. Ms. Park gave permission for the officers to search her purse. Two, one-hundred-dollar bills were found in Ms. Park's purse. Agent Gray took photographs of the two, one-hundred-dollar bills, and confirmed they were the bills Col. Lee had given to Ms. Park. (Exhibit 5 – color photograph of money.)

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 24200.5(b) provides that the Department shall revoke a license “[i]f the licensee has employed or permitted any persons to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under any commission, percentage, salary, or other profit-sharing plan, scheme, or conspiracy.”

4. Section 25657(a) provides that it is unlawful “[f]or any person to employ, upon any licensed on-sale premises, any person for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, or to pay any such person a percentage or

commission on the sale of alcoholic beverages for procuring or encouraging the purchase or sale of alcoholic beverages on such premises.”

5. Section 25657(b) provides that it is unlawful “[i]n any place of business where alcoholic beverages are sold to be consumed upon the premises, to employ or knowingly permit anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting.”

6. Rule 143 prohibits a licensee’s employees from soliciting, in the licensed premises, the purchase or sale of any drink, any part of which is for, or intended for, the consumption or use of such employee. Rule 143 further prohibits a licensee’s employees from accepting, in the licensed premises, any drink purchased or sold there, any part of which drink is for, or intended for, the consumption or use of any employee.

7. 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) for the violations of sections 24200.5(b), and 25657(b), as respectively alleged in counts 1 and 5. (Findings of Fact ¶¶ 4-11, 17-19.)

8. The preponderance of the evidence supports the violations under sections 25657(b) and 24200.5(b). As to section 25657(b), the evidence clearly established that on March 4, 2022, Respondent’s employees (both the waitress and waiter) knowingly permitted Jane Doe #1 to loiter in karaoke room number two with the undercover officers for the purpose of soliciting patrons to purchase an alcoholic beverage for her. Corp. Lee credibly testified to speaking Korean fluently and knowing the very common Korean culture of Korean males to request dowoomees in Korean bars, to serve as companions, make the environment livelier by sparking up conversation, and encourage consumption of alcoholic beverages by making sure the male patrons’ alcoholic beverages do not go below half and top them off, as well as serving themselves alcohol and consuming alcohol with the male patrons.

9. When Col. Lee requested three dowoomees from the waitress at the front desk, she said they would be made available and in fact Respondent’s waiter brought them into the undercover officers’ private karaoke room. While the waiter was still in the room Jane Doe #1 asked Corp. Lee to buy her a Soju, to which Corp. Lee agreed and immediately ordered the Soju from the waiter. Jane Doe #1 was allowed by Respondent’s employees to loiter in the room with the officers for two hours.

10. As to section 24200.5(b) Respondent argued there was no evidence that any of the dowoomee³ were employees and compensated by a commission, percentage, salary or other profit-sharing plan.

11. This argument is rejected. Section 24200.5(b) prohibits a licensee from employing *or permitting* any person “to solicit or encourage others, directly or indirectly, to buy them drinks in the licensed premises under any commission...scheme, or conspiracy.” This section does not state that the payment to the female cannot come from the undercover agents. In fact, in drink solicitation cases relating to sections 24200.5(b) often it is the officer who is paying the drink solicitor, who then keeps her share of the commissioned scheme. Respondent’s employees were knowingly engaging in a scheme and conspiracy of permitting the dowoomees to be paid by patrons for their companionship in exchange for the dowoomees soliciting or encouraging male patrons to buy the dowoomee a drink in the Licensed Premises, as did Jane Doe #1.

12. Cause for suspension or revocation of the Respondent’s license was not established for the violation of section 25657(a) as alleged in count 4, and the violation of rule 143 as alleged in counts 2, 3, 6, 7, 8 and 9. (Findings of Fact ¶¶ 4-21.)

13. Both section 25657(a) and rule 143 require an element of employment. There was insufficient evidence to establish that Jane Doe #1, Jane Doe #2, Vanessa, Joung Bun Kim or Michelle Soojung Park were employed by the Respondent.

14. The Department argued the facts of this case are distinguishable from the facts in Precedential Decision No. 18-02-E.⁴ The Department urges there is circumstantial evidence of the women’s employment by the fact the only reason the women were in the karaoke rooms was because the Respondent’s employees requested they be there, at Corp. Lee’s behest. The Department argued that the Respondent’s employees did not question Corp. Lee’s request because the Respondent’s employees knew for what a dowoomee girl was and provided these female companions to men for the purpose of encouraging the consumption of alcohol.

15. This argument is rejected. Precedential Decision No. 18-02-E found little evidence of employment, but it was nonetheless three factors, taken together, which were sufficient to establish an employment relationship under the circumstances. Those factors included that:

³ Jane Doe #1 was the only name listed in count 1, which was the sole count alleging a section 24200.5(b) violation.

⁴ *Cal. Dept of ABC v. Du Hee Bae DBA Pharos Shrine*, Precedential Decision No. 18-02-E (2018).

- 1) the licensee's staff made the females available upon request;
- 2) the staff directed the females' movements on multiple occasions, [specifically (a) employee Park returned female Julie to the karaoke room, after Julie left the room on her own accord, (b) Park apologized for Julie's absence, and (c) Park directed another female (Kayla) to leave the karaoke room];
- 3) the staff negotiated with and collected from the officers the females' pay [specifically, (a) Park collected Kayla's payment for her, (b) Park informed the officer how much he had to pay for the two women (Julie and Kayla) and (c) Park actually negotiated the price as to Kayla's services].

16. If the above-recited facts were considered "little evidence" of employment, the facts in the matter at hand are insufficient to meet the standard of an employment relationship set forth in Precedential Decision No. 18-02-E. Although Respondent's employees made the females available upon request, the employees did not direct their movements in any manner other than letting them know what room to go to, and the employees did not negotiate or collect the females' fees for their services. Once in the room, the dowomees were left on their own, to negotiate their own fee for services, and collect their own payment from Corp. Lee. The dowomees were not otherwise directed in any way by Respondent's employees. There was no evidence the dowomees themselves or their personal belongings were kept in a room or area of the Licensed Premises for employees only. The dowomee kept their purses with them. Agent Gray testified that when he entered the karaoke room on March 19, 2022, he observed the females' purses on the table. Agent Hoang did not know from where the dowomees came or where they went, whether they were outside the Licensed Premises in a van or elsewhere.

17. As to counts 2, 3, 4, 6, 7, 8 and 9, the Department failed to meet its burden as to the second element of solicitation under rule 143⁵ and section 25657(a). As to the latter, it requires the females were so employed "for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages." Precedential decision 18-02-E held that "direct' solicitation or the 'procuring or encouraging of the purchase' of alcoholic beverages may be established by the totality of the circumstances, even without words of solicitation actually being uttered." For example, "payment for the alcoholic beverages served and consumed by the companions was required by the establishment to be included in the purchase price paid by the patron (beyond merely paying the bill without question); statements made by the companions that their duties included encouraging patrons to procure or purchase alcoholic beverages or greater quantities of alcoholic beverages, rather than merely providing companionship; that the companions'

⁵ The solicitation element under rule 143 is satisfied with any drink solicited and does not require the solicitation of alcoholic beverages as does section 25657(a).

compensation was based in some respect on the amount of alcoholic beverages purchased; or that the companions are only provided in connection with the purchase of alcoholic beverages, as opposed to being made available regardless of what may be purchased by the patrons. Expert testimony” why certain businesses operate as they do and why the companions who are provided engage in the activities they do. In the matter at hand, only the latter was present; there was insufficient evidence to establish a totality of the circumstances. As the Respondent pointed out, pursuant to said precedential decision, the fact the dowoomees in question poured drinks for themselves without asking or being asked is not sufficient to establish solicitation in this case.

18. The Department urges that counts 2, 3, 4, 6, 7, 8 and 9 are alleged as unlawful acceptance and not solicitation under rule 143. While the females accepted a drink purchased or intended for their consumption, those counts fail since none of the said dowoomees were employed by Respondent, as discussed above.

19. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

PENALTY

The Department recommended a penalty of revocation stayed for three years, plus a 30-day suspension and adding the following condition to the Respondent’s license: “No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitously or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers.” The Respondent did not recommend a penalty should the accusation be sustained and did not argue for mitigation.

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. Rule 144 provides for a penalty ranging from a 30-day suspension up to revocation for a violation of section 25657(b). The penalty for a violation of rule 143 is a 15-day suspension. Sections 25657(a) and 24200.5(b), on the other hand, mandate a penalty of revocation for any violation of their provisions. This mandate is satisfied, however, by a stayed revocation⁶ as well as an outright revocation.⁷

⁶ See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board*, 244 Cal. App. 2d 468, 36 Cal. Rptr. 697 (1964) (revocation stayed coupled with suspension imposed for violations of section 24200.5).

Mitigation is warranted given Respondent's over seven-year discipline-free history. No aggravation was argued nor present. The penalty recommended herein complies with rule 144.

ORDER

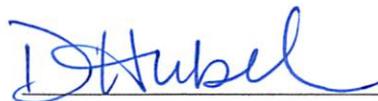
Counts 1 and 5 of the accusation are sustained. With respect to those counts Respondent's on-sale general eating place license is hereby revoked, with the revocation stayed for a period of three years from the effective date of this decision, upon the condition that no subsequent final determination is made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within the period of the stay. Should such a determination be made, the Director of the Department of Alcoholic Beverage Control may, in the Director's discretion and without further hearing, vacate this stay order and revoke Respondent's license, and should no such determination be made, the stay shall become permanent. The license is further suspended for 20 consecutive days.

In addition, the following condition will be added to and imposed upon the Respondent's license:

"No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide or permit, or make available either gratuitously or for compensation, male or female persons who act as escorts, companions, or guests of and for the customers."

Counts 2, 3, 4, 6, 7, 8 and 9 of the accusation are dismissed.

Dated: October 2, 2023



D. Huebel
Administrative Law Judge

⁷ See, e.g., *Greenblatt v. Martin*, 177 Cal. App. 2d 738, 2 Cal. Rptr. 508 (1960) (outright revocation imposed for violations of section 24200.5).

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullough</u>
Date: <u>11/14/23</u>