

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

AB-9998

File: 48-340877; Reg: 23093336

REMEK ENTERTAINMENT, INC.,
dba Torch Room
10632 Imperial Highway
Norwalk, CA 90650,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: June 18, 2024
Sacramento, CA/Teleconference

ISSUED JUNE 20, 2024

Appearances: *Appellant:* Michael Cho, of Palmieri, Tyler, Wiener, Wilhelm & Waldron LLP, as counsel for Remek Entertainment, Inc.,

Respondent: Joseph J. Scoleri III, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Remek Entertainment, Inc., doing business as Torch Room (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking its license because it: 1) knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon the licensed premises, in violation of Business and Professions Code section 24200.5(a)²; 2) its agents or employees sold,

¹ The decision of the Department, dated February 15, 2024, is set forth in the appendix.

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

furnished, or offered to sell or furnish, cocaine upon the licensed premises, in violation of Health and Safety Code section 11352, and; 3) its agent or employee possessed cocaine upon the licensed premises, in violation of Health and Safety Code section 11350.

Appellant's license was also suspended for a period of ten days³ because appellant: 1) failed to comply with the conditions attached to its license, in violation of section 23804; 2) permitted 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, and; 3) failed to maintain a clearly legible permanent sign reading, "No Person Under 21 Allowed," in violation of Rule 107.⁴

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on June 22, 1998. There is one prior instance of departmental discipline against the license on February 28, 2020, for violating section 24200.5 as well as Health and Safety Code sections 11350 and 11351. Appellant received a penalty of revocation, which was stayed for a period of three years, and a 30-day suspension for the 2020 violation.

On June 29, 2023, the Department filed a ten-count accusation against appellant. An administrative hearing was held on September 13, 2023, where oral evidence, documentary evidence, and evidence by oral stipulation on the record was received. Department agents Michael Connolly, Perry Gray, Supervising Agent in Charge (SAC)

³ Appellant's license was suspended for ten, five, and ten days for Counts 8, 9, and 10, respectively, and are to run concurrently.

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

Bradley Beach, and SAC Benjamin Delarosa testified on behalf of the Department. Bruce Mekjian (Mekjian), shareholder of appellant, testified for appellant.

Evidence established that appellant executed a petition for conditional license on November 29, 1998, which attached ten conditions on the license. Two of those conditions are:

3. The rear door(s) shall be kept closed at all times during the operation of the premises except in cases of emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.
5. There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.

On November 19, 2021, at approximately 10:30 p.m., Agent Connolly entered the licensed premises with another agent in an undercover capacity. Agent Connolly saw two employees working inside the licensed premises: Content Wagner (Wagner) and Michaela Stanford (Stanford). A disc jockey was playing music.

Between November 7, 2021 and May 10, 2023, Agent Connolly visited the licensed premises on seven separate occasions in plain clothes in order to build a rapport with the employees and patrons. On May 10, 2023, Agent Connolly went to the licensed premises with SAC Beach.

SAC Beach went to the restroom, where he noticed two men, one of whom wore a "Mongol's" jacket and was identified as JoJo. The men had a baggie with a white powdery substance, which one of them was holding up to the other man's nose. SAC Beach heard a sound which he believed to be snorting.

Later, while at the bar, SAC Beach spoke to JoJo, who confirmed he was snorting cocaine. Later, while playing billiards, SAC Beach told JoJo he was looking for some

“coke,” and JoJo pointed to Wagner, and said SAC Beach should speak with her. SAC Beach approached Wagner, who appeared to be off-duty, and told her he wanted cocaine. Wagner asked, “how much,” and SAC Beach told her he wanted a “40.”⁵ After some negotiation, SAC Beach and Wagner agreed on a price of \$160 for a full 8-ball.

SAC Beach went to the restroom, and when he returned, Wagner indicated she gave the cocaine to Agent Connolly. Agent Connolly confirmed he had been handed a box labeled “Stiizy THC Pods.” (Exhibits 4, 6, and 25.) Inside was a baggie containing cocaine. (*Ibid.*)

On May 12, 2023, Agent Connolly and SAC Beach returned to the licensed premises. Wagner was working as a bartender. Agent Connolly ordered a drink from her and asked her if she could get him more cocaine. Wagner said she could and laughed when Agent Connolly offered to only pay \$40. Wagner told Agent Connolly it was the same price as before (\$160). Agent Connolly paid Wagner, and she gave him cocaine by placing it in his pocket. (Exhs. 7, 9, and 25.)

Agent Connolly and SAC Beach returned to the licensed premises on May 25, 2023. Agent Connolly texted Wagner because she was not working. Wagner replied she was not going to come into work, but that she could connect him with Izamar Murillo (Murillo), another bartender. Murillo subsequently contacted Agent Connolly and told him the cocaine was going to be there, but that she needed the money up front. Agent Connolly paid Murillo \$160, and she gave him the cocaine. (Exhs. 10, 12, and 25.)

⁵ A “40” refers to one quarter of an “8-ball” of cocaine. An “8-ball” is one-eighth of an ounce, or 3.5 grams.

Agent Connolly and SAC Beach returned to the licensed premises again on June 9, 2023. Mekjian was behind the bar counter and spoke with Agent Connolly and SAC Beach briefly, telling them that a bartender would help them shortly. The bartender, Stanford, took their orders and served them. Agent Connolly asked Stanford if she could get him an 8-ball of cocaine, and Stanford told him, "No." Neither Wagner nor Murillo were present.

Agent Connolly texted Murillo and Wagner. Murillo indicated she could get him cocaine. Stanford came back to speak with Agent Connolly, and she confirmed he wanted an 8-ball. She told him it would be the same price as before. Agent Connolly paid Stanford \$160, and she handed him the cocaine at the bar counter. (Exhs. 13, 17, and 25.)

Backup officers entered the licensed premises and contacted several people, including Stanford. Officers located a baggie of cocaine in Stanford's purse. (Exhs. 16, 17, and 25.)

One of the agents, Agent Abbott, contacted an individual, Vincent Esquer inside the licensed premises. Esquer told Agent Abbott that he was 19 years old. Agent Connolly examined Esquer's California driver's license, which confirmed his age. Agent Abbott's report and a photograph of Esquer were entered into evidence. (Exhs. 18 and 20.)

Agent Connolly viewed the licensed premise's video, which depicted Esquer being served a can of some beverage by one bartender and then a second can by another. Agent Connolly testified he believed the cans were White Claw Hard Seltzer, an alcoholic

beverage. Although several signs were posted outside the licensed premises, there were no signs inside the licensed premises stating minors were not permitted.

The administrative law judge (ALJ) issued a proposed decision on December 13, 2023, dismissing count three but sustaining all other counts. The ALJ recommended penalties of revocation, in addition to concurrent suspensions of ten, five, and ten days. The Department adopted the proposed decision in its entirety on February 14, 2024, and issued a certificate of decision the next day.

Appellant filed a timely appeal contending the Department's decision must be reversed because: 1) appellant lacked the requisite knowledge to sustain the violations, and; 2) continuance of appellant's license would not be contrary to public welfare or morals.

DISCUSSION

The Board's scope of review is limited; it may only review a Department's decision based upon "insufficiency of the evidence, excess of jurisdiction, errors of law, or abuse of discretion." (*Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 95, [84 Cal.Rptr. 113].)

Further, the California Constitution provides:

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has *resulted in a miscarriage of justice*.

(Cal. Const., art. VI, § 13, emphasis added.) The burden to show that an alleged error was prejudicial is on the party seeking reversal. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308 [140 Cal.Rptr.3d 459].)

I. RESPONDEAT SUPERIOR

Appellant argues its license cannot be revoked because the Department “failed to show that [appellant] knowingly permitted the illegal sale or negotiations of controlled substances or dangerous drugs upon the licensed Premises.” (Appellant’s Opening Brief (AOB), at p. 6.)

Section 24200.5(a) states that the Department shall revoke a license “[i]f a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises.” Section 24200.5(a) further states that “[s]uccessive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission.”

Here, the Department found that the evidence established a violation of section 24200.5(a), as alleged in count 1, because “the negotiations for the sale of cocaine ... as well as the sales themselves-took place inside the Licensed Premises between the Department’s agents and the Respondent’s employees. (Findings of Fact ¶¶ 7-19.)” (Conclusions of Law ¶ 10.)

Both this Board and the courts have consistently found that a licensee may be held liable for the actions of his agents or employees. (See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 181 [17 Cal.Rptr. 315] [holding that the licensee had the responsibility to see that the license was not used in violation of law].) “The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and as a matter of general law the knowledge and acts of the employee or agent are imputable to the licensee. [Citation.]” (*Id.* at p. 180.) The *Laube* court noted:

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

(*Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779].) Similarly, in *Reimel* the court stated:

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

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

The doctrine of *respondeat superior* provides that an employer or principal is vicariously liable for the wrongful conduct of his or her employees or agents committed within the scope of the employment or agency. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106].) And it is well-settled in alcoholic beverage case law that an agent or employee's on-premises knowledge and misconduct is imputed to the licensee/employer. (See *Yu v. Alcoholic Bev. Control Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Kirby v. Alcoholic Bev. Control Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291].) Indeed, in *Laube*, the court observed that the Department's factual findings — notably not subject to review on appeal — include:

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

(*Laube, supra*, 2 Cal.App.4th at p. 367, citing *Fromberg v. Dept. of Alcoholic Bev. Control* (1959) 169 Cal.App.2d 230, 233-234 [337 P.2d 123].) Importantly, as the court of appeals observed in *McFaddin*:

It is not necessary for a licensee to knowingly allow its premises to be used in a prohibited manner in order to be found to have permitted its use. . . . Further, the word "permit" implies no affirmative act. It involves no intent. It is mere passivity, *abstaining from preventative action*.

(*McFaddin San Diego 1130, Inc. v. Stroh* (1989) 208 Cal.App.3d 1384, 1389-1390 [257 Cal.Rptr. 8], internal quotations omitted, emphasis in original.)

Here, the Department sustained the violation of section 24200.5(a) because the illicit sales and negotiations occurred inside the licensed premises between appellant's employees and undercover agents. The extensive legal authority cited above instructs that appellant's employees' conduct is imputable to appellant, regardless of whether appellant had actual knowledge that the negotiations and sales were occurring. It is, therefore, immaterial whether the Department sustained the violation based on the actions of the employees directly or based on the presumption of permission based upon the successive sales that occurred at the licensed premises.

In this vein, the Board can reconcile the fact that appellant's shareholder, Mekjian, credibly testified he had no actual knowledge of the illicit activity at the licensed premises, and yet the illicit activity was still imputable to appellant. Simply stated, a section 24200.5(a) violation does not require Mekjian to have expressly permitted drug sales at the licensed premises. Appellant knowingly permitted the illegal sales and negotiations because the sales and negotiations were done by its employees, or because the successive sales and negotiations over a continuous period were deemed evidence of permission. Either way, the Department's decision must stand.

II. PUBLIC WELFARE AND MORALS

Appellant contends that the Department has not shown that continuance of its license would not be contrary to public welfare or morals. (AOB at pp. 7-8.) Appellant argues that it “taken necessary steps to protect the public welfare” after the sales at the licensed premises, and it “no longer pose[s] a threat to the community.” (*Id.* at p 8.)

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

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

This general authority, however, does not mean the Department must specifically prove a continuance of the license would be contrary to public welfare or morals. The criteria for establishing good cause for discipline has been explained as follows:

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

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

In *Schieffelin*, the court found:

[A] finding that licensees had violated a Department rule was in effect a finding that the licensees' acts were contrary to public welfare and morals because the rule itself was an articulation of acts which the Department found to be contrary to public welfare and morals. [Citations omitted.]

Similarly, the Legislature has already determined that the Alcoholic Beverage Control Act is intended “for the protection of the safety, welfare, health, peace, and morals of the people of the State” and that the act

involves “in the highest degree” the “moral well-being” of the state and its people. (See Business and Professions Code Section 23001.)[fn.]

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

Here, by finding that appellant violated provisions of the Alcoholic Beverage Control Act, the Department found appellant acted contrary to public welfare and morals. (*Schieffelin, supra*, at p. 1217.) Thus, continuance of said license would also be contrary to public welfare and morals. There is no additional requirement that the appellant be allowed to “clean up its act,” so to speak, and show that the violations will not likely continue. The Department has proven the violations, and the underlying violation implies that discipline, in this instance, revocation, is necessary to protect the public. The Board sees no error.

III. PENALTY

In its closing brief, appellant asks the Board to remand the matter to the Department to reconsider the penalty. (Appellant’s Closing Brief, at pp. 9-10.) Appellant argued at oral argument that a lesser penalty, such as stayed revocation or allowing appellant to sell its business, would be more appropriate based on mitigating factors (e.g., length of licensure). The Department objected to appellant’s argument because it was not included in its opening brief, and thus, the Department did not have the opportunity to respond.

The Board agrees with the Department. “It is the responsibility of the appellant ... to support claims of error with meaningful argument and citation to authority.” (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [183 Cal.Rptr.3d 654] (citations omitted).) “When legal argument with citation to authority is not furnished on a particular

point, we may treat the point as forfeited and pass it without consideration.” (*Ibid.*) Since appellant did not brief this issue in its opening brief, the Board cannot consider it.

However, the Board notes that the record shows appellant was already on probation for a similar violation, and the penalty for violating that probation was revocation, which is what appellant received. The Board also notes the significant aggravating evidence in the Department’s decision. Although rule 144 also allows the Department to exercise discretion to consider aggravation and mitigation, the Board cannot say the Department’s rejection of appellant’s mitigation evidence is an abuse of discretion. In certain circumstances, the Board feels reconsideration of penalty is warranted based on mitigating evidence. This is not one of those circumstances.

ORDER

The decision of the Department is affirmed.⁶

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

⁶ 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:**

REMEK ENTERTAINMENT INC
TORCH ROOM
10632 IMPERIAL HWY
NORWALK, CA 90650

ON-SALE GENERAL PUBLIC PREMISES
LICENSE

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

RECEIVED

FEB 15 2024

Alcoholic Beverage Control
Office of Legal Services

LAKEWOOD DISTRICT OFFICE

File: 48-340877

Reg: 23093336

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 February 14, 2024. 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 March 27, 2024, 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: February 15, 2024



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Remek Entertainment Inc.
dba Torch Room
10632 Imperial Hwy.
Norwalk, California 90650

Respondent

} File: 48-340877
}
} Reg.: 23093336
}
} License Type: 48
}
} Word Count: 25,000
}
} Reporter:
} Leticia Reyna
} Kennedy Court Reporters
}
}

On-Sale General Public Premises License

PROPOSED DECISION

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at by videoconference on September 12-13, 2023.

Joseph J. Scolari, Assistant Chief Counsel, represented the Department of Alcoholic Beverage Control.

Roger Jon Diamond attorney-at-law, represented respondent Remek Entertainment Inc. Bruce Mekjian, shareholder and president of the Respondent, was present.

The Department seeks to discipline Respondent's license on the grounds that, between May 10, 2023 and June 9, 2023, the Respondent knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon the licensed premises in violation of Business and Professions Code section 24200.5(a).¹ (Exhibit 1.)

The Department also seeks to discipline Respondent's license on the grounds that, on May 10, 2023, May 12, 2023, May 25, 2023, and June 9, 2023, its agents or employees sold, furnished, or offered to sell or furnish cocaine upon the licensed premises in violation of California Health and Safety Code section 11352. (Exhibit 1.)

Next, the Department seeks to discipline the Respondent's license on the grounds that, on or about June 9, 2023, the Respondent's agent or employee possessed cocaine upon the

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

licensed premises in violation of California Health and Safety Code section 11350. (Exhibit 1.)

Additionally, the Department seeks to discipline the Respondent's license on the grounds that,

- (a) on May 10, 2023, the Respondent failed to comply with a condition attached to its license by permitting the rear door to be used for purposes other than emergencies and deliveries and
- (b) on November 19, 2021, the Respondent failed to comply with a condition attached to its license by permitting live entertainment (a disc jockey) in violation of section 23804. (Exhibit 1.)

Further, the Department seeks to discipline the Respondent's license on the grounds that the Respondent, the holders of an on-sale general public premises license, permitted Vincent Esquer, 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 1.)

Finally, the Department seeks to discipline the Respondent's license on the grounds that, on or about June 9, 2023, the Respondent failed to maintain a clearly legible permanent sign reading, "No Person Under 21 Allowed" at or near and visible from the exterior of each public entrance or in a prominent place in the interior of the premises in violation of Rule 107.² (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 September 13, 2023

FINDINGS OF FACT

1. The Department filed the accusation on June 29, 2023.
2. The Department issued a type 48, on-sale general public premises license to the Respondent for the above-described location on June 22, 1998 (the Licensed Premises).

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

3. The Respondent's license has been the subject of the following discipline:

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
2/28/2020	20089825	BP §24200.5, H & S §11350 & H & S §11351	Rev. stayed 3 years & 30-day susp.

The foregoing disciplinary matter is final. (Exhibit 2.)

4. On November 29, 1998, the Respondent executed a petition for conditional license. The petition for conditional license sets forth ten conditions which attached to the license when it issued. (Exhibit 3.) Two of these conditions are as follows:

3. The rear door(s) shall be kept closed at all times during the operation of the premises except in cases of emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.
5. There shall be no live entertainment of any type, including but not limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.

5. On November 19, 2021 at approximately 10:30 p.m., Agent M. Connolly entered the Licensed Premises with his partner. He saw two employees working inside the Licensed Premises, Content Wagner and Michaela Stanford. A DJ was playing music.

6. Between November 7, 2021 and May 10, 2023, he visited the License Premises on seven separate occasions. He did so to build a rapport with the employees and patrons.

7. On May 10, 2023, he went to the Licensed Premises with Supervising-Agent-in-Charge B. Beach. They entered the Licensed Premises.

8. SAC Beach went to the restroom. He noticed two men, one of whom wore a Mongol's jacket and was identified as JoJo. They had a baggie with a white powdery substance, which one of them was holding up to the other man's nose. SAC Beach heard something which sounded like snorting.

9. Later, while at the bar counter, SAC Beach spoke to JoJo, who confirmed that he was snorting cocaine. Later still, while playing pool, SAC Beach said that he was looking for some coke. JoJo pointed to Wagner and said that he should talk to her.

10. SAC Beach approached Wagner, who appeared to be off-duty. He said that he wanted cocaine. She asked how much and he said that he wanted a "40" (approximately

¼ of an 8-ball). They discussed the price of a full 8-ball, and eventually agreed upon the price of \$160.

11. SAC Beach went to the restroom. When he returned, Wagner indicated that she had given the cocaine to Agent Connolly. Agent Connolly confirmed that he had been handed a box labeled Stiizy THC Pods. Inside was a baggie containing cocaine. (Exhibit 4, 6, and 25.)

12. On May 12, 2023, Agent Connolly and SAC Beach returned to the Licensed Premises. Wagner was working as a bartender.

13. Agent Connolly ordered a drink from her and asked her if she could get him more. She replied that she could. He offered to pay \$40. She laughed and said that it was the same price as before. He paid her \$160. She gave him some cocaine (exhibit 7, 9, and 25) by placing it in his pocket.

14. Agent Connolly and SAC Beach returned to the Licensed Premises on May 25, 2023. Agent Connolly texted Wagner because she was not working. Wagner replied that she was not going to come into work, but that she could hook him up via Izamar Murillo, another bartender.

15. Murillo subsequently contacted him. She said that the cocaine was going to be there, but she needed the money, \$160, up front. He paid her. She subsequently gave him the cocaine. (Exhibit 10, 12, and 25.)

16. Agent Connolly and SAC Beach returned to the Licensed Premises on June 9, 2023. Mekjian was behind the bar counter. They had a brief conversation with him, during which he said that a bartender would help them shortly.

17. The bartender, Stanford, took their orders and served them. Agent Connolly asked her if she could get him an 8-ball of cocaine. She said, "no."

18. Neither Wagner nor Murillo were present. Agent Connolly texted Murillo, who indicated that she could hook him up. He also texted Wagner.

19. Stanford came back and confirmed that he wanted an 8-ball. She said that it would be the same price as before. He handed \$160 to Murillo. She handed him the cocaine (exhibit 13, 17, and 25) at the bar counter.

20. Back up officers entered the Licensed Premises. They contacted a number of people, including Stanford. A baggie of cocaine was located in Stanford's purse. (Exhibit 16, 17, and 25.)

21. Agent Connolly testified that Agent B. Abbott contacted Vincent Esquer inside the Licensed Premises. Esquer told Agent Abbott that he was 19 years old. Agent Connolly examined Esquer's California driver license, which showed that he was born on June 27, 2003. Agent Abbott's report (exhibit 18) was entered into evidence. A photo of Esquer was taken. (Exhibit 20.)
22. Agent Connolly viewed the Licensed Premises' video. He observed Esquer being served a can of some beverage by one bartender, then a second can by another. Agent Connolly testified that he believed the cans were White Claw Hard Seltzer (although the labels are not legible in the photos), known by him to be an alcoholic beverage. (Exhibits 21-24.)
23. Although a number of signs were posted outside the Licensed Premises (exhibit 19), there was no sign stating that minors were not permitted inside the Licensed Premises.
24. Mekjian testified that the Licensed Premises is a sports bar. The prior disciplinary matter included a stayed revocation, which expired on June 30, 2023. The final night of the investigation took place less than a month before the end of the stay.
25. Mekjian was taking extra precautions to make sure that they did not violate any law. He was on-site at least five days a week to make sure that everything was OK. He was not involved in any sales of cocaine and was not even aware of such sales.
26. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 24200.5(a) provides that the Department shall revoke a license "[i]f a retail licensee has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances or dangerous drugs upon his or her licensed premises." It further provides that "[s]uccessive sales, or negotiations for sales, over any continuous period of time shall be deemed evidence of permission."

4. Health & Safety Code section 11350 makes it a felony to possess any controlled substance

(1) specified in

- (a) subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054,
- (b) paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
- (c) subdivision (b) or (c) of Section 11055, or
- (d) subdivision (h) of Section 11056 or

(2) classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

5. Health & Safety Code section 11352 makes it a felony to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport any controlled substance

(1) specified in

- (a) subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
- (b) paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
- (c) subdivision (b) or (c) of Section 11055, or
- (d) subdivision (h) of Section 11056, or

(2) classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

6. 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 section 11352 alleged in counts 2, 4, 5, and 6. (Findings of Fact ¶¶ 7-19.)

7. The evidence established that, on May 10, 2023 (count 2), Content Wagner, an off-duty bartender, sold cocaine to Supervising-Agent-in-Charge B. Beach. SAC Beach paid for the cocaine, which was delivered to Agent M. Connolly. All negotiations took place inside the Licensed Premises. (Findings of Fact ¶¶ 7-11.)

8. The evidence further established that, on May 12, 2023, May 25, 2023, and June 9, 2023 (counts 4, 5, and 6), Agent Connolly was able to purchase cocaine from one of the Respondent's bartenders—Wagner on May 12, 2023, Izamar Murillo on May 25, 2023, and Michaela Stanford on June 9, 2023. (Findings of Fact ¶¶ 12-19.)

9. 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 section 11350 alleged in count 7. Specifically, Murillo, the Respondent's bartender, possessed cocaine while on duty inside the Licensed Premises. (Finding of Fact ¶ 20.)

10. 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 section 24200.5(a) alleged in count 1. As noted above, the negotiations for the sale of cocaine alleged in counts 2, 4, 5, and 6—as well as the sales themselves—took place inside the Licensed Premises between the Department's agents and the Respondent's employees. (Findings of Fact ¶¶ 7-19.)

11. Section 23804 provides that the violation of a condition placed upon a license constitutes the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and constitutes grounds for the suspension or revocation of the license.

12. 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 section 23804 alleged in count 10. Specifically, on November 19, 2021, a DJ was playing live music inside the Licensed Premises in violation of condition #5 attached to its license. (Findings of Fact ¶¶ 4-5.)

13. The Department did not present any evidence related to the condition violation alleged in count 3. Accordingly, that count is dismissed.

14. Section 25665 provides that any person holding an on-sale license issued for a public premises 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.

15. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that the Respondent, the holder of an on-sale general public premises license, permitted Vincent Esquer, 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. (Findings of Fact ¶¶ 21-22.)

16. Under *Lake v. Reed*³ police reports and the statements therein are admissible in administrative hearings. Importantly, while the personal observations of office who prepared the report are admissible as direct evidence, statements made to the officer by others only qualifies as administrative hearsay. In the present case, Agent Abbott

³ 16 Cal. 4th 448 (1997).

personally contacted Esquer and examined his California driver license. From the license he determined that Esquer was only 19 years old, having been born on June 27, 2003. Esquer admitted that he was only 19 years old. Moreover, at least two of the Respondent's employees were aware that Esquer was inside the Licensed Premises since they served drinks to him. (Findings of Fact ¶¶ 21-22.)

17. Rule 107 provides: "The licensee of each premises licensed with an on-sale license for public premises shall maintain a clearly legible permanent sign, not less than 7" x 11" in size reading, 'No Person Under 21 Allowed' at or near each public entrance thereto in such a manner that such sign shall be visible from the exterior of each public entrance. The lettering of such sign shall be no less than one inch in height. A sign of like size and content shall be maintained at a prominent place in the interior of the premises."

18. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that the Respondent failed to post a sign reading "No Person Under 21 Allowed" near the entrance to the Licensed Premises in violation of rule 107. (Findings of Fact ¶¶ 23.)

PENALTY

The Department requested that the Respondent's license be revoked, arguing that the sales of cocaine were conducted openly by the Respondent's employees on a number of different dates. The Respondent argued that a mitigated penalty was appropriate based on its efforts to ensure that the law is fully complied with.

In making its recommendation, the Department argued that outright revocation was mandatory under that section 24200.5. The Department cited *Department of Alcoholic Beverage Control v Alcoholic Beverage Control Appeals Board (IBPOE Elks of the World Arrowhead Lodge 896)*, which held that "revocation is mandatory where a retail licensee 'has knowingly permitted the illegal sale, or negotiations for the sales, of controlled substances upon his or her licensed premises.'"⁴

The Department's argument ignores existing caselaw. While the holding in *IBPOE Elks* seems clear on its face, it contains no analysis of section 24200.5, no discussion of its legislative history, and no discussion or analysis of existing caselaw. For at least seven decades, caselaw has provided that section 24200.5's mandate requires some form of

⁴ 71 Cal. App. 5th 78 (2021).

revocation, i.e., outright revocation⁵ or stayed revocation,⁶ depending upon the circumstances. Similarly, rule 144 provides that the term “revocation” includes a period of stayed revocation as well as outright revocation of the license, consistent with these cases.

For drug-related offenses, both under section 24200.5(a) and under the various Health and Safety Code sections, the recommended penalty pursuant to rule 144 is revocation. Given that three different employees, on four different dates, openly sold cocaine and that one of those employees was found to be in possession of cocaine—outright revocation is appropriate in this case.

All of the other violations are fairly run-of-the-mill. There is no reason to deviate from the standard penalties for any of them. The penalty recommended herein complies with rule 144.

ORDER

Counts 1, 2, 4, 5, 6, and 7 are sustained. For these violations, the Respondent’s on-sale general public premises license is hereby revoked.

Count 8 is sustained. For this violation, the Respondent’s on-sale general public premises license is hereby suspended for a period of 10 days.

Count 9 is sustained. For this violation, the Respondent’s on-sale general public premises license is hereby suspended for a period of 5 days.

⁵ 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).

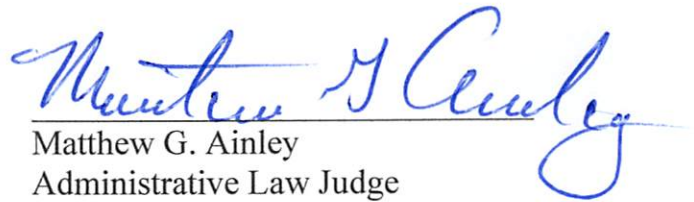
⁶ See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board*, 244 Cal. App. 2d 468, 36 Cal. Rptr. 697 (1964) (revocation stayed coupled with suspension imposed for violations of section 24200.5).

Count 10 is sustained. For this violation, the Respondent's on-sale general public premises license is hereby suspended for a period of 10 days.

All penalties are to run concurrently.

Count 3 is dismissed.

Dated: December 13, 2023


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>J. McCullum</u>
Date: <u>02/14/24</u>

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

REMEK ENTERTAINMENT, INC.,
dba Torch Room,
10632 Imperial Highway
Norwalk, CA 90650,
Appellant/Licensee,

v.

DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,
Respondent.

) AB-9998
)
) File: 48-340877
) Reg: 23093336
)

**DECLARATION OF SERVICE
BY E-MAIL**

I, MARIA SEVILLA, declare that I am over the age of eighteen (18) years, and not a party to the within action; that my place of employment and business is 400 R Street, Suite 320, Sacramento, CA; that on the 20th day of June, 2024, I served a true copy of the attached **Decision** of the Alcoholic Beverage Control Appeals Board in the above-entitled proceeding on each of the persons named below:

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below:

MICHAEL C. CHO
Palmieri, Tyler, Wiener, Wilhelm
& Waldron LLP
1900 Main Street, Suite 700
Irvine, CA 92614-7328
mcho@ptwww.com

Department of ABC
Office of Legal Services
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
yuri.jafarinejad@abc.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California, on the 20th day of June 2024.

Maria Sevilla

MARIA SEVILLA