

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

AB-9795

File: 20-557995; Reg: 18087344

7-ELEVEN, INC., CHHABRA and CHHABRA, INC.,
dba 7-Eleven Store #36983A
8495 Western Avenue
Buena Park, CA 90620-3224,
Appellants/Applicants

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris H. Huebel

Appeals Board Hearing: October 3, 2019
Los Angeles, CA

ISSUED OCTOBER 15, 2019

Appearances: *Appellants:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as
counsel for 7-Eleven, Inc. and Chhabra and Chhabra, Inc.,

Respondent: Lisa Wong, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

7-Eleven, Inc., Chhabra and Chhabra, Inc., doing business as 7-Eleven Store #36983A, appeal from a decision of the Department of Alcoholic Beverage Control¹ suspending their license for 15 days because their clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Profession Code section 25658(a).

¹The decision of the Department, dated February 7, 2019, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale beer and wine license was issued on September 2, 2015. There is no record of prior departmental discipline against the license.

On August 31, 2018, the Department filed a single-count accusation against appellants charging that, on May 24, 2018, appellants' clerk, Dillon Dewayne Walker (the clerk), sold an alcoholic beverage to 17-year-old Martin Park (the decoy). Although not noted in the accusation, the decoy was working for the Buena Park Police Department at the time.

At the administrative hearing held on November 27, 2018, documentary evidence was received, and testimony concerning the sale was presented by the decoy and by Buena Park Police Officer Kevin Franklin. Nasir Sikder, manager of the licensed premises, testified on behalf of appellants.

Testimony established that on May 24, 2018, at approximately 7:00 p.m., the decoy entered the licensed premises and was followed shortly thereafter by Officer Franklin. The decoy walked straight to the alcoholic beverage coolers and selected a three-pack of Bud Light beer cans. The decoy took the beer directly to the checkout line and waited behind two other patrons.

At the counter, the clerk scanned the beer and asked the decoy for his identification. The decoy handed the clerk his valid California Driver's License, which showed his correct date of birth, and had several other indicators that the decoy was under age, including a vertical orientation and a red stripe which read, "AGE 21 IN 2021." (Exh. 2.) The clerk looked at the identification for two seconds, handed it back to the decoy, and proceeded with the sale. The clerk did not ask the decoy any questions about his age or identification. The clerk completed the sale by utilizing the

manual visual ID button on the register, indicating that the decoy was 21 years or older and eligible to purchase alcohol.

After the transaction was complete, the decoy exited the licensed premises and was followed by Officer Franklin, who witnessed the sale with a clear, unobstructed view. Both the decoy and Officer Franklin then reentered the licensed premises. Officer Franklin approached the clerk and asked him to speak with him away from the registers and the two of them walked to the back of the store near the restrooms. There, the decoy approached the clerk and identified him as the person who sold him the alcohol. A photograph of the decoy and the clerk was taken (exh. 3), and the clerk was cited.

After the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established. The Department also ordered that appellants' license be suspended for 15 days. Appellants filed a timely appeal contending that the 15-day suspension is excessive.

DISCUSSION

Appellants contend their 15-day suspension is excessive. (AOB, at pp. 7-12.) Specifically, appellants argue that the administrative law judge (ALJ) (and by extension the Department) "abused their discretion in mischaracterizing and failing to consider significant mitigating evidence ... as well as fail[ed] to make findings in the way required by law." (Id. at p. 12.) The impetus being that, had the ALJ and Department not abused their discretion regarding appellants' mitigating evidence, appellants would have received a lesser penalty.

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].)

If the penalty imposed is reasonable, the Board must uphold it, even if another penalty would be equally, or even more, reasonable. "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within the area of its discretion."

(Harris v. Alcoholic Beverage Control Appeals Board (1965) 62 Cal. 2d 589, 594 [400 P.2d 745].)

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, emphasis added.)

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.)

Here, appellants argue that a 15-day penalty, which is the standard penalty for a first-time offense, is not reasonable considering the amount of mitigating evidence they presented. (AOB, at pp. 7-12.) Regarding such evidence, the ALJ cited the testimony of Mr. Sikder and other documentation from appellants. (Findings of Fact, ¶¶ 12-18.) The ALJ specifically noted appellants' training, signage, calendar reminders, and secret shopping program prior to the violation. (Id. at ¶¶ 12-14.) Further, respondents presented additional evidence regarding actions they have taken to prevent sales to minors after the violation, which included retraining, a change in policy to scan all IDs instead of using the manual override button, and two specific instances where appellants prevented sales to minor decoys. (Id. at ¶¶ 17-18.)

In the proposed Penalty Order, the ALJ nonetheless proposed a 15-day penalty, which the Department adopted, noting:

While it is commendable the Respondents' policy now urges its clerks to scan or swipe customers' IDs, there was no evidence presented that the manual bypass buttons were removed. Also of note, despite the Respondents' offered evidence of mitigation, including, but not limited to, its training, posted signs, secret shopper program and requirement to request customer IDs there was no evidence the distinguishing marks of a minor's ID are emphasized to Respondents' clerks. The latter would aide [sic] its clerks in future transactions, as well would have aided clerk Waller in said transaction. Based on a thorough weighing of the valid argued for factors, the aggravating and mitigating factors balance each other out.

(Proposed Decision, p. 7.)

This Board has said many times that the extent the ALJ or Department considers mitigating or aggravating factors is a matter entirely within its discretion — pursuant to rule 144 — and the Board may not interfere with that discretion absent a clear showing of abuse. The record shows that the ALJ considered appellants' evidence of mitigation as it was offered at the administrative hearing. The fact that appellants' evidence was not enough to outweigh the aggravating evidence and shorten the standard 15-day suspension does not constitute an abuse of discretion nor render the penalty unreasonable. The Board sees no error.

ORDER

The decision of the Department is affirmed.²

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

² This final order is filed in accordance with Business and Professions Code section 23088 and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

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

APPENDIX

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

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

7-ELEVEN, INC., CHHABRA AND
CHHABRA, INC.
7-ELEVEN STORE 36983A
8495 WESTERN AVE
BUENA PARK, CA 90620-3224

OFF-SALE BEER AND WINE - LICENSE

SANTA ANA DISTRICT OFFICE

File: 20-557995

Reg: 18087344

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 February 4, 2019. 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 March 20, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: February 7, 2019



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

7-Eleven, Inc., Chhabra and Chhabra,	}	File: 20-557995
Inc. Dba: 7-Eleven Store 36983A	}	
8495 Western Avenue	}	Reg.: 18087344
Buena Park, California 90620-3224	}	
	}	License Type: 20
Respondents	}	
	}	Word Count: 10,762
	}	
	}	Reporter:
	}	Tami Comet
	}	Kennedy Court Reporters
	}	
<u>Off-Sale Beer and Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Santa Ana, California, on November 27, 2018.

Jonathan Nguyen, Attorney, represented the Department of Alcoholic Beverage Control (the Department).

Brian Washburn, Attorney, represented Respondents, 7 -Eleven, Inc., and Chhabra and Chhabra, Inc.

The Department seeks to discipline the Respondents' license on the grounds that, on or about May 24, 2018, the Respondents-Licensees' agent or employee, Dillon Dewayne Waller, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: beer, to M.P. (Martin Park), 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 November 27, 2018.

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

FINDINGS OF FACT

1. The Department filed the accusation on August 31, 2018. At the hearing, the Department, without objection by Respondents, amended the accusation by interlineation, replacing the date in the second paragraph of Count 1, from “May 24, 20018,” with “May 24, 2018.”
2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on September 2, 2015 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents’ license.
4. Martin Park (hereinafter referred to as decoy Park) was born on October 14, 2000. On May 24, 2018, he was 17 years old. On that date he served as a minor decoy in an operation conducted by the City of Buena Park Police Department (hereinafter referred to as the Buena Park PD).
5. Decoy Park appeared and testified at the hearing. On May 24, 2018, he was 5’10” tall and weighed 160 pounds. He wore a dark gray jacket, over a gray t-shirt and black jeans. He described his hair as styled in a “sports, spike-up hair” style. He wore a black Apple watch. (Exhibits 3, 4 and 5.) His appearance at the hearing was the same, except that his hair was one inch shorter.
6. On May 24, 2018, at approximately 7:00 p.m., decoy Park entered the Licensed Premises, followed shortly thereafter by Buena Park PD Officer Kevin Franklin (hereinafter referred to as Officer Franklin). Decoy Park walked straight to the alcoholic beverage coolers and selected a three-pack of Bud Light beer cans. (Exhibit 3.) Beer is an alcoholic beverage. Decoy Park brought the three-pack of beer directly to the check-out line and waited in line behind two patrons. There were three patrons waiting in line behind decoy Park. There was one male clerk working at the cash register, and who was later identified as Dillon Dewayne Waller (hereinafter referred to as clerk Waller).
7. At the counter decoy Park placed the three-pack of Bud Light beer upon the sales counter. Clerk Waller scanned the beer and asked decoy Park for his identification (ID). Decoy Park handed clerk Waller his valid California Driver License, which clerk Waller accepted. Decoy Park’s California Driver license had a vertical orientation, showed his correct date of birth and included a red stripe which read, “AGE 21 IN 2021.” (Exhibit 2.) Clerk Waller looked at the ID for two seconds, and then handed the ID back to the decoy. Clerk Waller did not ask decoy Park any questions about his age or ID. Clerk Waller continued with the sales transaction. Decoy Park gave \$20 to the clerk, who placed the \$20 in the cash register, provided the decoy with change and bagged the beer. Decoy Park took the change, the bagged three-pack of Bud Light beer and exited the

store. Clerk Waller did not attempt to stop decoy Park from exiting the store, nor did he say anything to decoy Park as the decoy exited the store. Officer Franklin witnessed these above-described events with a clear, unobstructed view, while posing as a customer. Decoy Park did not communicate with Officer Franklin while he was inside the Licensed Premises. Officer Franklin exited the store soon after decoy Park.

8. Decoy Park re-entered the Licensed Premises with Officer Franklin and other Buena Park PD Officers. Officer Franklin approached clerk Waller at the cash register, identified himself as a police officer and advised clerk Waller of the violation. Officer Franklin asked clerk Waller to speak with him away from the cash register. Clerk Waller walked with Officer Franklin to the back of the store near the restrooms. Decoy Park approached Officer Franklin and clerk Waller at the back of the Licensed Premises. Officer Franklin asked decoy Park to identify the person who sold him the alcohol. Decoy Park pointed at clerk Waller and replied, "He provided me with the alcohol." Decoy Park and clerk Waller were standing three to five feet apart and facing each other at the time of this identification. A photo of clerk Waller and decoy Park was taken after the face-to-face identification, with decoy Park holding the three-pack of Bud Light beer in his right hand, while standing next to clerk Waller. (Exhibit 3.) Decoy Park then stood off to the side while Officer Franklin continued with his investigation. Thereafter, a citation was issued to clerk Waller.

9. Clerk Waller did not appear at the hearing. There was no evidence that clerk Waller was distracted during the sales transaction or the face-to-face identification.

10. Decoy Park 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 Waller at the Licensed Premises on May 24, 2018, decoy Park displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to the clerk. Decoy Park has a youthful appearance in-person and looks his age.

11. May 24, 2018, was the fourth day of decoy operations in which decoy Park participated. On May 24, 2018, decoy Park had visited approximately 10 locations during the decoy operation, with three premises having sold alcohol to him, including the Licensed Premises. Decoy Park had been to the Licensed Premises once prior to May 24, 2018, when he was on a ride-a-long with a Buena Park PD Officer. At that time, decoy Park and the officer entered the Licensed Premises and the officer purchased a candy bar for decoy Park from a clerk who was not clerk Waller, no age-restricted products were purchased on that prior occasion. There was no evidence presented that clerk Waller was inside the Licensed Premises or saw decoy Park on that prior occasion. Decoy Park learned about the decoy program through his service as a police explorer

with the Buena Park PD. As of May 24, 2018, decoy Park had been a police explorer for three years. His duties as a police explorer include learning to perform traffic stops, and tactical training in the event of an active shooter scenario. He is also taught how to conduct a consensual encounter with the public and if he has to talk to transients he is assisted by the Buena Park PD officers.

(Respondents' Witness)

12. Nasir Sikder appeared and testified at the hearing. Mr. Sikder has been the manager of the Licensed Premises for two years, as of the date of the hearing. Mr. Sikder's duties as a manager include training the Respondents' employees. New hires are required to take an on-line, computer-based training provided by the franchisor, 7-Eleven, entitled, "7 Excel University." That training includes a quiz, on which the employees must obtain a passing rate of 100 percent. The 7 Excel University program includes training on age-restricted products, how to check customer identification, and verify valid California IDs. The Respondents' employees must undergo this training annually.

13. The Respondents have a sign posted at the cash register, which reads in part, "WE CHECK I.D. If you look under 30, we will scan your I.D." (Exhibit A.) Despite that sign, the Respondents' policy requires its employees to ask for the ID of customers appearing under 40 years of age. The Respondents also have a calendar near the cash register to aide their clerks with what year they should look for on customer IDs during age-restricted sales. (Exhibit B.) The Respondents change the calendar date daily.

14. The Respondents' participate in the BARS Secret Shopper Program on a random basis each quarter. The Respondents' employees receive a green card upon their successfully requesting identification of a secret shopper who attempts to purchase an age-restricted product, and a red card for failing to request identification. The Respondents produced at the hearing five pages of color copies of green cards received by some of its employees, none of whom were clerk Waller. (Exhibits C1 through C5.) Clerk Waller was never tested by a BARS secret shopper because he had worked at the Licensed Premises for approximately two months and a secret shopper did not show-up at the Licensed Premises during his employment.

15. Mr. Sikder was not at the Licensed Premises during the violation of May 24, 2018, because he left the store at 5:00 p.m. and the violation took place after 7:00 p.m. Mr. Sikder learned of the said violation when clerk Waller telephoned him about it.

16. Mr. Sikder spoke to clerk Waller about the violation of May 24, 2018, asking the clerk how he had conducted the sales transaction with the minor and determined the minor to be of legal age to purchase alcohol. From Mr. Sikder's conversation with clerk Waller he learned that clerk Waller did not scan decoy Park's ID into the cash register,

but instead bypassed the cash registers safety protocol by visually looking at the date of birth on the ID, believed the date of birth made decoy Park 21, pressed the manual visual ID button, and then pressed the “yes” button to indicate that decoy Park was 21 years or older and eligible to purchase alcohol. By pressing these buttons clerk Waller caused the cash register to allow the sale of alcohol to decoy Park. Clerk Waller was not terminated after the said violation. Clerk Waller stopped showing up for work after the violation of May 24, 2018.

17. After the violation of May 24, 2018, the Respondents’ employees were required to undergo re-training on the 7 Excel University on-line computer based training modules for age-restricted products. The Respondents’ policy regarding the cash register no longer allows a clerk to manually bypass the age-restricted software by pressing the manual visual ID and “yes” buttons, and requires clerks to scan or swipe customers’ IDs. There was no evidence presented that the manual bypass buttons were removed. After the said violation, Mr. Sikder sat down with each employee separately and individually instructed them to request customer IDs and how to scan customer IDs into the cash register so as to prevent future sales of age-restricted products to minors.

18. The Respondents produced at the hearing two ABC-341 form letters dated October 22, 2015, and October 18, 2018, informing Respondents of having successfully prevented the sale of alcohol to a minor decoy. (Exhibits D and F.) The Respondents also produced a copy of a letter from the California Department of Public Health, dated January 16, 2018, for having successfully prevented the sale of tobacco to a minor decoy. (Exhibit E.)

19. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties lack merit.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee’s violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on May 24, 2018, the Respondents-Licensees' employee, clerk Dillon Dewayne Waller, inside the Licensed Premises, sold alcoholic beverages, to-wit: a three-pack of Bud Light beer, to Martin Park, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 4-10.)

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

6. With respect to rule 141(b)(2), the Respondents argued decoy Park did not have the appearance of someone under the age of 21 because of certain factors which made him appear to be older than 21. Those factors, the Respondents argued, included decoy Park's height, the Apple watch he wore, his "extensive experience" as a decoy and police explorer, in addition to the fact decoy Park could have been seen by clerk Waller when an officer purchased a candy bar for decoy Park during a prior visit to the Licensed Premises. The Respondents argue all of these factors resulted in decoy Park exuding the appearance, maturity, demeanor and confidence of someone 21 or older to clerk Waller.

7. This rule 141(b)(2) argument is rejected. Respondents' unsupported assertions are nothing but assumption and conjecture. Respondents presented no evidence that clerk Waller believed decoy Park to be 21 years old or older based on these asserted factors. There was no evidence presented that clerk Waller was inside the Licensed Premises or saw decoy Park on decoy Park's visit to the Licensed Premises prior to May 24, 2018. Clerk Waller did not testify. In fact, during part of Mr. Sikder's testimony, to which was not objected, Mr. Sikder said that clerk Waller informed him he based his determination decoy Park was 21 by looking at the date of birth on decoy Park's ID and believed the date of birth made decoy Park 21. Based on Mr. Sikder's testimony it is more likely clerk Waller focused only on the ID date of birth and miscalculated decoy Park's age, and that was the reason why he sold alcohol to decoy Park. However, this too is speculation. Furthermore, there was no reason for clerk Waller to even calculate decoy Park's age when he had in his hand the vertically formatted minor's ID, which had a red stripe reading, "AGE 21 IN 2021." Clerk Waller even could have simply scanned the decoy's ID into the cash register, which would have stopped the sale of alcohol to the minor. Regardless, there was nothing about decoy Park's height, Apple watch, demeanor, or decoy and police explorer experience which made him appear older than his actual age. Simply looking at decoy Park, in-person, he has a youthful appearance and looks his age. In other words, decoy Park had the appearance generally expected of a person under the age of 21. (Finding of Fact ¶ 10.)


PENALTY

The Department requested the Respondents' license be suspended for a period of 15 days, given the Respondents' short length of licensure and the decoys' actual age and youthful appearance. The Respondents recommended a 10-day, all stayed penalty based on argued for mitigated factors. While it is commendable the Respondents' policy now urges its clerks to scan or swipe customers' IDs, there was no evidence presented that the manual bypass buttons were removed. Also of note, despite the Respondents' offered evidence of mitigation, including, but not limited to, its training, posted signs, secret shopper program, and requirement to request customer IDs there was no evidence the distinguishing marks of a minor's ID are emphasized to Respondents' clerks. The latter would aide its clerks in future transactions, as well would have aided clerk Waller in said transaction. Based on a thorough weighing of the valid argued for factors, the aggravating and mitigating factors balance each other out. The penalty recommended herein complies with rule 144.

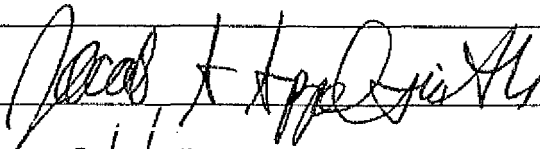
ORDER

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

Dated: December 21, 2018



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/>	Adopt
<input type="checkbox"/>	Non-Adopt: _____
By:	
Date:	2/4/19