

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

AB-9663

File: 20-548860 Reg: 17085264

**7-ELEVEN, INC. and HK & D ENTERPRISES, INC.,
dba 7-Eleven Store #34449A
1256 Orange Street,
Redlands, CA 92374,
Appellants/Licensees**

v.

**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent**

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

Appeals Board Hearing: June 7, 2018
Los Angeles, CA

ISSUED JULY 16, 2018

Appearances: *Appellants*: Donna J. Hooper, of Solomon Saltsman & Jamieson, as counsel for 7-Eleven, Inc. and HK & D Enterprises, Inc., doing business as 7-Eleven Store #34449A.
Respondent: Matthew S. Gaughan as counsel for the Department of Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and HK & D Enterprises, Inc., doing business as 7-Eleven Store #34449A (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 July 25, 2017, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on November 24, 2014. On January 17, 2017, the Department filed an accusation charging that appellants' clerk, Simranjit Kaur (the clerk), sold an alcoholic beverage to 18-year-old Bryceson Coleman on October 14, 2016. Although not noted in the accusation, Coleman was working as a minor decoy for the Redlands Police Department at the time.

At the administrative hearing held on May 23, 2017, documentary evidence was received and testimony concerning the sale was presented by Coleman (the decoy), and by Officer David Frisch and Detective Michael Merriman of the Redlands Police Department. Appellants presented no witnesses.

Testimony established that on the date of the operation, the decoy entered the licensed premises, and shortly thereafter Officer David Frisch entered. The decoy went to the back of the store to the refrigerator and selected a 12-pack of Bud Light beer, an alcoholic beverage. The decoy brought the 12-pack of beer to the front sales counter for purchase. He did not have to wait in line.

At the counter the decoy set down the 12-pack of Bud Light beer. The clerk asked the decoy for his identification. The decoy handed his valid California driver's license to the clerk, who took possession of it and looked at it for three to five seconds. The decoy's California driver's license has a vertical orientation, shows his correct date of birth, and includes a red stripe that reads "Age 21 in 2019." The clerk then handed the identification back to the decoy. The clerk proceeded with the sale of alcohol to the decoy. The decoy paid for the beer and exited the store carrying the 12-pack of Bud Light beer. The clerk did not ask the decoy his age, any age-related questions, or

questions about the identification. Officer Frisch was inside the store and witnessed these events. Officer Frisch exited the store three seconds after the decoy exited.

The decoy reentered the licensed premises with Officer Frisch and Detective Michael Merriman. Detective Merriman approached the clerk, who was behind the cash register. He identified himself as a police officer and explained the violation to the clerk. He asked if there were other employees in the store. The clerk responded that she was the only employee in the store.

The decoy was standing next to Detective Merriman. Both of them were on the customer side of the counter, with the clerk across from them, standing on the employee side of the counter. Detective Merriman asked the decoy to identify who sold him the beer. The decoy, while looking at the clerk, pointed at her and said, "She is the one who sold me the 12-pack of Bud Light." The decoy and the clerk were standing approximately five to eight 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 12-pack of beer and his identification while standing next to the clerk.

After the hearing, the Department issued a decision determining that the violation charged was proved and no defense was established.

Appellants then filed this appeal contending the ALJ abused her discretion and failed to proceed in the manner required by law when she failed to articulate why she disregarded appellants' mitigating evidence.

DISCUSSION

Appellants contend the ALJ abused her discretion and failed to proceed in the manner required by law when she failed to articulate her reasons for disregarding appellants' mitigating evidence. (App.Br., at p. 5.) Citing *Topanga*, they argue the ALJ was required to explain her reasoning by setting forth findings to "bridge the analytical gap" between the evidence and the penalty imposed. (App.Br., at p. 7, citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506-515 [113 Cal.Rptr. 836].) According to appellants, the ALJ's failure to articulate her reasoning leaves them "completely in the dark" and wondering "what, if any, mitigating evidence will move the ALJ to deviate" from the standard 15-day penalty. (App.Br., at pp. 7-8.)

Appellants, however, do not request reconsideration of the penalty, but instead seek reversal of the decision in its entirety. (App.Br., at p. 8.)

This Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v. Alcoholic Bev. Control Appeals Bd. & Haley* (1959) 52 Cal.2d 287, 291 [341 P.2d 296].) 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].)

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 not pointed out a statute with such requirements. Findings regarding the penalty imposed 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 Board has repeatedly rejected the very same gloss on *Topanga* appellants advocate here. (See, e.g., *Hawara* (2015) AB-9512 at pp. 9-13; *Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2013) AB-9236, at pp. 3-4.) With regard to factual findings supporting the actual charges—not the penalty imposed—this Board has recently clarified our position:

If this Board observes that the evidence appears to contradict the findings of fact, it will review the ALJ's analysis—assuming some reasoning is provided—to determine whether the ALJ's findings were nevertheless proper. Should this Board be faced with evidence clearly at odds with the findings and no explanation from the ALJ as to how he or she reached those findings, this Board will not hesitate to reverse. . . . While an ALJ may better shield himself against reversal by thoroughly explaining his reasoning, he is not required to do so. The omission of analysis alone is not grounds for reversal, provided findings have been made.

(*Garfield Beach CVS, LLC/Longs Drug Stores Cal., LLC* (2015) AB-9514, at pp. 6-7.)

We emphasize that the above language 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 will have 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.)

In this case, the ALJ imposed a penalty of fifteen days' suspension "in light of the short length of licensure." (Penalty.) While the ALJ acknowledged appellants presented evidence that they were "successful in three other decoy operations within the short span of time of licensure," she chose not to mitigate the penalty. (See *ibid.*) The penalty, although greater than appellants hoped, was reasonable. (See Code Regs., tit. 4, § 144, Penalty Guidelines.) We see no cause to reconsider the penalty, let alone reverse the entire decision.

ORDER

The decision of the Department is affirmed.²

BAXTER RICE, CHAIRMAN
PETER J. RODDY, MEMBER
JUAN PEDRO GAFFNEY RIVERA, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

2. 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, HK & D ENTERPRISES INC
7-ELEVEN STORE #34449A
1256 ORANGE ST
REDLANDS, CA 92374

OFF-SALE BEER AND WINE - LICENSE

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

RIVERSIDE DISTRICT OFFICE

AB-9663

File: 20-548860

Reg: 17085264

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 July 17, 2017. 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, 300 Capitol Mall, Suite 1245, Sacramento, CA 95814.

On or after September 4, 2017, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: July 25, 2017



Matthew D. Botting
General Counsel

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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 HK & D Enterprises, Inc. dba 7-Eleven Store #34449A 1256 Orange Street Redlands, California 92374	}	File: 20-548860
	}	Reg.: 17085264
	}	License Type: 20
	}	Word Count: 7,699
Respondents	}	Reporter:
	}	Chere Davis
	}	Kennedy Court Reporters
<u>Off-Sale Beer & Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at San Bernardino, California, on May 23, 2017.

Jennifer Casey, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Donna Hooper, Attorney, represented Respondents, 7-Eleven Inc. and HK & D Enterprises, Inc.

The Department seeks to discipline the Respondents' license on the grounds that, on or about October 14, 2016, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Bryceson Coleman, 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 May 23, 2017.

FINDINGS OF FACT

1. The Department filed the accusation on January 17, 2017.

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

2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on November 24, 2014 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. Bryceson Coleman was born on August 29, 1998. On October 14, 2016, he was 18 years old. On that date he served as a minor decoy in an operation conducted by the Redlands Police Department (Redlands PD).
5. Decoy Coleman appeared and testified at the hearing. On October 14, 2016, he was 5'6" tall and weighed 165 pounds. He was wearing a black hooded sweatshirt zipped up in the front, with a black t-shirt underneath, gray sweatpants which stopped at his ankles, and dark Nike tennis shoes. He did not wear the hood of the sweatshirt on his head while he was in the Licensed Premises. He wore no jewelry. His hair was cut short to his scalp; so much so that all around his head his scalp was visible. He had no facial hair. (Exhibits 2B and 3.) His appearance at the hearing was the same, except he was 5'7" tall, weighed 171 pounds and wore a white t-shirt underneath the sweatshirt.
6. On October 14, 2016, decoy Coleman entered the Licensed Premises and shortly thereafter officer David Frisch (officer Frisch) of the Redlands PD entered. Decoy Coleman went to the back of the store to the refrigerator and selected a 12-pack of Bud Light beer. (Exhibit 3.) Beer is an alcoholic beverage. Decoy Coleman brought the 12-pack of beer to the front sales counter for purchase. He did not have to wait in line.
7. At the counter decoy Coleman set down the 12-pack of Bud Light beer. Clerk Simranjit Kaur asked decoy Coleman for his identification (ID). Decoy Coleman handed his valid California Driver License to clerk Kaur, who took possession of it, and looked at it for three to five seconds. Decoy Coleman's California Driver License has a vertical orientation, shows his correct date of birth and includes a red stripe which reads, "Age 21 in 2019." (Exhibit 2A.) Clerk Kaur then handed the ID back to decoy Coleman. Clerk Kaur proceeded with the sale of alcohol to decoy Coleman. Decoy Coleman paid for the beer and exited the store carrying the 12-pack of Bud Light beer. Clerk Kaur did not ask decoy Coleman his age, any age-related questions or questions about the ID. Officer Frisch was inside the store and witnessed these events. Officer Frisch exited the store three seconds after decoy Coleman exited.
8. Decoy Coleman re-entered the Licensed Premises with officer Frisch and detective Michael Merriman (detective Merriman) of the Redlands PD. Detective Merriman approached clerk Kaur, who was behind the cash register. He identified himself as a police officer and explained the violation to clerk Kaur. He asked if there were other

employees in the store. Clerk Kaur responded that she was the only employee in the store.

9. Decoy Coleman was standing next to detective Merriman, both of whom were on the customer side of the counter, with clerk Kaur across from them, standing on the employee side of the counter. Detective Merriman asked decoy Coleman to identify who sold him the beer. Decoy Coleman, while looking at clerk Kaur, pointed at clerk Kaur and said, "She is the one who sold me the 12-pack of Bud Light." Decoy Coleman and clerk Kaur were standing approximately five to eight feet apart, facing and looking at each other at the time of this identification. A photo of clerk Kaur and decoy Coleman was taken after the face-to-face identification, with decoy Coleman holding the 12-pack of beer and his ID while standing next to clerk Kaur. (Exhibit 3.)

10. Clerk Kaur was issued a citation after the face-to-face identification.

11. October 14, 2016, was decoy Coleman's second day of decoy operations. Decoy Coleman became involved in the minor decoy program through the Redlands PD's Police Explorer Program, in which he has four years' experience. He has a rank of sergeant. His training as an explorer includes instruction to act professional, respectful, behave maturely and how to: write reports, work the car computer, talk on the radio, fill out 1185 forms, and interact with the public. He goes on ride-alongs and volunteers at community events providing security.

12. On October 14, 2016, decoy Coleman visited a total of 20 locations, with two of those 20 locations, including the Licensed Premises, having sold alcoholic beverages to him.

13. Decoy Coleman had visited the Licensed Premises by himself one month prior to October 14, 2016, and did not purchase alcohol at the time.

14. Decoy Coleman appeared his age at the time of the decoy operation. Based on his overall appearance, i.e., his physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and conduct in front of clerk Kaur at the Licensed Premises on October 14, 2016, decoy Coleman displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to the clerk. Decoy Coleman's appearance is consistent with that of a teenager; he had a youthful look.

15. The parties stipulated to the following facts: Since the Respondents' licensure on November 24, 2014, the Redlands PD has conducted four separate minor decoy operations at the Licensed Premises, with no sale to a minor made on three of those

operation dates, including on October 6, 2015, January 22, 2016, and January 20, 2017. It was on the third visit, the date of the violation at hand, October 14, 2016, in which a sale to a minor was made.

16. 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 October 14, 2016, the Respondents' clerk, Simranjit Kaur, inside the Licensed Premises, sold alcoholic beverages to Bryceson Coleman, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-14.)
5. The Respondents argued the decoy operation at the Licensed Premises failed to comply with rule 141(b)(2), therefore, the accusation should be dismissed pursuant to rule 141(c).

Respondents argued decoy Coleman did not have the appearance of someone under 21 because of several factors which made him appear to be older than 21. Those factors included the decoy's four years' explorer experience and rank as sergeant, his demeanor, along with his testimony he learned from being an explorer to present himself in a mature way and behave responsibly, especially when working with police officers. This rule 141(b)(2) argument is rejected. There is no evidence that decoy Coleman's explorer experience, training, rank or demeanor had any impact on clerk Kaur. There was nothing about decoy Coleman's demeanor, experience or training which made him appear older than his actual age. Decoy Coleman has a youthful, teenage-like appearance. In other

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words, decoy Coleman had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 14.)

PENALTY

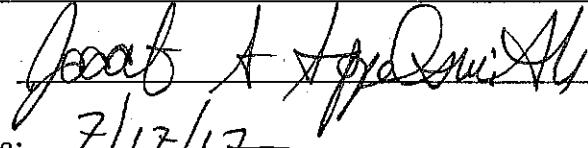
The Department requested the Respondents' license be suspended for a period of 15 days, in light of the short length of licensure since November 24, 2014. The Respondents argued that, if the accusation were not dismissed, a mitigated penalty of 10 days, all stayed, was appropriate given Respondents were successful in three other decoy operations within the short span of time of licensure. The penalty recommended herein complies with rule 144.

ORDER

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

Dated: June 5, 2017


D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: 7/17/17