

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

AB-9695

File: 21-571987 Reg: 17085873

7-ELEVEN, INC. and HARSHARAN KUL SUKHJAS, INC.,
dba 7-Eleven Store #18526D
8708 Atlantic Avenue,
South Gate, CA 90280-3503,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: D. Huebel

Appeals Board Hearing: October 4, 2018
Ontario, CA

ISSUED OCTOBER 19, 2018

Appearances: *Appellants:* Donna Hooper, of Solomon Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and Harsharan Kul Sukhjas, Inc., doing business as 7-Eleven Store #18526D.

Respondent: John P. Newton as counsel for the Department of Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Harsharan Kul Sukhjas, Inc., doing business as 7-Eleven Store #18526D (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 15 days because their clerk sold an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

1. The decision of the Department, dated February 22, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on September 27, 2016. On August 24, 2017, the Department filed an accusation charging that appellants' clerk, Lorena Ramirez-Salazar (the clerk), sold an alcoholic beverage to 19-year-old Alyssa Camacho on May 20, 2017. Although not noted in the accusation, Camacho was working as a minor decoy in a joint operation between the South Gate Police Department and the Department of Alcoholic Beverage Control at the time.

At the administrative hearing held on December 15, 2017, documentary evidence was received and testimony concerning the sale was presented by Camacho (the decoy); by Sergeant Ishmael Ververa of the South Gate Police Department; and by Kuljinder Deep Singh, appellants' owner.

Testimony established that on the date of the operation, the decoy entered the licensed premises, walked straight to the alcoholic beverage section, and selected a 25-ounce can of Bud Light beer. The decoy brought the can of beer to the front sales counter for purchase and waited in line.

At the counter the decoy set down the can of Bud Light beer. The clerk scanned the beer. A yellow screen appeared on the cash register monitor instructing the clerk to request the identification of anyone 30 and under, compare the picture on the identification with the customer, and swipe the identification or manually enter the customer's birthdate. The clerk did not ask for the decoy's identification, and did not ask her age or any age-related questions. The clerk pressed a "visual ID" bypass button on the cash register screen to override the system's request. The clerk proceeded with the alcohol sales transaction. The decoy paid for the beer by handing the clerk cash, which

the clerk accepted. The clerk then gave the decoy change. The decoy took the change and the can of Bud Light beer and exited the store.

The decoy reentered the licensed premises with Sergeant Ververa, Detectives Ed Camacho² and Daniel Bernabe, and Field Training Officer Melendrez, all of the South Gate Police Department. Sergeant Ververa contacted the clerk, who was behind the front sales counter. He identified himself as a police officer and explained the violation to the clerk. The decoy was standing next to Sergeant Ververa, and both were facing the clerk. Sergeant Ververa asked the decoy to identify the person who sold her the beer. The decoy pointed at the clerk and said, "She sold me the beer." The decoy and the clerk were standing six feet apart, facing and looking at each other at the time of this identification. A photo of the clerk and the decoy was taken after the face-to-face identification, with the decoy holding the 25-ounce can of beer while standing next to the clerk. The clerk claimed she thought the decoy was 21.

After the hearing, the Department issued a decision determining the violation charged was proved and no defense was established. The decision imposed a penalty of 15 days' suspension.

Appellants then filed this appeal contending the ALJ failed to consider mitigating evidence or explain her reasoning in selecting the penalty.

DISCUSSION

Appellants contend that "[a]lthough the ALJ heard and recorded the numerous steps" appellants took in mitigation, she "does not seem to have actually considered the mitigating information." (App.Br., at p. 6.) Appellants contend the omission of the ALJ's

2. It is unclear from the record whether the decoy and Detective Camacho are related.

reasoning "leaves the licensee and the Board in the dark" regarding whether the ALJ found Singh's testimony credible, or if she found appellants' subsequent measures to be "useless actions that warrant no mitigation at all." (App.Br., at p. 7.)

Appellants cite *Topanga* as support for their assertion that the ALJ should have explained her reasoning. (App.Br., at p. 8, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836].) Appellants contend "[t]his lack of attention to the reasoning behind the penalty recommendations undermines confidence in administrative adjudications, causes confusion for licensees, and results in an inefficient system." (App.Br., at p. 9.)

Appellants acknowledge that "a 15-day license suspension is the standard penalty for the first sale of alcohol to a person under 21 years old within a 3 year period." (App.Br., at p. 5.) Nevertheless, appellants ask this Board to reverse the decision in its entirety. (App.Br., at p. 10.)

Rule 144 provides penalty guidelines for Department discipline. That rule states, in relevant part:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act [citation] and the Administrative Procedures Act [citation], the Department shall consider the disciplinary guidelines entitled "Penalty Guidelines" (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department *in its sole discretion* determines that the facts of the particular case warrant such a deviation—such as where facts in aggravation or mitigation exist.

(Code Regs., tit. 4, § 144, emphasis added.) The referenced penalty guidelines in turn state:

POLICY STATEMENT

It is the policy of this Department to impose administrative, non-punitive penalties in a consistent and uniform manner with the goal of encouraging and reinforcing voluntary compliance with the law.

PENALTY POLICY GUIDELINES

The California Constitution authorizes the Department, in its discretion, to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

Higher or lower penalties from this schedule may be recommended based on the facts of individual cases where generally supported by aggravating or mitigating circumstances.

(Code Regs., tit. 4, § 144, Penalty Guidelines.) Like the rule itself, the plain language of the penalty guidelines unequivocally entrusts the penalty to the Department's discretion. The penalty guidelines go on to list factors that *may* be considered in aggravation or mitigation, including "[p]ositive action by licensee to correct problem." Throughout the penalty guidelines, however, the language is consistently permissive. (See generally *ibid.*) A licensee is not *entitled* to mitigation, even if it presents evidence.

Because the penalty is, by law, a matter of the Department's discretion, this Board will not disturb the Department's penalty order in the absence of an abuse of that discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) If the penalty imposed is reasonable, the Board must uphold it,

even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Moreover, unless some statute requires it, an administrative agency's decision need not include findings with regard to mitigation. (*Vienna v. Cal. Horse Racing Bd.* (1982) 133 Cal.App.3d 387, 400 [184 Cal.Rptr. 64]; *Otash v. Bureau of Private Investigators* (1964) 230 Cal.App.2d 568, 574-575 [41 Cal.Rptr. 263].) Appellants have cited no law imposing such requirements. Findings regarding the penalty are not necessary as long as specific findings are made that support the decision to impose disciplinary action. (*Williamson v. Bd. of Med. Quality Assurance* (1990) 217 Cal.App.3d 1343, 1346-1347 [266 Cal.Rptr. 520].)

The holding of *Topanga* does *not* extend to the penalty. No "analytical bridge" of any sort is required in imposing a penalty. Provided the penalty is reasonable, this Board has no cause to retrace the ALJ's reasoning. As we have written time and again, "[t]his Board's review of a penalty looks only to see whether it can be considered reasonable, not what considerations or reasons led to it. If it is reasonable, our inquiry ends there." (*Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2013) AB-9236, at p. 4; *7-Eleven, Inc. v. Ghuman & Sons, Inc.* (2011) AB-8997, at p. 4.)

While the ALJ did discuss Singh's testimony regarding the steps he has taken to prevent sales to minors, nothing in the law required her to then reduce the penalty based on those steps, or to explain why she chose not to mitigate the penalty.

The only question before this Board is whether the penalty is reasonable. As appellants acknowledge, a 15-day suspension is the standard penalty for a first sale-to-minor violation. It is therefore reasonable. We see no grounds to reconsider the penalty, let alone reverse the decision in its entirety, as appellants request.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
MEGAN MCGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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

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

APPENDIX

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

IN THE MATTER OF THE ACCUSATION
AGAINST:

7 ELEVEN INC, HARSHARAN KUL
SUKHJAS INC
7-ELEVEN STORE #18526D
8708 ATLANTIC AVE
SOUTH GATE, CA 90280-3503

CERRITOS ENFORCEMENT OFFICE
DISTRICT OFFICE

File: 21-571987

Reg: 17085873

AB: 9695

OFF-SALE GENERAL - LICENSE

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

CERTIFICATION

I, Dominique Williams, do hereby certify that I am a Senior Legal Analyst for the Department of Alcoholic Beverage Control of the State of California.

I do hereby further certify that annexed hereto is a true, correct and complete record (not including the Hearing Reporter's transcript) of the proceedings held under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code concerning the petition, protest, or discipline of the above-listed license heretofore issued or applied for under the provisions of Division 9 of the Business and Professions Code.

IN WITNESS WHEREOF, I hereunto affix my signature on April 11, 2018, in the City of Sacramento, County of Sacramento, State of California.


Office of Legal Services

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RECEIVED
ABC APPEALS BOARD

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

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

7-ELEVEN INC AND HARSHARAN KUL
SUKHIAS INC
7 ELEVEN STORE #18526D
8708 ATLANTIC AVENUE
SOUTH GATE, CA 90280-3503

OFF-SALE GENERAL - LICENSE

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

CERRITOS DISTRICT OFFICE

File: 21-571987

Reg: 17085873

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 5, 2018. 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. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after April 4, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: February 22, 2018



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

7 Eleven Inc., and	}	File: 21-571987
Harsharan Kul Sukhjas Inc.	}	
dba 7 Eleven Store #18526D	}	Reg.: 17085873
8708 Atlantic Avenue	}	
South Gate, California 90280-3503	}	License Type: 21
	}	
Respondents	}	Word Count: 12,396
	}	
	}	Reporter:
	}	Tracy Terkeurst
	}	California Reporting
	}	
<u>Off-Sale General License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Cerritos, California, on December 15, 2017.

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

Donna Hooper, Attorney, represented Respondents, 7 Eleven Inc., and Harsharan Kul Sukhjas Inc.

The Department seeks to discipline the Respondents' license on the grounds that, on or about May 20, 2017, the Respondents, through their agent or employee, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: beer, to Alyssa Camacho, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on December 15, 2017.

FINDINGS OF FACT

1. The Department filed the accusation on August 24, 2017.

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

2. The Department issued a type 21, off-sale general license to the Respondents for the above-described location on September 27, 2016 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. Alyssa Camacho was born on March 2, 1998. On May 20, 2017, she was 19 years old. On that date she served as a minor decoy in an operation conducted by the South Gate Police Department (South Gate PD) in conjunction with the Department.
5. Decoy Camacho appeared and testified at the hearing. On May 20, 2017, she was 5'9" tall and weighed 159 pounds. She was wearing slip-on Vans shoes, dark-washed jeans (with a horizontal cut in her jeans at her right knee), a white V-neck shirt, covered by a white, blue and red, long-sleeved, flannel shirt. Her hair was worn down, past her shoulders. (Exhibits 2 and 3.) Her appearance at the hearing was the same, except she did not have the cut in her jeans, she was one inch taller, weighed one pound less, and her hair was eight inches shorter.
6. On May 20, 2017, at approximately 2:55 p.m., decoy Camacho entered the Licensed Premises, and walked straight to the alcoholic beverage section and selected a 25 ounce can of Bud Light beer. (Exhibit 3.) Beer is an alcoholic beverage. Decoy Camacho brought the can of beer to the front sales counter for purchase. She waited in line.
7. At the counter decoy Camacho set down the can of Bud Light beer. Clerk Lorena Ramirez-Salazar scanned the 25 ounce can of Bud Light beer. A yellow screen appeared on the cash register monitor instructing the clerk to request the identification (ID) of anyone 30 and under, compare the picture on the ID with the customer, and swipe the ID or manually enter the customer's birthdate. Clerk Ramirez-Salazar did not ask for the decoy's ID, her age or any questions. Clerk Ramirez-Salazar pressed a "Visual ID" bypass button on the cash register screen to override the system's request. Clerk Ramirez-Salazar proceeded with the alcohol sales transaction. Decoy Camacho paid for the beer handing clerk Ramirez-Salazar cash, which the clerk accepted. Clerk Ramirez-Salazar then gave the decoy change. Decoy Camacho took the change and 25 ounce can of Bud Light beer and exited the store.
8. Decoy Camacho re-entered the Licensed Premises with Sergeant Ishmael Ververa, Detective Ed Camacho, Detective Daniel Bernabe, and Field Training Officer (FTO) Melendrez, all of whom were with the South Gate PD. Sergeant Ververa was in full uniform, with the two detectives and FTO in a plain clothes capacity. Sergeant Ververa contacted clerk Ramirez-Salazar, who was behind the front sales counter, identified himself as a police officer, and explained the violation to clerk Ramirez-Salazar. Decoy

Camacho was standing next to Sergeant Ververa, both of whom were facing clerk Ramirez-Salazar. Sergeant Ververa asked decoy Camacho to identify the person who sold her the beer. Decoy Camacho pointed at clerk Ramirez-Salazar and said, "She sold me the beer." Decoy Camacho and clerk Ramirez-Salazar were standing six feet apart, facing and looking at each other at the time of this identification. A photo of clerk Ramirez-Salazar and decoy Camacho was taken after the face-to-face identification, with decoy Camacho holding the 25 ounce can of beer while standing next to clerk Ramirez-Salazar. (Exhibit 3.) Clerk Ramirez-Salazar claimed she thought the decoy was 21.

9. Clerk Ramirez-Salazar was issued a citation after the face-to-face identification. Clerk Ramirez-Salazar did not appear and did not testify at the hearing.

10. On May 20, 2017, decoy Camacho visited a total of 13 locations, with only the Licensed Premises having sold alcoholic beverages to her. Decoy Camacho had never visited the Licensed Premises prior to May 20, 2017. Prior to May 20, 2017, decoy Camacho had participated in two other decoy operations. She learned about the decoy program through Sergeant Ververa.

11. Decoy Camacho appeared her age at the time of the decoy operation. Based on her overall appearance, i.e., her physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in front of clerk Ramirez-Salazar at the Licensed Premises on May 20, 2017, decoy Camacho displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to the clerk. In-person decoy Camacho has girlish-facial features – a youthful appearance - looking younger than 19.

12. Sergeant Ververa appeared and testified at the hearing. After initially advising clerk Ramirez-Salazar she had sold alcohol to a minor, clerk Ramirez-Salazar replied, "I'm not going to lie, I messed up. She looked familiar."

13. Kulginder Deep Singh appeared and testified at the hearing. Mr. Singh testified that he has been the owner of the Licensed Premises since August 31, 2016, with an interim operating permit issued by the Department prior to September 27, 2016. Clerk Ramirez-Salazar was trained on Respondents' store policy relating to alcohol sales but did not follow any store procedure or policy during the sales transaction with decoy Camacho. Mr. Singh fired clerk Ramirez-Salazar for violating store policy in selling an alcoholic beverage to minor decoy Camacho and for not checking the minor's ID as required. The 7 Eleven policy requires store employees to ask customers who appear 30 years of age and under for their ID. Prior to May 20, 2017, clerk Ramirez-Salazar was aware of this requirement and signed an affidavit acknowledging store policy relating to age-restricted sales of alcohol and tobacco. Mr. Singh advises all new employees of the age-restricted

alcohol and tobacco policy on their first day of employment. Mr. Singh requires his clerks take a computer-based training on alcohol and tobacco age-restricted merchandise sales twice a year. After May 20, 2017, Mr. Singh now requires his employees to retrieve the customer's ID and either scan it or manually enter the date of birth of any customer appearing 30 years or younger. Mr. Singh also removed from the yellow warning screen the "Visual ID" button, which was originally located to the right of the "Manual Enter" button. The yellow warning screen appears when alcohol or tobacco is scanned at the cash register. (Exhibit A.) The Visual ID button enabled the clerks to override the requirement of scanning the customer's ID or manually entering the customer's date of birth, and allowed the clerks to proceed with the sale of alcohol or tobacco to the customer. Mr. Singh removed the Visual ID button because he wanted to prevent other clerks from using it, as clerk Ramirez-Salazar did on May 20, 2017, to override an age-restricted alcohol sales transaction. Mr. Singh is at the Licensed Premises five days a week, supervising, training and coaching his employees. His store used to participate in the 7 Eleven secret shopper BAR program once monthly and as of November 2017, he has elected to have his store participate in the Bar program twice a month. Through the BAR program, an unidentified/secret shopper will enter the Licensed Premises unannounced and attempt to purchase tobacco or alcoholic beverages. If the clerks request ID they are given a green card. (Exhibit B.) If the clerk fails to request ID they are given a red card. Mr. Singh said that the Licensed Premises has never received a red card. Mr. Singh provides an additional incentive to his clerks for following store policy, giving them a \$25 reward card when they acquire a green card for asking for ID from a secret shopper. If any of his clerks ever were to be given a red card Mr. Singh would fire them. After the said violation, Mr. Singh placed warning signs on the exterior front door entrance and beer cooler doors, which reads in part, "ALCOHOL OR TOBACCO - NO ID, NO SALE! UNDER 21? It's the Law! We Check ID! 7 Eleven Check ID if you look under 30 years of age." (Exhibits C1, C2, and C3.) The Licensed Premises has a video surveillance system, which Mr. Singh reviews two hours a day when he is in the store. Mr. Singh is able to flag age-restricted sales transactions on the 7 Eleven system, and from the time stamps he is able to review the video surveillance. He checks the video to confirm his clerks are asking for ID, and either scanning the customer's ID or manually entering the customer's birth dates into the cash register. If Mr. Singh ever saw an employee fail to scan or enter a customer's date of birth he would give them a first warning and on the second such occurrence it would be cause for termination. Mr. Singh is adamant that his employees comply with all age-restricted policies because he could be subject to losing his 7 Eleven store contract for receiving a Departmental violation. Mr. Singh looked at Exhibit 2, a color photograph of decoy Camacho, and said he would not have sold alcoholic beverages to the minor.

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

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on May 20, 2017, the Respondents' clerk, Lorena Ramirez-Salazar, inside the Licensed Premises, sold an alcoholic beverage to Alyssa Camacho, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-11.)
5. The Respondents argued the decoy operation at the Licensed Premises failed to comply with rules 141(b)(2) and 141(b)(5), therefore, the accusation should be dismissed pursuant to rule 141(c).

With respect to rule 141(b)(2), Respondents argued decoy Camacho did not have the appearance of someone under 21 because of several factors which made her appear to be older than 21. Those factors included clerk Ramirez-Salazar's statement that she thought the decoy was 21 years old and Respondents' attorney's opinion the decoy "looks older than 21, she's large, ...has a very strong and confident demeanor" and "viewing her in person and on the picture she looks like someone that is easily over 21 years old." This rule 141(b)(2) argument is rejected. Respondents presented no evidence as to why clerk Ramirez-Salazar allegedly believed decoy Camacho to be 21 years old. Clerk Ramirez-Salazar's hearsay claims that she thought the decoy to be 21 and familiar are not credible given the fact she had a strong motive to lie to avoid termination, knowing she violated 7 Eleven policy which required she request ID of persons appearing 30 years of

age and under. (Evidence Code sections 780 and 412².) In contrast, decoy Camacho had no motive to falsify her testimony and credibly maintained she had never been in the Licensed Premises prior to May 20, 2017. Finally, there was nothing about decoy Camacho's stature or demeanor which made her appear older than her actual age. In fact, when viewing decoy Camacho in-person she has girlish-facial features which give away her youthfulness despite her height. In other words, decoy Camacho had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 11.)

6. With respect to rule 141(b)(5), the Respondents argued the face-to-face identification was insufficient because of conflicting testimony between Sergeant Ververa and decoy Camacho and that it was Sergeant Ververa who identified the clerk and not the decoy when Sergeant Ververa made initial contact with the clerk and informed her of the violation. Respondents also argued the decoy's testimony indicated that "when she identified the clerk the clerk was busy looking at someone else until she was rehabilitated by the court." This rule 141(b)(5) argument is rejected and without merit. Nothing in the rule prevents the officer, Sergeant Ververa in this case, from initially informing the clerk of the said violation. Indeed, by contacting clerk Ramirez-Salazar first and explaining the violation to her, Sergeant Ververa ensured that clerk Ramirez-Salazar would be aware she was being identified and why. The testimony makes clear that thereafter decoy Camacho identified clerk Ramirez-Salazar when the two were standing six feet apart, facing and looking at each other, with decoy Camacho pointing at clerk Ramirez-Salazar; after which a photo was taken of the clerk and decoy together, with the decoy holding the 25 ounce can of Bud Light beer, which the clerk had sold to the decoy (Exhibit 3). Under the totality of the circumstances, clerk Ramirez-Salazar knew or reasonably should have known she was being identified as the person who sold alcohol to decoy Camacho and there was no evidence the decoy was misled into making a misidentification. The unrebutted, sworn and direct testimony of both decoy Camacho and Sergeant Ververa establishes that a face-to-face identification was conducted as required by the rule.³ The testimony of either witness, by itself, is sufficient to establish that a valid face-to-face identification took place. Taken together, the result is the same.

In addressing counsel's assertion of the court rehabilitating the decoy's testimony, it was, Ms. Hooper's follow-up question, which immediately rehabilitated the decoy, that of, "And did you, did the detective, wait until she was finished with the customer to approach her, and take a picture with you?" to which the decoy replied, "Yes." The decoy's response to both Ms. Hooper's initial and follow-up question made it clear the decoy was confused by the initial question, as the decoy acknowledged upon re-direct

² If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

³ It should be noted that both witnesses testified credibly. No two people will use the exact same words to describe the same event—word choice, distance and time estimates, and so forth will naturally vary from person to person. The minor differences in the testimony of these two witnesses do not call into question either's credibility.

that she did not fully understand Ms. Hooper's question to her about the clerk waiting on a customer when she identified her. On direct examination the decoy credibly testified that the clerk was looking at the decoy when the decoy was identifying the clerk. Sergeant Ververa further credibly testified that decoy Camacho went to the front counter when the decoy identified the clerk.

PENALTY

The Department requested the Respondents' license be suspended for a period of 15 days, based on their short licensure since September 27, 2016. The Respondents argued that, if the accusation were not dismissed, a mitigated penalty of five (5) days was appropriate, given the steps Respondents took to prevent future violations and Mr. Singh's active participation at the Licensed Premises to ensure his employees follow the law. The penalty recommended herein complies with rule 144.

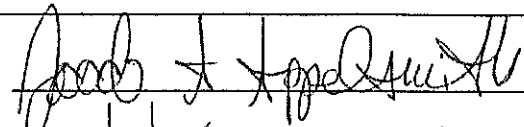
ORDER

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

Dated: January 8, 2018



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: 2/5/18