

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

AB-9723

File: 20-440046; Reg: 18086287

CS OASIS 8, INC.,
dba CS Oasis
388 E. Shaw Avenue,
Fresno, CA 93710-7610,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: May 2, 2019
Ontario, CA

ISSUED MAY 16, 2019

Appearances: *Appellant:* Donna J. Hooper, of Solomon, Saltsman & Jamieson, as
counsel for CS Oasis 8, Inc,

Respondent: Matthew Gaughan, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

CS Oasis 8, Inc., doing business as CS Oasis, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 30 days because its clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

¹The decision of the Department, dated June 21, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on June 21, 2006. There are two prior instances of departmental discipline against the license.

On January 5, 2018, the Department filed an accusation charging that appellant's clerk, Chamnam Thong (the clerk), sold an alcoholic beverage to 19-year-old Rebecca Rachel Alcala (the decoy) on April 3, 2017. Although not noted in the accusation, the decoy was participating in a joint operation between the Fresno Police Department and the Department of Alcoholic Beverage Control at the time.

At the administrative hearing held on April 11, 2018, documentary evidence was received, and testimony concerning the sale was presented by the decoy and by Detective Janette Olson, from the Fresno Police Department. Appellant presented no witnesses.

Testimony established that on April 3, 2017, the decoy entered the licensed premises and went to the coolers where she selected a three-pack of Modelo beer in cans. She took the beer to the register. The clerk asked her if she was 21, and the decoy told him she was 19. The clerk replied, "Are you serious? I have to ask for ID." (RT at p. 10.) The decoy handed the clerk her California driver's license, which had a portrait orientation, and contained her correct date of birth — showing her to be 19 years old, and a red stripe indicating "AGE 21 IN 2018." (Exh. D-2) The clerk looked at the ID and whispered to himself, "21 in 2018?" (*Ibid.*) Nevertheless, the clerk completed the transaction.

The decoy exited the store with the beer and met with Detective Olsen and Department Agent Lori Coleman to tell them what had occurred. She described the clerk to them as an Asian male. While this conversation was taking place, they

observed an individual matching her description of the clerk come outside the premises to smoke a cigarette. One of the officers asked if that was the clerk and the decoy confirmed that it was.

The decoy re-entered the premises with Detective Olson. Olson identified herself as a police officer and explained the violation to him. While standing on opposite sides of the counter, approximately 3-4 feet apart, the decoy confirmed verbally to Detective Olson that this was the clerk who sold her the beer. The clerk admitted that he sold beer to her and that it was a mistake. The clerk and decoy were photographed together (*ibid.*) and the clerk was subsequently cited.

On April 12, 2018, the administrative law judge (ALJ) issued his proposed decision, sustaining the accusation and recommending that the license be suspended for 30 days. On June 11, 2018 the proposed decision was adopted in its entirety, and on June 21, 2018 a Certificate of Decision was issued.

Appellant then filed a timely appeal contending rule 141(b)(2)² was violated because the ALJ's finding, that the decoy displayed the appearance which would generally be expected of a person under the age of 21, was not supported by substantial evidence.

DISCUSSION

Appellant contends the ALJ's finding of fact — that the decoy displayed the appearance which would generally be expected of a person under the age of 21 — was not supported by substantial evidence because of her physical stature and confident demeanor, as well as her extensive experience as a decoy. (AOB at pp. 7-9.)

²References to rule 141 and its subdivisions are to section 141 of title 4 of the California Code of Regulations, and to the various subdivisions of that section.

Rule 141(b)(2) provides:

The decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offense.

This rule provides an affirmative defense, and the burden of proof lies with appellant.

(*Chevron Stations, Inc.* (2015) AB-9445; *7-Eleven, Inc./Lo* (2006) AB-8384.)

Appellant maintains the police used a decoy in this case that failed to comply with standards set forth in rule 141(b)(2). It argues that the decoy's appearance violated this rule because of her physically mature and full-figured appearance, and her extensive experience purchasing alcohol as a decoy — working in operations for the Fresno Police Department, Fresno Sheriff's Department, and the Department since 2015. (RT at pp. 19-20.) Appellant contends these factors gave her the appearance of a person over 21 years of age.

This Board is bound by the factual findings in the Department's decision so long as those findings are supported by substantial evidence. The standard of review is as follows:

We cannot interpose our independent judgment on the evidence, and we must accept as conclusive the Department's findings of fact. [Citations.] We must indulge in all legitimate inferences in support of the Department's determination. Neither the Board nor [an appellate] court may reweigh the evidence or exercise independent judgment to overturn the Department's factual findings to reach a contrary, although perhaps equally reasonable, result. [Citations.] The function of an appellate board or Court of Appeal is not to supplant the trial court as the forum for consideration of the facts and assessing the credibility of witnesses or to substitute its discretion for that of the trial court. An appellate body reviews for error guided by applicable standards of review.

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd. (Masani)* (2004)

118 Cal.App.4th 1429, 1437 [13 Cal.Rptr.3d 826].)

When findings are attacked as being unsupported by the evidence, the power of this Board begins and ends with an inquiry as to whether there is substantial evidence, contradicted or uncontradicted, which will support the findings. When two or more competing inferences of equal persuasion can be reasonably deduced from the facts, the Board is without power to substitute its deductions for those of the Department—all conflicts in the evidence must be resolved in favor of the Department's decision. (*Kirby v. Alcoholic Bev. Control Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815]; *Harris v. Alcoholic Beverage Control Appeals Board* (1963) 212 Cal.App.2d 106 [28 Cal.Rptr.74].)

Therefore the issue of substantial evidence, when raised by an appellant, leads to an examination by the Appeals Board to determine, in light of the whole record, whether substantial evidence exists, even if contradicted, to reasonably support the Department's findings of fact, and whether the decision is supported by the findings. The Appeals Board cannot disregard or overturn a finding of fact by the Department merely because a contrary finding would be equally or more reasonable. (Cal. Const. Art. XX, § 22; Bus. & Prof. Code § 23084; *Boreta Enterprises, Inc. v. Dept. of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94 [84 Cal.Rptr. 113]; *Harris, supra*, at 114.)

This Board has stated many times that, in the absence of compelling reasons, it will ordinarily defer to the ALJ's findings on the issue of whether there was compliance with rule 141(b)(2). The ALJ made the following findings regarding the decoy's appearance:

4. Alcala appeared and testified at the hearing. On April 3, 2017 she appeared as depicted in an image that was taken during the operation (Exhibit D-2). Alcala wore light blue jeans and a plain black t-shirt on her upper body. The only jewelry Alcala wore was a watch and a bracelet. Her face was fully exposed and she wore no makeup. Her hair was down

and slightly below her shoulders. Alcala was approximately 5 feet, 3 inches tall at the hearing. Alcala was unsure of her weight. She appeared to be full figured but not overweight. Alcala credibly testified that her size and physical appearance on the date of the operation were essentially the same, except that her hair was shorter.

¶¶ . . . ¶¶

13. Alcala had served as a decoy on prior operations since she started volunteering for the Fresno Sheriff's Department in 2015. Alcala was enrolled at Fresno State University when she was asked to volunteer during a class. Alcala's appearance during the operation and at the hearing was consistent with her chronological age at the time of the decoy operation. Based on her overall appearance, i.e., her physical appearance, clothing, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in front of Thong at the Licensed Premises on April 3, 2017, Alcala displayed an appearance which would generally be expected of a person less than 21 years of age during her interactions with Thong.

(Findings of Fact, ¶¶ 4-13.) Based on these findings, the ALJ addressed appellant's rule 141(b)(2) arguments:

5. The Respondent argued generally that the decoy operation at the Licensed Premises failed to comply with rule 141^[fn.] and, therefore, the accusation should be dismissed. The Respondent specifically argued that the appearance and behavior of the decoy did not comply with rule 141(b)(2) because her demeanor and appearance made her appear older than 21. This violation if established, would be an affirmative defense and require dismissal of the accusation pursuant to rule 141(c). However, none of the evidence received in this case supports this assertion.

6. Alcala did not dress in a way that would make her seem older. She wore no makeup. The fact that she was full figured, in and of itself, would not be reliable proof of her age such that a clerk could reasonably dispense with making a further inquiry. (Findings of Fact ¶¶ 3-11 and Exhibit D-2). Common experience tells us that a 14 year old girl could be full figured and a 50 year old woman could be petite and slim figured. The Respondent has not presented supporting evidence that body shape alone would be a basis for abandoning the affirmative legal duty of a clerk to ensure that a person purchasing alcohol is of legal age to do so.

7. Further, in this matter, Thong *did* ask Alcala her age and she truthfully said she was 19 years old. Thong asking for her identification suggests he had reason to believe that Alcala *might* be underage which was consistent with the appearance she presented. She then produced her

license that showed she was 19 years old. Thong did not testify to explain why he made the sale despite concrete evidence that Alcala was only 19 years old. The Respondent has also failed to show a nexus between Alcala's *demeanor* and the assertion that this caused Thong to believe she was over 21. The conversation between Alcala and Thong was minimal *and primarily involved Alcala telling Thong she was 19 years old*. It defies reason to believe this minimal interaction could have led to a good faith belief that she was over 21. As previously noted, the clerk did not testify to establish facts suggesting anything in Alcala's actions, manner, or appearance that led Thong to reasonably conclude that Alcala was over 21. The Department has established compliance with rule 141(b)(2) and the Respondent has failed to rebut this evidence. (Findings of Fact ¶¶ 3-11 and Exhibit D-2).

(Conclusions of Law, ¶¶ 5-7.) We concur with the ALJ's assessment.

As this Board has said many times, minors come in all shapes and sizes and we are reluctant to suggest, without more, that minor decoys of large stature automatically violate the rule. (See, e.g., *7-Eleven/NRG Convenience Stores* (2015) AB-9477; *7-Eleven Inc./Lobana* (2012) AB-9164.) This Board has noted that:

[a]n ALJ's task to evaluate the appearance of decoys is not an easy one, nor is it precise. To a large extent, application of such standards as the rule provides is, of necessity, subjective; all that can be required is reasonableness in the application. As long as the determinations of the ALJs are reasonable and not arbitrary or capricious, we will uphold them.

(*O'Brien* (2001) AB-7751, at pp. 6-7.) Notably, the standard is not that the decoy must display the appearance of a "childlike teenager" but "the appearance which could generally be expected of a person under 21 years of age." In Findings of Fact paragraphs 4-13, and Conclusions of Law paragraphs 5-7, the ALJ found that the decoy met this standard.

The Board has also, on innumerable occasions, rejected the "experienced decoy" argument. As the Board previously observed:

A decoy's experience is not, by itself, relevant to a determination of the decoy's apparent age; it is only the *observable effect* of that experience that can be considered by the trier of fact. . . . There is no justification for contending that the mere fact of the decoy's experience violates Rule

141(b)(2), without evidence that the experience actually resulted in the decoy displaying the appearance of a person 21 years old or older.

(Azzam (2001) AB-7631, at p. 5, emphasis in original.) This case is no different.

Appellant presented no evidence that the decoy's experience, physical appearance, or demeanor *actually resulted* in her displaying the appearance of a person 21 years old or older on the date of the operation in this case. As the ALJ notes, the clerk did not testify. We cannot know what went through the clerk's mind in the course of the transaction, or why he made the sale — in spite of looking directly at evidence to the contrary, showing her to be 19 years of age. Absent some evidence to establish that the decoy's stature or experience was the *actual reason* the clerk made the sale, these arguments must fail.

Ultimately, appellant is asking this Board to second guess the ALJ and reach a different conclusion, despite substantial evidence to support the findings in the decision. This the Board cannot do.

ORDER

The decision of the Department is affirmed.³

MEGAN McGUINNESS, ACTING CHAIR
SUSAN A. BONILLA, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This 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:**

CS OASIS 8, INC.
CS OASIS
388 E. SHAW AVENUE
FRESNO, CA 93710-7610

OFF-SALE BEER AND WINE - LICENSE

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

FRESNO DISTRICT OFFICE

File: 20-440046

Reg: 18086287

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 June 11, 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 August 1, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: June 21, 2018



Matthew D. Botting
General Counsel

RECEIVED

JUN 21 2018

Alcoholic Beverage Control
Office of Legal Services

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

IN THE MATTER OF THE ACCUSATION AGAINST:

CS Oasis 8, Inc.	}	File: 20-440046
Db: CS Oasis	}	
388 E. Shaw Avenue	}	Registration: 18086287
Fresno, California 93710-7610	}	
	}	License Type: 20
Respondent	}	
	}	Word Count: 8,585
	}	
	}	Reporter:
	}	Myra Pish-CSR #11613
	}	California Reporting Services
	}	
<u>Off-Sale Beer & Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Fresno, California, on April 11, 2018.

Matthew Gaughan, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Donna Hooper, Attorney, represented Respondent CS Oasis 8, Inc. (Respondent).

The Department seeks to discipline the Respondent's license on the grounds that, on or about April 3, 2017 the Respondent, through their agent or employee, Chamnan Thong, sold, furnished, or gave alcoholic beverages to Rebecca Alcala, an individual under the age of 21 in violation of Business and Professions Code section 25658(a)¹ (Exhibit D-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 April 11, 2018.

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

FINDINGS OF FACT

1. The Department filed the accusation on January 5, 2018 (Exhibit D-1)
2. On June 21, 2006 the Department issued a type 20, off-sale beer & wine license to the Respondent for the above-described location (the Licensed Premises). The following is the record of prior Department discipline against the Respondent's license as established by official records introduced by the Department:

Violation Date	Violation	Registration Date	Registration Number	Penalty
June 10, 2015	25658(a)	July 29, 2015	15082837 (Exhibit D-4)	POIC in lieu of 15 day suspension.
June 29, 2010	25658(a)	November 12, 2010	10073766 (Exhibit D-3)	POIC in lieu of 15 day suspension.

3. Rebecca Alcalá (Alcalá) was born on September 28, 1997. She was 19 years of age at the time of the investigation conducted by the Fresno Police Department (FPD) on April 3, 2017 that led to the accusation in this matter. On that date, Alcalá served as a minor decoy in an operation conducted by FPD at five different locations, including at the Licensed Premises.
4. Alcalá appeared and testified at the hearing. On April 3, 2017 she appeared as depicted in an image that was taken during the operation (Exhibit D-2). Alcalá wore light blue jeans and a plain black t-shirt on her upper body. The only jewelry Alcalá wore was a watch and a bracelet. Her face was fully exposed and she wore no makeup. Her hair was down and slightly below her shoulders. Alcalá was approximately 5 feet, 3 inches tall at the hearing. Alcalá was unsure of her weight. She appeared to be full figured but not overweight. Alcalá credibly testified that her size and physical appearance on the date of the operation were essentially the same, except that her hair was shorter.
5. Alcalá volunteered for a decoy operation on April 3, 2017. Alcalá went to the Licensed Premises with FPD Detective Janette Olson (Olson) and Department Agent Lori Coleman (Coleman) for the purpose of attempting to purchase alcohol. Prior to entering, she was instructed to make an attempt at purchasing an alcoholic beverage. Alcalá was told to carry her identification, show it if requested, and to be truthful regarding her age if asked.

6. Alcalá entered the Licensed Premises after the officers parked their vehicle. Upon entering, she looked for the coolers and saw them to the right of the entrance. She went to the coolers and selected a three-pack of Modelo beer cans as depicted in later images taken of Alcalá, the clerk she interacted with, her license, and a note on the register (Exhibit D-2). Alcalá took her selection, approached the clerk at the register, and presented the three-pack for purchase.

7. The clerk asked Alcalá if she was 21. Alcalá told the clerk she was 19 which was her actual age. The clerk said, "Are you serious?" and then asked Alcalá for her license. Alcalá took out her California driver's license and presented it to the clerk. The clerk took the identification and appeared to examine it for about 30 seconds.

8. Because she was still under 21, the license Alcalá presented was in a portrait rather than a landscape configuration. The license also indicated in a red band under her date of birth that she was under 21 years of age until 2018 (Exhibit D-2). Alcalá could hear the clerk reading aloud this portion of her license as he was examining it. Despite her statement and the information on the license, the clerk continued with the transaction and presented Alcalá the cost. Alcalá paid for the beer. Alcalá was handed change by the clerk along with the beer purchase in a black, plastic bag.

9. Alcalá exited the Licensed Premises with the Modelo brand 3-pack of beer. She got into the vehicle where the two officers were waiting. Alcalá told the officers what happened and described the clerk as an Asian male. During their discussion, a person matching Alcalá's description of the clerk exited the Licensed Premises, looked around, and then proceeded to smoke a cigarette. Olson asked Alcalá if that was the clerk. Alcalá confirmed to the officers that the man smoking was the clerk who sold the beer to her.

10. The clerk reentered the Licensed Premises after finishing his cigarette. Olson and Coleman then went into the Licensed Premises with Alcalá. Upon entering, Olson approached the clerk, identified herself as an officer, and explained why they were present. Olson told the clerk they were there because he had sold alcohol to Alcalá, a minor. Alcalá was standing next to Olson and just across the counter from the clerk. While the clerk was looking at her and Olson, Alcalá confirmed verbally that the clerk Olson was talking to sold her the Modelo beer. The clerk was standing across the counter approximately 3-4 feet away while this occurred. The clerk was identified as Chamnam Thong (Thong) after he gave his name and presented identification during the investigation.

11. Thong was asked if he sold beer to Alcalá. He confirmed that he did sell beer to Alcalá and that it was a mistake. Thong was subsequently photographed next to Alcalá. Alcalá held the Modelo beer can in her left hand and the identification she had presented

to Thong in her right hand while standing next to Thong in front of one of the Licensed Premises coolers. (Exhibit D-2)

12. From the initial law enforcement contact with Thong until after Thong was cited, Alcalá was in the immediate presence of Thong and the officers. Thong was subsequently cited for the sale after he produced his driver's license to confirm his identity.

13. Alcalá had served as a decoy on prior operations since she started volunteering for the Fresno Sheriff's Department in 2015. Alcalá was enrolled at Fresno State University when she was asked to volunteer during a class. Alcalá's appearance during the operation and at the hearing was consistent with her chronological age at the time of the decoy operation. Based on her overall appearance, i.e., her physical appearance, clothing, poise, demeanor, maturity, and mannerisms shown at the hearing, and her appearance and conduct in front of Thong at the Licensed Premises on April 3, 2017, Alcalá displayed an appearance which would generally be expected of a person less than 21 years of age during her interactions with Thong.

14. Thong did not testify in this matter to explain his remarks to Alcalá during the sale, his age related impressions of her or why he sold her alcohol after she said she was 19 and presented a portrait style driver's license that clearly depicted her as being under 21 years of age. Thong was the clerk on duty during the 2015 incident that led to discipline against the Respondent. (Exhibit D-4)

15. 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 Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on April 3, 2017 the Respondent's clerk, Chamnan Thong inside the Licensed Premises, sold an alcoholic beverage to Rebecca Alcala, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 2-14)

5. The Respondent argued generally that the decoy operation at the Licensed Premises failed to comply with rule 141² and, therefore, the accusation should be dismissed. The Respondent specifically argued that the appearance and behavior of the decoy did not comply with rule 141(b)(2) because her demeanor and appearance made her appear older than 21. This violation, if established, would be an affirmative defense and require dismissal of the accusation pursuant to rule 141(c). However, none of the evidence received in this case supports this assertion.

6. Alcala did not dress in a way that would make her seem older. She wore no makeup. The fact that she was full figured, in and of itself, would not be reliable proof of her age such that a clerk could reasonably dispense with making a further inquiry. (Findings of Fact ¶¶ 3-11 and Exhibit D-2) Common experience tells us that a 14 year old girl could be full figured and a 50 year old woman could be petite and slim figured. The Respondent has not presented supporting evidence that body shape alone would be a basis for abandoning the affirmative legal duty of a clerk to ensure that a person purchasing alcohol is of legal age to do so.

7. Further, in this matter, Thong *did* ask Alcala her age and she truthfully said she was 19 years old. Thong asking for her identification suggests he had reason to believe that Alcala *might* be underage which was consistent with the appearance she presented. She then produced her license that showed she was 19 years old. Thong did not testify to explain why he made the sale despite concrete evidence that Alcala was only 19 years old. The Respondent has also failed to show a nexus between Alcala's *demeanor* and the assertion that this caused Thong to believe she was over 21. The conversation between Alcala and Thong was minimal *and primarily involved Alcala telling Thong she was 19 years old*. It defies reason to believe this minimal interaction could have led to a good faith belief that she was over 21. As previously noted, the clerk did not testify to establish facts suggesting anything in Alcala's actions, manner, or appearance that led Thong to reasonably conclude that Alcala was over 21. The Department has established compliance with rule 141(b)(2) and the Respondent has failed to rebut this evidence. (Findings of Fact ¶¶ 3-11 and Exhibit D-2)

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

8. Regarding the general assertion that there was a violation of rule 141(b), neither the clerk nor any other witnesses for the Respondent testified to rebut the credible evidence presented by the Department that this was a fully compliant identification that allowed Thong to become aware that Alcala was the decoy. Respondent has offered no evidence or argument suggesting that the identification violated state or federal due process considerations. Given the totality of the evidence presented by the Department credibly establishing compliance with rule 141(b), the Respondent's assertions that compliance did not occur are unsupported.

PENALTY

The Department recommended that the Respondent's license be suspended for a period of 30 days which is an upward departure from the standard penalty of 25 days given the established prior discipline within 3 years of this violation. (Exhibit D-4) This recommendation for an aggravated penalty is based on proof of an *additional* prior violation of section 25658(a) outside of the 36 month period. (Exhibit D-3)

The Respondent argued for a downward departure from the standard penalty based on the conduct being the product of an error. No evidence was presented regarding the Respondent's efforts to establish and enforce policies to prevent sales of alcoholic beverages to underage individuals by its agents and employees.

The Department's position that the Respondent should receive an aggravated penalty is warranted. This is now the third violation in an approximately eight year period for this Respondent. This history certainly supports an upward departure from the standard penalty.

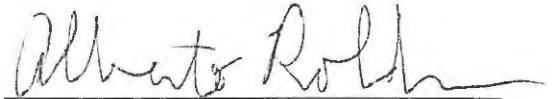
There appear to be no factors in mitigation applicable to this violation. The penalty recommended herein complies with rule 144.

CS Oasis 8, Inc.
Dba: CS Oasis
File #20-440046
Reg. #18086287
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ORDER

The Respondents' off-sale beer & wine license is hereby suspended for a period of 30 days.

Dated: April 12, 2018



Alberto Roldan
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: <u>David A. Lopez</u>
Date: <u>6/4/18</u>