

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

AB-9713

File: 21-513458; Reg: 17086025

SATINDERPAL KAUR,
dba Super Market & Liquor
4820 Santa Monica Boulevard,
Los Angeles, CA 90029,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Huebel

Appeals Board Hearing: January 10, 2019
Ontario, CA

ISSUED JANUARY 31, 2019

Appearances: *Appellant:* Ralph Barat Saltsman and Brian Washburn, of Solomon, Saltsman & Jamieson, as counsel for Satinderpal Kaur,

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

OPINION

Satinderpal Kaur, doing business as Super Market & Liquor, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 15 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 1, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on October 12, 2011. There is one prior instance of discipline against the license for violating section 25658(a).

On October 13, 2017, the Department filed a one-count accusation charging that appellant's clerk, Mo Abdur Rouf (the clerk), sold an alcoholic beverage to 19-year-old Arelid Alan Ramirez Fabian on March 28, 2017. Although not noted in the accusation, Ramirez was working as a minor decoy for the Los Angeles Police Department (LAPD) at the time.

At the administrative hearing held on February 6, 2018, documentary evidence was received, and testimony concerning the sale was presented by Ramirez (the decoy), by LAPD Rampart Vice Officer Antonio Arevalo, and by LAPD Sergeant Josh Min. Appellant presented no witnesses.

Testimony established that on March 28, 2017, Officer Arevalo entered the licensed premises in an undercover capacity, followed a short time later by the decoy. The officer stood approximately 5 to 10 feet from the cash register where he could see the decoy at all times. The decoy went to the coolers where he selected a 24-ounce can of Bud Light beer (exh. 5B), referred to as a "tallboy." (RT at p. 27.) He took the beer to the register and set it down. The clerk, who was talking on the telephone, scanned the beer and completed the sale without asking for identification or engaging in any conversation with the decoy. Following the sale — with the clerk still talking on the telephone — the decoy exited the premises, followed by Arevalo.

Outside, two other plain clothes officers asked the decoy what had occurred. The decoy advised them that the single male clerk behind the counter sold him a beer. The two officers placed their hands on the decoy's shoulders, the decoy placed his

hands behind his back as if he were in custody, and the officer escorted him back into the premises. They were joined by a uniformed LAPD officer and they made contact with the clerk, who was still on the telephone. When the clerk saw the officer he hung up the phone. The officer explained the violation to the clerk. Sergeant Min asked the decoy who sold him the beer. The decoy pointed at the clerk and said "he did." The clerk and decoy were standing approximately five feet apart and looking at each other at the time. The clerk was asked to step out from behind the counter and a photo of the clerk and decoy was taken. (Exh. 5A.) The clerk was then issued a citation.

On March 9, 2018, the administrative law judge (ALJ) issued her proposed decision, sustaining the accusation and recommending a 15-day suspension. The proposed decision was adopted by the Department in its entirety and a Certificate of Decision was issued on June 1, 2018.

Appellant then filed a timely appeal contending the decoy operation violated rules 141(a) and 141(b)(2).²

DISCUSSION

Appellant contends the decoy operation violated rules 141(a) and 141(b)(2) and failed to promote fairness by using a decoy with six years of law enforcement training to "trick" the licensee. (AOB at pp. 4-9.)

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

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.

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 Department used a decoy in this case that failed to comply with standards set forth in rule 141(b)(2). Appellant argues that the decoy's six years of law enforcement training as a LAPD cadet — including one year as a lieutenant, responsible for supervising 40 to 60 other cadets — as well as his experience as a minor decoy, caused him to display a mature and confident demeanor, and gave him the appearance of a person over 21 years of age. (AOB at p. 6.)

Appellant further maintains that the facts in this case indicate unfairness in that the officers failed to reveal to the appellant that this was a decoy operation. Instead, the officers pretended that the minor decoy had been detained during the face-to-face identification. (*Id.* at p. 8.) It asserts that the accusation only states that section 25658(a) was violated, but not that it was during a decoy operation, thereby leaving the appellant unaware that the affirmative defenses under rule 141 would be available. (*Ibid.*) It contends that “the LAPD’s use of trickery and deceptive practices did not promote fairness through this minor decoy operation.” (*Id.* at p. 9.)

Rule 141(a) provides:

A law enforcement agency may only use a person under the age of 21 years to attempt to purchase alcoholic beverages to apprehend licensees, or employees or agents of licensees who sell alcoholic beverages to minors (persons under the age of 21) and to reduce sales of alcoholic beverages to minors in a fashion that promotes fairness.

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 of fact regarding the decoy's appearance, demeanor, experience, and apparent age:

5. Decoy Ramirez appeared and testified at the hearing. On March 28, 2017, he was 5' 4" tall and weighed 190 pounds. He wore black Levi jeans, a black Batman T-shirt, over which he wore an unbuttoned black trucker jacket, black boots and a black watch. (Exhibits 4 and 5A.) His appearance at the hearing was the same, except he weighed 210 pounds.

[¶ . . . ¶]

10. Decoy Ramirez had never visited the Licensed Premises prior to March 28, 2017. Prior to March 28, 2017, decoy Ramirez had participated in two other decoy operations. He was a little nervous during the decoy operation of March 28, 2017. He learned about the decoy program through his service with the LAPD Rampart Station Cadet Program, as a volunteer cadet for six years. As a recruit cadet he went through an 18-week basic training course, in which he learned the penal and radio codes, how to march, drill, and conduct searches. He reached the rank of lieutenant and was responsible for directing approximately 40 to 60 cadets for 11 months and then resigned from his post as a cadet. He felt his experience as a cadet made him a better person, taught him to respect authority, made him more mature and responsible, and affected how he conducts himself on a day-to-day basis, as well as how he presents himself to the public.

11. Decoy Ramirez 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 Rouf at the Licensed Premises on March 28, 2017, decoy Ramirez 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 Ramirez looks his age.

(Findings of Fact, ¶¶ 5-11.) Based on these findings, the ALJ addressed appellant's

rule 141(b)(2) defense:

5. The Respondent argued the decoy operation at the Licensed Premises failed to comply with rules 141(a) and 141(b)(2), therefore, the accusation should be dismissed pursuant to rule 141(c).

With respect to rule 141(b)(2), Respondent argued decoy Ramirez 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 decoy Ramirez' training and six years' experience as a cadet, with the responsibility of being in charge of 40-60 cadets for 11 months, and his own testimony that his experience as a cadet made him a better person, more mature and responsible and affected how he presents himself to the public and in his day-to-day life. Further, Respondent's counsel opined the decoy "looks over 21, he's [a] very mature, young man, he's fairly stocky, he's not tall, fully grown, stocky, has stubble. . . I think we could tell today he was very mature and articulate and a confident young man that clearly looks over the age of 21."

This rule 141(b)(2) argument is rejected. Respondent presented no evidence as to why clerk Rouf allegedly believed decoy Ramirez to be 21 years old. Respondent's counsel's unsupported assertions are nothing but assumption and conjecture. Clerk Rouf never testified. There was nothing about decoy Ramirez' experience as a cadet, his stature or demeanor which made him appear older than his actual age. In fact, when viewing decoy Ramirez in-person at the hearing he appears his age. The undersigned, who sat within three feet of the decoy, while he sat upon the witness chair, could see no "stubble" upon his face, despite the undersigned leaning in to look closely. Decoy Ramirez even indicated that he shaved the night before the hearing and the morning of the said decoy operation. As such, it is extremely unlikely decoy Ramirez had any "stubble" when he presented himself before clerk Rouf on March 28, 2017, having shaved that same morning. In other words, decoy Ramirez had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 11.)

(Conclusions of Law, ¶ 5.)

The Board has repeatedly declined to substitute its judgment for that of the ALJ on this issue, and has 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 actually resulted in his displaying an appearance of a person 21 years old or older on the date of the operation in this case. The clerk did not testify. We cannot know what went through his mind in the course of the transaction or why he failed to ask for identification. Perhaps he was simply too preoccupied by talking on the phone while doing his job. Appellant relies entirely on a difference of opinion — theirs versus that of the ALJ — as to what conclusion the evidence in the record supports. Absent an evidentiary showing, this argument must fail. In Finding of Fact paragraphs 5 through 11, and Conclusions of Law paragraph 5, *supra*, the ALJ found that the decoy met the standards required by rule 141(b)(2).

As we have said on many occasions, the ALJ is the trier of fact, and has the opportunity to observe the decoy as he testifies and to make a determination whether the decoy has an appearance which meets the requirement of rule 141 that he possess 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.

The evidence presented at the hearing, including the presence of the decoy himself, clearly provided substantial evidence for finding that the decoy's appearance complied with the requirements of rule 141(b)(2). Ultimately, appellant is asking this Board to consider the same set of facts and reach a different conclusion, despite substantial evidence to support those findings. This the Board cannot do.

On the issue of fairness, the Court of Appeals recently opined on whether the Board was empowered to impose additional fairness criteria beyond those enumerated in rule 141. The Court found:

Contrary to the Appeals Board's contention, Rule 141 provides specific guidance regarding how to preserve fairness in minor decoy operations.

Subdivision (b) of Rule 141 implements the goal of fairness by imposing five specific requirements for every minor decoy operation. Decoys must be under the age of 20; have the appearance of a person under 21; carry their own actual identification and present that identification upon request; truthfully answer any questions about their ages; and make face-to-face identifications of the persons who sold the alcoholic beverages. (Rule 141, subd. (b)(1)–(5).) Fairness under Rule 141 is assured by a set of five expressly defined safeguards, all of which must be fulfilled during a minor decoy operation. [Citation.] Consequently, Rule 141's use of the word “fairness” does not render the rule ambiguous or confusing.

(*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd./ Garfield Beach* (2017) 7 Cal.App.5th 628, 638 [213 Cal.Rptr.3d 130].) In other words, the Court made it very clear that the word “fairness” in rule 141(a) is not subject to enlargement by this Board, allowing it to add fairness requirements to decoy operations. Rather, the five factors enumerated in rule 141(b)(1) through (5) lay out specifically what is required to make a decoy operation “fair.” Those five factors were all complied with in this case. To wit: the decoy (1) was under the age of 20; (2) had the appearance of a person under 21; (3) carried his own actual identification and would have presented that identification, had he been asked; (4) would have truthfully answered any questions about his age, had he been asked; and (5) made a face-to-face identification of the person who sold him the alcoholic beverage.

At oral argument, counsel for appellant argued that the Board should consider additional factors affecting “fairness” and argued that he should not be constrained by the holding in *Garfield Beach, supra* because, as he said, “I’m not in front of the Court of Appeals.” This statement ignores the fact that lower courts — including, very specifically this Board — are bound by that precedent. As our state Supreme Court has explained:

“The doctrine of stare decisis expresses a fundamental policy . . . that a rule once declared in an appellate decision constitutes a precedent which

should normally be followed It is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system" [Citations].

(*Peterson v. Super. Ct.* (1995) 10 Cal.4th 1185, 1195 [43 Cal.Rptr.2d 836].)

The ALJ addressed appellant's fairness argument as follows:

6. With respect to Respondent's 141(a) argument, Respondent in effect argued that "reading between the lines" the five requirements under 141(b) are just the minimum standards to be applied and are not the only standards that need to be applied, that the decoy operation after the sale, and as a whole, was conducted unfairly and was "incredibly deceptive," claiming "trickery" and citing such factors, which included, but are not limited to, the officers pretending the decoy was not a decoy, bringing the decoy back into the Licensed Premises as if he were in physical custody, "that he was somebody that was caught, a minor that was caught [] purchasing alcohol under age."

Respondent's argument has no merit and is rejected. First of all, there was no evidence presented that clerk Rouf even saw the officers bring decoy Ramirez back in as clerk Rouf was otherwise engaged on the telephone and with the LAPD officer who approached him.

[¶ . . . ¶ — quoting *Garfield Beach, supra*, at 7 Cal.App.5th 628, 638.]

Accordingly, the court did not recognize the separate criteria of "fairness" to be applied when assessing whether individual decoy operations comply with Rule 141(a). The Court of Appeal was clear that "fairness" is achieved by adhering to the five standards set forth in Rule 141(b)(1)-(5). In the matter at hand, the record made clear that all five of the standards set forth in rule 141(b)(1)-(5) were complied with during the said decoy operation. Rule 141(a) was fully complied with.

(Conclusions of Law, ¶ 6.)

We have reviewed the entire record and agree with the ALJ's fairness determination. The five factors enumerated in rule 141(b)(1) through (5) — to ensure fairness under rule 141(a) — were complied with. We decline to follow appellant's invitation to ignore precedent and to expand the rule to include additional fairness factors.

ORDER

The decision of the Department is affirmed.³

MEGAN McGUINNESS, ACTING CHAIR
PETER J. RODDY, 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:**

SATINDERPAL KAUR SUPER
MARKET & LIQUOR 4820
SANTA MONICA BLVD
LOS ANGELES, CA 90029

OFF-SALE GENERAL - LICENSE

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

CERRITOS DISTRICT OFFICE

File: 21-513458

Reg: 17086025

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 May 9, 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 July 12, 2018, a representative of the Department will contact you to arrange to pick-up the license certificate.

Sacramento, California

Dated: June 1, 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:

Satinderpal Kaur
Dba: Super Market & Liquor
4820 Santa Monica Blvd.,
Los Angeles, California 90029

Respondent

} File: 21-513458
}
} Reg.: 17086025
}
} License Type: 21
}
} Word Count: 15,059
}
} Reporter:
} Tracy Terkeurst
} California Reporting

Off-Sale General License

PROPOSED DECISION

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Cerritos, California, on February 6, 2018.

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

Donna Hooper, Attorney, represented Respondent, Satinderpal Kaur.

The Department seeks to discipline the Respondent's license on the grounds that, on or about March 28, 2017, the Respondent, 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 Arelid Alan Ramirez Fabian, 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 February 6, 2018.

FINDINGS OF FACT

1. The Department filed the accusation on October 13, 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 Respondent for the above-described location on October 12, 2011 (the Licensed Premises).

3. Respondent has been the subject of the following discipline:

<u>Date of Violation</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
August 8, 2013	13079273	BP§§25658(a) 24200(a)&(b)	POIC in lieu of 15 day suspension

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

4. Arelid Alan Ramirez Fabian was born on December 29, 1997, On March 28, 2017, he was 19 years old. On that date he served as a minor decoy in an operation conducted by the Los Angeles Police Department (LAPD).

5. Decoy Ramirez appeared and testified at the hearing. On March 28, 2017, he was 5'4" tall and weighed 190 pounds. He wore black Levy jeans, a black Batman T-shirt, over which he wore an unbuttoned black trucker jacket, black boots and a black watch. (Exhibits 4 and 5A.) His appearance at the hearing was the same, except he weighed 210 pounds.

6. On March 28, 2017, at approximately 3:15 p.m., LAPD Rampart Vice Officer Antonio Arevalo entered the Licensed Premises followed shortly thereafter by decoy Ramirez. Officer Arevalo stood approximately five to 10 feet from the cash register with a clear view of the decoy at all times. Decoy Ramirez walked straight to the back of the store to the alcoholic beverage refrigerators and selected a 24 ounce can of Bud Light beer. (Exhibit 5B.) Decoy Ramirez brought the can of beer to the front sales counter for purchase where there was only one clerk behind the sales counter. Decoy Ramirez did not have to wait in line.

7. At the counter decoy Ramirez set down the can of Bud Light beer. Clerk Mo Abdur Rouf, who was on the telephone during the entire transaction, scanned the 24 ounce can of Bud Light beer. Clerk Rouf did not ask for the decoy's identification (ID) or his age. Decoy Ramirez had on his person his valid California ID. Clerk Rouf proceeded with the alcohol sales transaction. Decoy Ramirez paid for the beer, by handing clerk Rouf \$20 in cash, which the clerk accepted. Clerk Rouf then gave the decoy change. Decoy Ramirez took the change and the 24 ounce can of Bud Light beer and exited the store, with clerk Rouf still on the telephone. Clerk Rouf engaged in no conversation with decoy Ramirez during the sales transaction. Officer Arevalo witnessed the sales transaction and the decoy's actions inside the Licensed Premises with a clear, unobstructed view. Officer

Arevalo was close enough to hear that nothing was said between clerk Rouf and decoy Ramirez. Officer Arevalo exited the store soon after decoy Ramirez.

8. Outside the front doors of the store stood two LAPD plain-clothed officers, who stopped decoy Ramirez as he exited the store, with one of the officers asking Ramirez what occurred. Decoy Ramirez advised the officers the single male clerk behind the counter sold him the Bud Light beer, which Decoy Ramirez still held in his hand. The two undercover officers placed their hands on the Decoy's shoulders, the decoy put his hands behind his back, and the officers escorted the decoy back into the Licensed Premises as if he was in physical custody. At that point a uniformed LAPD officer entered and walked with one of the undercover officers to the sales counter and made contact with clerk Rouf, who remained on the telephone behind the counter. When clerk Rouf saw the LAPD officer he hung up the telephone. The officer explained the violation to clerk Rouf. At that point, one of the plain-clothed officers, Sergeant Josh Min, who was with decoy Ramirez, asked decoy Ramirez to identify the person who sold him the beer. Decoy Ramirez pointed at clerk Rouf with his right hand and said, "He did." Decoy Ramirez and clerk Rouf were standing less than five feet apart, looking at each other at the time of this identification. Sergeant Min asked clerk Rouf to step out from behind the sales counter, which he did. A photo of clerk Rouf and decoy Ramirez was taken after the face-to-face identification, with decoy Ramirez holding the 24 ounce can of Bud Light beer while standing next to clerk Rouf and pointing at clerk Rouf. (Exhibit 5A.)

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

10. Decoy Ramirez had never visited the Licensed Premises prior to March 28, 2017. Prior to March 28, 2017, decoy Ramirez had participated in two other decoy operations. He was a little nervous during the decoy operation of March 28, 2017. He learned about the decoy program through his service with the LAPD Rampart Station Cadet Program, as a volunteer cadet for six years. As a recruit cadet he went through an 18-week basic training course, in which he learned the penal and radio codes, how to march, drill, and conduct searches. He reached the rank of lieutenant and was responsible for directing approximately 40 to 60 cadets for 11 months and then resigned from his post as a cadet. He felt his experience as a cadet made him a better person, taught him to respect authority, made him more mature and responsible, and affected how he conducts himself on a day-to-day basis, as well as how he presents himself to the public.

11. Decoy Ramirez 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 Rouf at the Licensed Premises on March 28, 2017, decoy Ramirez 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 Ramirez looks his age.

12. 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 March 28, 2017, the Respondent's clerk, Mo Abdur Rouf, inside the Licensed Premises, sold an alcoholic beverage, to-wit: beer, to Arelid Alan Ramirez Fabian, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-11.)
5. The Respondent argued the decoy operation at the Licensed Premises failed to comply with rules 141(a) and 141(b)(2), therefore, the accusation should be dismissed pursuant to rule 141(c).

With respect to rule 141(b)(2), Respondent argued decoy Ramirez 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 decoy Ramirez' training and six years' experience as a cadet, with the responsibility of being in charge of 40-60 cadets for 11 months, and his own testimony that his experience as a cadet made him a better person, more mature and responsible and affected how he presents himself to the public and in his day-to-day life. Further, Respondent's counsel opined the decoy "looks over 21, he's [a] very mature, young man, he's fairly stocky, he's not tall, fully grown, stocky, has stubble...I think we could tell today he was very mature and articulate and a confident young man that clearly looks over the age of 21."

This rule 141(b)(2) argument is rejected. Respondent presented no evidence as to why clerk Rouf allegedly believed decoy Ramirez to be 21 years old. Respondent's counsel's unsupported assertions are nothing but assumption and conjecture. Clerk Rouf never testified. There was nothing about decoy Ramirez' experience as a cadet, his stature or demeanor which made him appear older than his actual age. In fact, when viewing decoy Ramirez in-person at the hearing he appears his age. The undersigned, who sat within three feet of the decoy, while he sat upon the witness chair, could see no "stubble" upon his face, despite the undersigned leaning in to look closely. Decoy Ramirez even indicated that he shaved the night before the hearing and the morning of the said decoy operation. As such, it is extremely unlikely decoy Ramirez had any "stubble" when he presented himself before clerk Rouf on March 28, 2017, having shaved that same morning. In other words, decoy Ramirez had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 11.)

6. With respect to Respondent's 141(a) argument, Respondent in effect argued that "reading between the lines" the five requirements under 141(b) are just the minimum standards to be applied and are not the only standards that need to be applied, that the decoy operation after the sale, and as a whole, was conducted unfairly and was "incredibly deceptive," claiming "trickery" and citing such factors, which included, but are not limited to, the officers pretending the decoy was not a decoy, bringing the decoy back into the Licensed Premises as if he were in physical custody, "that he was somebody that was caught, a minor that was caught [] purchasing alcohol under age."

Respondent's argument has no merit and is rejected. First of all, there was no evidence presented that clerk Rouf even saw the officers bring decoy Ramirez back in as clerk Rouf was otherwise engaged on the telephone and with the LAPD officer who approached him. Regardless of that, in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2017) 7 Cal. App.5th 628, 638 [213 Cal.Rptr.3d 130], the Court of Appeal determined, "Contrary to the Appeals Board's contention, Rule 141 provides specific guidance regarding how to preserve fairness in minor decoy operations. Subdivision (b) of Rule 141 implements the goal of fairness by imposing five specific requirements for every minor decoy operation. Decoys must be under the age of 20; have the appearance of a person under 21; carry their own actual identification and present that identification upon request; truthfully answer any questions about their ages; and make face-to-face identifications of the persons who sold the alcoholic beverages. (Rule 141(b)(1)-(5).) Fairness under Rule 141 is assured by a set of five expressly defined safeguards, all of which must be fulfilled during a minor decoy operation." Accordingly, the court did not recognize the separate criteria of "fairness" to be applied when assessing whether individual decoy operations comply with Rule 141(a). The Court of Appeal was clear that "fairness" is achieved by adhering to the five standards set forth in Rule 141(b)(1)-(5). In the matter at hand, the record made clear that all five of the standards set

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forth in Rule 141(b)(1)-(5) were complied with during the said decoy operation. Rule 141(a) was fully complied with.

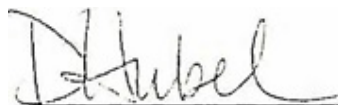
PENALTY

The Department requested the Respondent's license be suspended for a period of 15 days, based on their short licensure since 2011, a sale-to-minor violation on August 8, 2013, no evidence of training to ensure its clerks are checking identification, no evidence of any safeguard on the cash register to prevent such sales, in addition to clerk Rouf being on the telephone during the entire sales transaction. The Respondent did not recommend a penalty in the event the accusation was sustained. The penalty recommended herein complies with rule 144.

ORDER

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

Dated: March 9, 2018



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/>	Adopt
<input type="checkbox"/>	Non-Adopt: _____
By:	<u>Mooh, J. Amal Singh</u>
Date:	<u>5/9/18</u>