

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

**AB-9785**

File: 47-580621; Reg: 18087019

GERALD JOSEPH CUCCO and ANTOUN JAMIL KAOUMI,  
dba TJ's Bar & Grill  
5710 East Los Angeles Avenue  
Simi Valley, CA 93063-5217,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Matthew G. Ainley

Appeals Board Hearing: December 5, 2019  
Sacramento, CA

**ISSUED DECEMBER 17, 2019**

*Appearances:*      *Appellants:* Dean R. Lueders, of ACTlegally, as counsel for Gerald Joseph Cucco and Antoun Jamil Kaoumi,

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

**OPINION**

Gerald Joseph Cucco and Antoun Jamil Kaoumi, doing business as TJ's Bar & Grill, appeal from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> suspending their license for 30 days (with 5 days conditionally stayed for one year provided no further cause for discipline arises during that time) because appellant did not operate as a bona fide eating place, violated its operating conditions, and

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<sup>1</sup> The decision of the Department, dated December 4, 2018, is set forth in the appendix.

purchased alcohol from retail licensees.

## FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general license was issued on September 27, 2017. There is no record of prior departmental discipline against the licence.

On June 4, 2018, the Department instituted a six-count accusation against appellants charging that appellants: did not operate as a bona fide eating place, in violation of Business and Professions Code sections 23038 and 23396; violated their operating conditions, in violation of Business and Professions Code section 23804; and purchased alcohol from retail licensees, in violation of Business and Professions Code section 23402.

At the administrative hearing held on August 30, 2018, documentary evidence was received and testimony concerning the violation charged was presented by Department Agent Brian Huber and co-licensee Gerald Cucco.

Testimony established that on June 16, 2017, appellants executed a Petition for Conditional License which contained nine conditions, including:

2. Full and complete meals must be offered and made available at all times the premises is exercising the privileges of its alcoholic beverage license, with the exception of the last ½ hour of operation each day.
5. There shall be no amplified music or other entertainment permitted in or on the premises at any time. For purposes of this condition, "amplified" shall mean the use of any eclectic, electronic, or other powered device that may be used or manipulated to control the volume of music or other entertainment.

(Exh. 2.)

Counts 1 & 2: On January 3, 2018, Agent Huber and his partner went to the licensed premises at approximately 12:30 p.m. He ordered a whiskey and Coke from

the bartender and asked if he could order lunch. The bartender said they did not serve food until after 4:30 p.m. when the cook arrived. (Finding of Fact, ¶ 5.)

Counts 3 & 4: The same scenario was repeated on January 10, 2018, and Agent Huber was again told they did not serve food until after 4:30 p.m. when the cook arrived. (Finding of Fact, ¶ 6.)

Count 5: On February 2, 2018, Agent Huber and his partners went to the licensed premises at approximately 6:40 p.m. and observed a cook in the kitchen and people eating food. A three-piece band was playing music, amplified by speakers. The band was using a microphone and electric guitar. (Finding of Fact, ¶ 7.)

Count 6: On February 15, 2018, Agent Huber returned to the licensed premises to conduct an inspection. He asked to see receipts for alcohol purchases and was shown several receipts from retailers. He also observed empty beer kegs with tags indicating they were purchased from BevMo, a retailer. (Findings of Fact, ¶¶ 8-12; Exhs. 3-8.)

The administrative law judge (ALJ) issued his proposed decision on October 1, 2018, sustaining all six counts of the accusation and recommending a 30-day suspension, with 5 days conditionally stayed for one year.<sup>2</sup> (Decision, at pp. 6-8.)

The Department adopted the proposed decision in its entirety on November 28, 2018, and issued its Certificate of Decision on December 4, 2018.

Appellants then filed a timely appeal arguing that the penalty is excessive.

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<sup>2</sup> This included a 15-day suspension with 5 days stayed for counts 1 and 3, no penalty for counts 2 and 4, a 10-day suspension with 5 days stayed for count 5, and a 15-day suspension for count 6 — with the suspensions for counts 1, 3 and 6 to run consecutively, and the suspension for count 5 to run concurrently.

## DISCUSSION

Appellants contend that “the penalty imposed by ABC has crossed over from enforcing compliance to being punitive.” (AOB at p. 3.) Appellants maintain that two violations occurring only seven days apart should not have resulted in two separate counts and that this “cumulative penalty . . . results in a punitive penalty that does not allow the payment of a fine and will force this young business to close.” (*Ibid.*)

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* (1966) 240 Cal.App.2d 659, 666-667 [49 Cal.Rptr. 901].) The California Supreme Court has defined abuse of discretion as: “. . . arbitrary determination, capricious disposition or whimsical thinking.” (*Harris v. Superior Court* (1977) 19 Cal.3d 786, 796 [140 Cal.Rptr. 318].)

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 Director addresses the issue of penalty at length:

PENALTY

Under Rule 144,<sup>[fn.]</sup> the standard recommended penalty for a retail-to-retail violation is a 15-day suspension. For failing to operate a bona fide eating place, it is a 10-day suspension and indefinitely until compliance. Finally, for violations of conditions attached to a license, rule 144 sets forth a 15-day suspension with 5 days stayed for one year.

The Department requested that the Respondents' license be suspended for a period of 40 days with 5 days stayed for two years. The Department

calculated this by combining the foregoing recommended penalties (i.e., having them run consecutively). Since the Licensed Premises already has the ability to serve food, the Department did not believe that the indefinite portion of the food-service violation penalty should be imposed.

The Respondents suggested that a minimal penalty would be appropriate under the circumstances. With respect to the food-service violations, the Respondents had food available and characterized the bartender who refused to serve it as a “rogue employee.” The retail-to-retail violations were the result of desperation, since wholesalers and distributors refused to sell to the Respondents. Finally, the Respondents checked with the city before permitting amplified music, mistakenly believing that that was enough.

The Respondents were clearly aware of their obligation to serve food, both by statute and pursuant to the conditions. It was their responsibility to ensure that all of their employees were aware of this obligation and were complying with it. The bartender’s statement to the agents that food would be available after 4:30 when the cook arrived suggests that this was a regular practice. It is inconsistent with the actions of a rogue employee. Having trouble purchasing alcohol at the wholesale level does not justify purchasing alcohol at the retail level. Accordingly, some aggravation is warranted.

Conversely, the amplified-music violation appears to be a mistake and does not warrant aggravation. With respect to the other condition violations, they duplicate the statutory food-service violations. A separate penalty for these violations is not warranted.

(Decision, at p. 6.)

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].)

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].)

Appellants cite a previous Board decision (*The Tiki Room, LLC* (2003) AB-8084) for the proposition that two violations (counts 1 and 3) occurring only seven days apart, should not have resulted in two separate counts. In the *Tiki Room* case, the Board relied on *Harris, supra*, 62 Cal.2d at p. 594, to reverse the Department’s decision. In *Harris*, three minor counts were accumulated in a span of eight days to impose the penalty of revocation. (*Ibid.*) The Board found that the penalty of revocation was excessive under the circumstances, and the court sustained the Board’s decision. (*Id.* at p. 595.) Notably, in *Harris*, the independent counts did not merit revocation. (*Ibid.*)

Here, by contrast, we do not have an accumulation of counts resulting in revocation. In fact, the ALJ did not issue two separate penalties for counts 1 and 3 — he issued a single penalty of 15-days’ suspension, with 5 days stayed, for the violation of failing to operate as a bona fide eating place. This is not an accumulation of counts, and is entirely within the ALJ’s discretion.

Appellants’ claim that the penalty will force the business to close is not supported by any evidence and appears to be an emotional appeal rather than a claim based on facts. Similarly, the assertion that the penalty will not allow for the payment of a fine is entirely speculative and does not constitute a basis for reversal by the Board. The Board is simply not empowered to reach a contrary conclusion from the Department or substitute its own judgment when, as here, the penalty is reasonable

and supported by substantial evidence.



ORDER

The decision of the Department is affirmed.<sup>3</sup>

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

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

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

# APPENDIX

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

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

GERALD JOSEPH CUCCO &  
ANTOUN JAMIL KAOUMI  
TJ'S BAR & GRILL  
5710 E. LOS ANGELES AVE.  
SIMI VALLEY, CA 93063-5217

**ON-SALE GENERAL EATING PLACE - LICENSE**

VENTURA DISTRICT OFFICE

File: 47-580621

Reg: 18087019

**CERTIFICATE OF DECISION**

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

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 November 28, 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 January 14, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: December 4, 2018

**RECEIVED**

DEC 05 2018

Alcoholic Beverage Control  
Office of Legal Services



Matthew D. Botting  
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Gerald Joseph Cucco & Antoun Jamil Kaoumi  
dba TJ's Bar & Grill  
5710 E. Los Angeles Ave.  
Simi Valley, California 93063-5217

Respondents

} File: 47-580621

} Reg.: 18087019

} License Type: 47

} Word Count: 12,000

} Reporter:

} Justyne Johnson

} Kennedy Court Reporters

On-Sale General Eating Place License

PROPOSED DECISION

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Ventura, California, on August 30, 2018.

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

Dean R. Lueders, attorney-at-law, represented respondents Gerald Joseph Cucco and Antoun Jamil Kaoumi. Gerald Cucco was present.

The Department seeks to discipline the Respondents' license on the grounds that, on two separate dates, the Respondents, the holder of an on-sale general eating place license, sold alcoholic beverages other than beer for consumption on the licensed premise while the licensed premises were not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption in violation of Business and Professions Code sections 23038 and 23396.<sup>1</sup>

The Department also seeks to discipline the Respondents' license on the grounds that, on three separate dates, the Respondent failed to comply with a condition attached to its license in violation of Business and Professions Code section 23804.

Finally, the Department seeks to discipline the Respondents' license on the grounds that, on various dates, the Respondent purchased alcoholic beverages for resale from various retailers who did not hold a beer manufacturer's, wine grower's, rectifier's, brandy

<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

manufacturer's, or wholesaler's license in violation of Business and Professions Code section 23402. (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 August 30, 2018.

### FINDINGS OF FACT

1. The Department filed the accusation on June 4, 2018 and a first amendment thereto on August 6, 2018.
2. The Department issued a type 47, on-sale general eating place license to the Respondents for the above-described location on September 27, 2017 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. On or about June 16, 2017, the Respondent executed a petition for conditional license. (Exhibit 2.) This petition contains nine conditions, including the following:
  2. Full and complete meals must be offered and made available at all times the premises is exercising the privileges of its alcoholic beverage license, with the exception of the last ½ hour of operation each day.
  5. There shall be no amplified music or other entertainment permitted in or on the premises at any time. For purposes of this condition, "amplified" shall mean the use of any electric, electronic, or other powered device that may be used or manipulated to control the volume of music or other entertainment.
5. On January 3, 2018, Agent Brian Huber and his partner went to the Licensed Premises. They arrived at approximately 12:30 p.m., entered, and sat down at the bar counter. Agent Huber ordered a whiskey and Coke from the bartender, which she served to him. He asked if he could order lunch. The bartender said that they did not serve food until after 4:30 p.m. when the cook arrived.
6. On January 10, 2018, Agent Huber and his partners went to the Licensed Premises at approximately 1:40 p.m. They entered and sat down at the bar counter. Agent Huber ordered a whiskey and Coke, then asked if they could order lunch. The bartender said that the Licensed Premises did not serve food until after 4:30 p.m. when the cook arrived.
7. On February 2, 2018, Agent Huber and his partners returned to the Licensed Premises at approximately 6:40 p.m. They entered and noticed that there was a cook in the kitchen

and people were eating food. A three-piece band was playing using a microphone, an electric guitar, and speakers. The music was being amplified through the speakers.

8. On February 15, 2018, Agent Huber returned to the Licensed Premises to conduct an inspection. He spoke to co-licensee Gerald Cucco and asked to see invoices for purchases of alcoholic beverages. Cucco indicated that they purchased their alcohol at Restaurant Depot, a wholesaler. He explained how he had set up an account with Restaurant Depot. Agent Huber asked to see receipts; Cucco said that they were with his accountant.

9. Cucco and Agent Huber went to an office. Agent Huber again asked about receipts. Cucco pulled a number of receipts from a desk drawer. He indicated that they were receipts from retailers. (Exhibit 3.) The receipts showed alcohol purchases from each of the retailers.

10. Agent Huber went to a storage room and found several empty kegs. The kegs bore tags indicating that they were from BevMo, a retailer. (Exhibits 7-8.) Among the receipts was a beer keg registration receipt from BevMo. (Exhibit 3.)

11. Agent Huber also found a notebook with various entries in it. He copied a few pages from the notebook. (Exhibits 4-6.) The notebook listed purchases paid for in cash. It listed the name of party paid and the amount, but did not detail any of the purchases.

12. Agent Huber verified that the locations listed on each of the receipts held retail licenses.

13. Cucco testified that he checked with the City of Simi Valley to see if the Licensed Premises could have amplified music. Donna Rosen, a city employee, indicated that he could as long as he did not disturb the neighbors. He did not realize that the conditions on the alcoholic beverage license were different than the conditions the city had imposed.

14. Cucco indicated that food was available on both January 3, 2018 and January 10, 2018. At least one person working at all times is certified to prepare food. The food is prepared in advance, dated, and placed in the refrigerator. It is heated up as needed. He did not know why the agents were told they had to wait until later in the day to get food.

15. Cucco testified that he had trouble setting up accounts with wholesalers and distributors when he first opened the business because of the previous owner's debts. He eventually found Restaurant Depot and Bar Depot. He conceded that, when he ran out of alcohol, he would purchase some from retailers. He has since been able to clear things up and now only gets alcohol from distributors.

16. Cucco looked at the receipts seized by Agent Huber. He testified that approximately one-third of it was for his personal use.

17. 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 23396 provides that no alcoholic beverages, other than beer, may be sold or served in any bona fide public eating place for which an on-sale license has been issued unless the premises complies with the requirements prescribed in Section 23038, 23038.1, or 24045.1.

4. Section 23038 is a definitional section which provides that a bona fide public eating place is one which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking and an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health.

This section goes on to define meals as the usual assortment of foods commonly ordered at various hours of the day and provides that the service of such food and victuals as sandwiches or salads only shall not be deemed compliance with this requirement. Finally, it defines guests as people who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein.

5. Section 23804 provides that the violation of a condition placed upon a license constitutes the exercise of a privilege or the performing of an act for which a license is required without the authority thereof and constitutes grounds for the suspension or revocation of the license.

6. Section 23402 provides that no retail on-sale or off-sale licensee, except a daily on-sale general licensee holding a license issued pursuant to Section 24045.1, shall purchase alcoholic beverages for resale from any person except a person holding a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license.

7. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on or about January 3, 2018 and January 10, 2018, the Respondents, the holders of an on-sale general eating place license, served a distilled spirit, whiskey, at a time when the Licensed Premises was not regularly and in a bona fide manner used and kept open for the serving of meals to guests for consumption, in violation of sections 23038 and 23396. (Findings of Fact ¶¶ 5-6.)

8. Around lunchtime on January 3, 2018 (count 1) and January 10, 2018 (count 3), Agent Brian Huber purchased a distilled spirit and attempted to purchase food. On neither date was food available. (Findings of Fact ¶¶ 5-6.)

9. 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, as alleged in counts 2, 4, and 5, the Respondents permitted conduct prohibited by the conditions attached to their license in violation of section 23804. (Findings of Fact ¶¶ 5-7.)

10. With respect to counts 2 and 4, the food service condition contained in the petition for conditional license requires that full and complete meals be available at all times the premises is exercising the privileges of its license. On January 3, 2018 and January 10, 2018, Agent Huber purchased a distilled spirit and attempted to purchase food. On neither date was food available. (Findings of Fact ¶¶ 5-6.) With respect to count 5, although the petition for conditional license contained a condition prohibiting amplified music or entertainment, on February 2, 2018, the Respondents permitted a three-piece band to perform with its music being amplified through speakers. A three-piece band was playing using a microphone, electric guitar, and speakers. The music was being amplified through the speakers. (Finding of Fact ¶ 7.)

11. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, between October 6, 2017 and January 30, 2018, the Respondents purchased alcoholic beverages for resale from other licensees who did not hold a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license in violation of section 23402. (Findings of Fact ¶¶ 8-10, 12 & 15-16.)



## PENALTY

Under Rule 144,<sup>2</sup> the standard recommended penalty for a retail-to-retail violation is a 15-day suspension. For failing to operate a bona fide eating place, it is a 10-day suspension and indefinitely until compliance. Finally, for violations of conditions attached to a license, rule 144 sets forth a 15-day suspension with 5 days stayed for one year.

The Department requested that the Respondents' license be suspended for a period of 40 days with 5 days stayed for two years. The Department calculated this by combining the foregoing recommended penalties (i.e., having them run consecutively). Since the Licensed Premises already has the ability to serve food, the Department did not believe that the indefinite portion of the food-service violation penalty should be imposed.

The Respondents suggested that a minimal penalty would be appropriate under the circumstances. With respect to the food-service violations, the Respondents had food available and characterized the bartender who refused to serve it as a "rogue employee." The retail-to-retail violations were the result of desperation, since wholesalers and distributors refused to sell to the Respondents. Finally, the Respondents checked with the city before permitting amplified music, mistakenly believing that that was enough.

The Respondents were clearly aware of their obligation to serve food, both by statute and pursuant to the conditions. It was their responsibility to ensure that all of their employees were aware of this obligation and were complying with it. The bartender's statement to the agents that food would be available after 4:30 when the cook arrived suggests that this was a regular practice. It is inconsistent with the actions of a rogue employee. Having trouble purchasing alcohol at the wholesale level does not justify purchasing alcohol at the retail level. Accordingly, some aggravation is warranted.

Conversely, the amplified-music violation appears to be a mistake and does not warrant aggravation. With respect to the other condition violations, they duplicate the statutory food-service violations. A separate penalty for these violations is not warranted.

## ORDER

Counts 1 and 3 are sustained. With respect to these violations, the Respondents' on-sale general eating place license is hereby suspended for a period of 15 days, with execution of 5 days of the suspension stayed, upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within one year from the effective date of this decision; that

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

should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in his discretion and without further hearing, vacate this stay order and reimpose the stayed penalty; and that should no such determination be made, the stay shall become permanent.

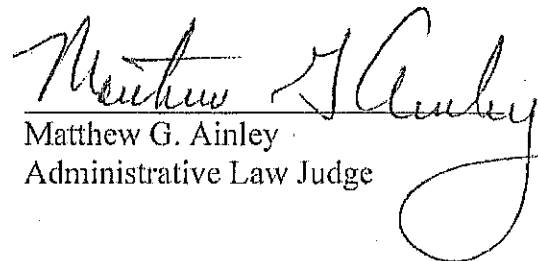
Counts 2 and 4 are sustained. No penalty is imposed for these violations at this time.

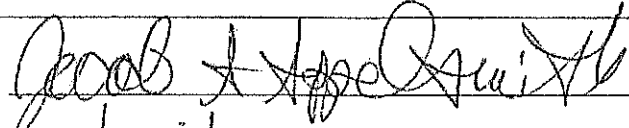
Count 5 is sustained. With respect to this violation, the Respondents' on-sale general eating place license is hereby suspended for a period of 10 days, with execution of 5 days of the suspension stayed, upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within one year from the effective date of this decision; that should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in his discretion and without further hearing, vacate this stay order and reimpose the stayed penalty; and that should no such determination be made, the stay shall become permanent.

Count 6 is sustained. With respect to this violation, the Respondents' on-sale general eating place license is hereby suspended for a period of 15 days.

By way of aggravation, the suspensions imposed for the violations of counts 1 and 3 and the violation of count 6 are to run consecutively. The suspension for the violation of count 5 is to run concurrently, such that the overall penalty in this case is a 30-day suspension, with 5 days stayed for a period of one year.

Dated: October 1, 2018

  
Matthew G. Ainley  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: 11/28/18