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

**AB-9750**
File: 20-558407; Reg: 18086570

SHASHI GUPTA,
dba Rodeo Market
634 Sherwood Drive,
Salinas, CA 93906-4008,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: August 16, 2019
Sacramento, CA

**ISSUED AUGUST 26, 2019**

*Appearances*: *Appellant:* Dean R. Lueders, of ACTlegally, as counsel for Shashi Gupta,

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

## OPINION

Shashi Gupta, doing business as Rodeo Market, appeals from a decision of the Department of Alcoholic Beverage Control[1] suspending its license for 45 days because its clerk sold an alcoholic beverage to a Department minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).

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[1]The decision of the Department, dated September 11, 2018, is set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on July 13, 2015. There are two prior instances of departmental discipline against the license.

On February 27, 2018, the Department filed a single-count accusation charging that appellant's clerk, Josan Amandeep (the clerk), sold an alcoholic beverage to 16-year-old Bernie G. (the decoy) on December 31, 2017. Although not noted in the accusation, the decoy was working for the Department of Alcoholic Beverage Control at the time.

At the administrative hearing held on June 14, 2018, documentary evidence was received, and testimony concerning the sale was presented by the decoy, Department Agent Jeremy Singleton, and appellant/licensee Shashi Gupta.

Testimony established that the decoy went to the licensed premises with Department agents. He selected a 25-ounce can of Budweiser beer and took it to the sales counter. He waited in line behind one person, and when it was his turn he presented the beer to the clerk. The clerk completed the sale without asking the decoy for identification and without asking him any age-related questions. Subsequently, the clerk was positively identified as the seller of the beer by the decoy. These facts are not in dispute.

On June 29, 2018, the administrative law judge (ALJ) issued his proposed decision, sustaining the accusation and recommending a 45-day suspension. The Department adopted the proposed decision in its entirety on August 20, 2018, and a Certificate of Decision was issued on September 11, 2018.

Appellant then filed a timely appeal contending that the penalty imposed is excessive.

DISCUSSION

Appellant contends the penalty is excessive, and that the ALJ abused his discretion when he ignored evidence of mitigation and incorrectly applied factors in aggravation in determining the penalty. Appellant maintains the penalty determination is not supported by substantial evidence. (AOB at pp.2-6.)

The 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].) "'Abuse of discretion' in the legal sense is defined as discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered. [Citations.]" (*Brown v. Gordon*, 240 Cal.App.2d 659, 666-667 (1966) [49 Cal.Rptr. 901].)

Rule 144 provides:

> In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*), and the Administrative Procedures Act (Govt. Code Sections 11400, *et seq.*), 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.

(Cal. Code Regs., tit. 4, § 144.)

Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, cooperation by the licensee in the investigation, and documented training of the licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

The Penalty Policy Guidelines further address the discretion necessarily involved in an ALJ's recognition of aggravating or mitigating evidence:

> **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.

(*Ibid.*)

In the decision, the ALJ addresses the issue of penalty and explains at length the factors considered in determining the penalty:

> PENALTY
>
> A second violation of section 25658(a) within a 36 month period calls for a 25 day suspension, absent mitigation or aggravation, pursuant to rule 144. The Department has established that the Respondent suffered prior discipline under this section for an incident that occurred on August 24, 2015 where Shashi Gupta himself was the person who made the sale.
>
> The Department recommended a significant upward departure from the standard penalty arguing that the Respondent's license should be revoked. The Department argued that the Respondent's history of repeated violations within a three year period, Licensee involvement in the prior, and the Respondent's failure to establish appropriate protocols to prevent sales to underage persons warrants the revocation of the license in the matter. The Respondent's licensed Premises was characterized as a problem location based on the nature of the violation and the history of non-compliance showing a continuing pattern of unlawful conduct.
>
> The Respondent argued for a 25 day penalty with 15 days stayed if the Accusation were sustained based on the period of licensure with only one

prior sustained disciplinary incident within 3 years, the Respondent's purported efforts to prevent unlawful alcohol sales, and its installation of signage after the June 23, 2017 incident.

In this matter, the Respondent has been placed on repeated notice that its protocols are woefully insufficient for preventing sales to minors. In the incident that led to the prior sustained discipline, Shashi Gupta himself sold alcohol to an underage person without making any investigation into the person's age. In this matter, the Respondent's clerk failed to make any age related inquiry when he sold to a 16 year old minor on December 31, 2017.

While the June 23, 2017 incident has not been finalized such that it can be considered a formal prior pursuant to rule 144, Shashi Gupta was told at that time that an underage sale of alcohol occurred without the clerk making an inquiry regarding age. The only discernable effort made by Gupta, after this incident, to prevent future unlawful sales was to install two signs in the Licensed Premises.

Gupta testified that he told his employees not to sell alcohol to people under 21. It is unclear if this is true given his active role in one sale where no identifying information was sought from an underage purchaser of alcohol and the repeated pattern of sales without inquiries. Even if it is true that Gupta spoke with this employees as he described, this tepid effort appeared to be the extent of his effort to establish policies that his employees would be held accountable for. The lack of detail and planning in Gupta's ineffective prevention efforts demonstrates this Respondent's lack of a real commitment to preventing sales of alcohol to underage persons at the Licensed Premises.

As of the hearing in this matter, Gupta had not sought out information from the Department or the industry to develop any discernable prevention plan despite three separate law enforcement contacts directly related to unlawful sales of alcohol to underage persons at the Licensed Premises. No evidence has been presented that the Respondent provided materials to this employees like identification guides. There is no evidence that Gupta sought available guidance materials or training from the Department for retailers like Gupta. Gupta presented no evidence that consequences were established and communicated to employees in order to prevent underage sales. Gupta did not use any equipment like scanning registers to assist in prevention efforts. This evinces a lack of training of the Licensee and his employees.

There appear to be no factors in mitigation applicable to his violation. Multiple factors in aggravation have been established. The penalty recommended herein complies with rule 144.

(Decision, at pp. 6-7.)

Appellant contends that the ALJ's penalty determination disregarded evidence of mitigation presented by the licensee. Appellant further contends the ALJ made assumptions and relied upon speculation rather than substantial evidence in aggravating the penalty. (AOB at p. 6.)

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, 114 [28 Cal.Rptr.74].)

In the instant case, appellant maintains that substantial evidence is lacking to support an aggravated penalty. Specifically, he contends that there is no evidence to support the ALJ's statement that the licensee had been placed on notice that its protocols were insufficient for preventing sales to minors. The absurdity of this assertion is astonishing. If two prior accusations against the license for sales to minors are not "putting the licensee on notice" then what is? Furthermore, the ALJ did not, as appellant asserts, ignore evidence of mitigation. In the decision, he takes note of additional signage and purported instructions to staff not to sell to minors. However, the ALJ clearly found the evidence of mitigation unpersuasive and insufficient — this is his prerogative.

The Board may not disturb a penalty order unless it is so clearly excessive that any reasonable person would find it to be an abuse of discretion in light of all the circumstances. "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 its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Appellant's disagreement with the penalty imposed does not mean the Department abused its discretion. This Board's review of a penalty looks only to see whether it can be considered reasonable, and, if it is reasonable, the Board's inquiry ends there. The penalty here is within the bounds of the Department's discretion. "[T]he propriety of the penalty to be imposed rests solely within the discretion of the Department whose determination may not be disturbed in the absence of a showing of palpable abuse. [Citations.]" (*Rice v. Alcoholic Bev. Control Appeals Bd.* (1979) 89 Cal.App.3d 30, 39 [152 Cal.Rptr. 285], emphasis added.)

The Board is simply not empowered to reach a contrary conclusion from that of the Department — and substitute its own judgment — when, as here, the underlying decision is reasonable and supported by substantial evidence. We find no abuse of discretion and the penalty imposed complies with the guidelines of rule 144.

ORDER

The decision of the Department is affirmed.[2]

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

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[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**

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|---|---|
| **IN THE MATTER OF THE ACCUSATION AGAINST:**<br><br>SHASHI GUPTA<br>RODEO MARKET<br>634 SHERWOOD DRIVE<br>SALINAS, CA 93906-4008<br><br>OFF-SALE BEER AND WINE - LICENSE<br><br>Respondent(s)/Licensee(s)<br>Under the Alcoholic Beverage Control Act | SALINAS DISTRICT OFFICE<br><br>File: 20-558407<br><br>Reg: 18086570<br><br>**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 August 20, 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 October 22, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: September 11, 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:

| | |
|---|---|
| Shashi Gupta<br>DBA: Rodeo Market<br>634 Sherwood Drive<br>Salinas, California 93906-4008<br><br>Respondent | File: 20-558407<br><br>Registration: 18086570<br><br>License Type: 20<br><br>Page Count: 95<br><br>Reporter:<br>Yvette Gallardo-CSR # 12889<br>Absolute Court Reporters, LLC |
| Off-Sale Beer and Wine License | **PROPOSED DECISION** |

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Salinas, California, on June 14, 2018.

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

Dean Leuders, Attorney, represented Respondent Shashi Gupta who was also present and testified.

The Department seeks to discipline the Respondent's license on the grounds that, on or about December 31, 2017 the Respondent, through their agent or employee, Josan Amandeep, sold, furnished, or gave alcoholic beverages to B.G.[1], an individual under the age of 21 in violation of Business and Professions Code section 25658(a)[2] (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 June 14, 2018.

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[1] In this matter, the decoy used by the Department was under 18 years of age at the time of the hearing. He is referred to by his initials in this proposed decision to protect his privacy. His first name was revealed to the Respondent during the course of proceedings and he was present during the hearing.

[2] All statutory references are to the Business and Professions Code unless otherwise noted.

## FINDINGS OF FACT

1. The Department filed the accusation on February 27, 2018. (Exhibit D-1)

2. On July 13, 2015 the Department issued a type 20, off-sale beer and 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 |
|---|---|---|---|---|
| 8/24/2015 | 25658(a) | 10/13/2015 | 15083153 (Exhibit D-4) | 15 day suspension. |

3. B.G. was born on March 18, 2001 and was 16 years of age at the time of the investigation on December 31, 2017. On that date, B.G. served as a minor decoy in an operation conducted by the Department at multiple locations, including at the Licensed Premises.

4. B.G. appeared and testified at the hearing. On June 14, 2018 his appearance was generally as depicted in an image that was taken during the operation on December 31, 2017. (Exhibit D-2) The one significant difference was that B.G. had light facial hair at the hearing and he was clean shaven on the date of the operation. B.G. wore a black cloth bomber style coat over a black, long-sleeved t-shirt. He also wore blue jeans and white lace up sneakers during the operation. His face was fully exposed and his hair was combed back. B.G. was approximately 5 feet, 9 inches tall and 200 pounds at the hearing. His build was heavyset, not muscular. B.G. credibly testified that his size and appearance on the date of the operation were essentially the same.

5. On December 31, 2017 B.G. went to the Licensed Premises with agents of the Department for the purpose of trying to buy alcohol. Prior to entering, he was told to make an attempt at purchasing an alcoholic beverage. B.G. was instructed to carry his identification, show it if requested, and to be truthful regarding his age if asked. B.G. wore an IPod type device that allowed the agents to listen to what was occurring for safety purposes. The device did not record but it allowed for the interactions of B.G. to be monitored in real time since he was entering the Licensed Premises alone.

6. B.G. went into the Licensed Premises and proceeded to the refrigerators containing beer. He selected a 25 ounce Budweiser beer can as depicted in a later image taken of B.G. and the clerk he interacted with. (Exhibit D-3) B.G. took his selection to the counter where the register was at. One person was in front of him. After that customer was

assisted, B.G. approached the clerk behind the counter. B.G. presented the Budweiser beer can to the clerk for purchase.

7. This clerk was the same individual in the image that was later taken of B.G. standing in front of the clerk that served him. (Exhibit D-3) After B.G. gave the clerk the beer for purchase, the clerk told B.G. the price for the beer. The clerk did not have B.G. produce identification and the clerk did not ask B.G. his age or any age related questions. B.G. paid for the beer with $10 in cash provided by the Department agents. The clerk rang up the beer, gave B.G. change and allowed him to take possession of it and leave.

8. B.G. exited the Licensed Premises with the Budweiser beer. He approached the vehicle where the Department agents were waiting. B.G. told the agents what happened. After this, the agents went into the Licensed Premises with B.G. Upon entering, B.G. identified the clerk who sold him the beer to one of the agents. He was approximately 4-5 feet away from the clerk when this occurred.

9. Prior to the identification, Department Agent Jeremy Singleton (Singleton) had approached the clerk and explained why they were present by telling him that he had sold beer to a minor. Singleton and the other agents were in plain clothes but they had their Department badges hanging around their necks on lanyards. Singleton stood across the counter from the clerk when he engaged with him.

10. After Singleton contacted the clerk because of the sale to a minor, B.G. was asked which clerk had sold to him. B.G. was standing next to Singleton when this question was asked. B.G. responded by pointing to the clerk and stating that he was the one who sold to him. B. G. was standing just across the counter from the clerk when B.G. responded to Singleton's question. The clerk was identified as Josan Amandeep (Amandeep) during Singleton's investigation of the sale to B.G.

11. After B.G. identified Amandeep, he was photographed while standing immediately across the counter from B.G. with both of them facing towards the camera. B.G. held the Budweiser beer can in one hand during this picture. (Exhibit D-3) From the initial law enforcement contact with Amandeep until after this photograph was taken; B.G. was in the immediate presence of Amandeep and the agents. Amandeep acknowledged making the sale to B.G. He stated that he thought B.G. was over 21. Amandeep was subsequently issued a citation for the sale.

12. Because of his large size, B.G. appeared slightly older than his chronological age of 16 years old at the time of the decoy operation. However, based on his overall appearance, i.e., his physical appearance, clothing, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and conduct in front of Amandeep

at the Licensed Premises on December 31, 2017, B.G. displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with Amandeep. Amandeep did not testify in this matter to explain his age related impressions of B.G.

13. Singleton was one of the investigating agents in the August 24, 2015 incident that led to the prior discipline that was established in this matter. (Exhibit D-4) In the August 2015 incident, no identification was asked for from the minor who made the purchase of an alcoholic beverage. Singleton, in an undercover capacity, conducted an investigation at the Licensed Premises on June 23, 2017. On that date, he observed a clerk at the Licensed Premises sell an alcoholic beverage to a person who was determined to be under 21 without asking for identification or age related information. During that investigation, Shashi Gupta (Gupta), the Licensee and owner of the Licensed Premises, arrived at the business after the incident, while Singleton was still present. Singleton spoke with Gupta about his observations during the investigation and concerns about sales being made to underage persons without the clerks even asking for identification or age related questions.

14. Gupta testified in this matter. He confirmed that he has been actively involved as a sole owner or partner in the Licensed Premises since 2011 except for a short period in 2014 through 2015 when the business was sold. During the short period it was sold, Gupta worked as an employee of the Licensed Premises. Gupta reacquired the Licensed Premises effective July 13, 2015 and has been the sole owner since that time. Gupta was the clerk who sold to an underage person during the sustained violation that occurred on August 24, 2015. Gupta testified that he was on painkillers at the time and that he erred in making the sale because of the influence of this medication.

15. Gupta recalled speaking with Singleton on June 23, 2017 about the investigation that resulted from Singleton's observations that day. That matter is still pending as an active case and has not reached a final disposition. After the incident on June 23, 2017, Gupta spoke with his hired clerks and reminded them to not sell to anyone under 21 or without identification to prove their age if they looked under 21. Gupta installed in the Licensed Premises an electric sign that said "WE ID" and another sign that said "NO ID-NO BEER". Next to the beer sign, Gupta installed a sign regarding the age threshold for cigarette sales. No evidence was offered by the Respondent regarding the use of a scanner at the register or any equipment to assist with preventing underage sales. The Respondent did not testify to any hard procedures for performing alcohol sales that had been established at the Licensed Premises. No evidence was received that Gupta or any of his employees had sought out or participated in any Department or industry training regarding the prevention of sales of alcoholic beverages to underage persons. Gupta

testified that Singleton told him about the investigation on June 23, 2017 but that he did not offer Gupta any advice or guidance regarding the prevention of future sales.

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 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 December 31, 2017 the Respondent's clerk, Josan Amandeep inside the Licensed Premises, sold an alcoholic beverage to B.G., a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 2-13)

5. The Respondent argued that the decoy operation at the Licensed Premises failed to comply with rule 141[3] and, therefore, the accusation should be dismissed. Specifically, the Respondent argued that the appearance of the decoy did not comply with rule 141(b)(2). This violation, if established, would be an affirmative defense and require dismissal of the accusation pursuant to rule 141(c).

6. There is no credible evidence supporting the assertion by the Respondent that the appearance of the decoy failed to comply with rule 141(b)(2). As noted above, Amandeep did not testify in this matter to establish that his error was the result of B.G.'s appearance. The record in this matter is that Amandeep barely spoke with B.G. at all. There was little opportunity for him to form an opinion about B.G.'s demeanor. Amandeep did not ask B.G. for age related information or for identification; he spoke *to* B.G. and told him the price of the beer. B.G. did not carry on any conversation with Amandeep beyond the brief

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

transaction. Further, B.G. testified in this matter and his physical appearance matched the physical appearance he presented to Amandeep on the date of the operation. Even though B.G.'s height and heft made him appear somewhat older than his chronological age of 16, he had the appearance "which could generally be expected of a person under 21 years of age" and he was well under 20 which are the standards required by rule 141(b)(2). As previously noted, the clerk did not testify to establish facts suggesting that there was anything in B.G.'s actions, manner, or appearance that led Amandeep to reasonably conclude that B.G. 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 ¶¶ 2-13)

## PENALTY

A second violation of section 25658(a) within a 36 month period calls for a 25 day suspension, absent mitigation or aggravation, pursuant to rule 144. The Department has established that the Respondent suffered prior discipline under this section from an incident that occurred on August 24, 2015 where Shashi Gupta himself was the person who made the sale.

The Department recommended a significant upward departure from the standard penalty in arguing that the Respondent's license should be revoked. The Department argued that the Respondent's history of repeated violations within a three year period, Licensee involvement in the prior, and the Respondent's failure to establish appropriate protocols to prevent sales to underage persons warrants the revocation of the license in this matter. The Respondent's licensed Premises was characterized as a problem location based on the nature of the violation and the history of non-compliance showing a continuing pattern of unlawful conduct.

The Respondent argued for a 25 day penalty with 15 days stayed if the Accusation were sustained based on the period of licensure with only one prior sustained disciplinary incident within 3 years, the Respondent's purported efforts to prevent unlawful alcohol sales, and its installation of signage after the June 23, 2017 incident.

In this matter, the Respondent has been placed on repeated notice that its protocols are woefully insufficient for preventing sales to minors. In the incident that led to the prior sustained discipline, Shashi Gupta himself sold alcohol to an underage person without making any investigation into the person's age. In this matter, the Respondent's clerk failed to make any age related inquiry when he sold to a 16 year old minor on December 31, 2017.

While the June 23, 2017 incident has not been finalized such that it can be considered a formal prior pursuant to rule 144, Shashi Gupta was told at that time that an underage

sale of alcohol occurred without the clerk making an inquiry regarding age. The only discernable effort made by Gupta, after this incident, to prevent future unlawful sales was to install two signs in the Licensed Premises.

Gupta testified that he told his employees not to sell alcohol to people under 21. It is unclear if this is true given his active role in one sale where no identifying information was sought from an underage purchaser of alcohol and the repeated pattern of sales without inquiries. Even if it is true that Gupta spoke with his employees as he described, this tepid effort appeared to be the extent of his effort to establish policies that his employees would be held accountable for. The lack of detail and planning in Gupta's ineffective prevention efforts demonstrates this Respondent's lack of a real commitment to preventing sales of alcohol to underage persons at the Licensed Premises.

As of the hearing in this matter, Gupta had not sought out information from the Department or the industry to develop any discernable prevention plan despite three separate law enforcement contacts directly related to unlawful sales of alcohol to underage persons at the Licensed Premises. No evidence has been presented that the Respondent provided materials to his employees like identification guides. There is no evidence that Gupta sought available guidance materials or training from the Department for retailers like Gupta. Gupta presented no evidence that consequences were established and communicated to employees in order to prevent underage sales. Gupta did not use any equipment like scanning registers to assist in prevention efforts. This evinces a lack of training of the Licensee and his employees.

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

## ORDER

The Respondents' off-sale beer and wine license is hereby suspended for a period of 45 days.

Dated: June 29, 2018

Alberto Roldan
Administrative Law Judge

☒ Adopt

☐ Non-Adopt: _____

By: Jacob A Appadurai

Date: 8/20/18