

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

**AB-9840**

File: 21-477721; Reg: 19088635

GARFIELD BEACH CVS, LLC and LONGS DRUGS STORES CALIFORNIA, LLC,  
dba CVS Pharmacy Store #9150  
388 Elm Avenue  
Auburn, CA 95603,  
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: March 5, 2020  
Los Angeles, CA

**ISSUED MARCH 19, 2020**

*Appearances:*      *Appellants:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as  
counsel for Garfield Beach CVS, LLC and Longs Drugs Stores  
California, LLC,  
  
*Respondent:* Colleen R. Villarreal, as counsel for the Department of  
Alcoholic Beverage Control.

**OPINION**

Garfield Beach CVS, LLC and Longs Drugs Stores California, LLC, doing  
business as CVS Pharmacy Store #9150 (appellants), appeal from a decision of the  
Department of Alcoholic Beverage Control<sup>1</sup> suspending their license for five days  
because their clerk sold an alcoholic beverage to a police minor decoy, in violation of  
Business and Professions Code section 25658(a).

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<sup>1</sup>The decision of the Department, dated September 6, 2019, is set forth in the  
appendix.

## FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on June 22, 2009. There is no record of prior departmental discipline against the license.

On March 15, 2019, the Department filed a single-count accusation against appellants charging that, on November 8, 2018, appellants' clerk, Rita Broome (the clerk), sold an alcoholic beverage to 16-year-old K.K.<sup>2</sup> (the decoy). Although not noted in the accusation, the decoy was working for the Placer County Sheriff's Office (PCSO) at the time.

At the administrative hearing held on June 11, 2019, documentary evidence was received, and testimony concerning the sale was presented by the decoy and PCSO Sergeant Robert Dellinger. Appellant did not present any witnesses.

Testimony established that on November 8, 2018, the decoy entered the licensed premises and selected a six-pack of Bud Light beer bottles for purchase. The decoy took the beer to the line for the register and waited. When it was his turn, the decoy presented the beer to the clerk, which she took and processed for sale. The only statement the clerk made to the decoy was to tell him the total cost of the beer. She did not ask the decoy for his identification or any age-related questions. The decoy paid for the beer with cash, and then left the licensed premises with the beer and his change.

The decoy re-entered the licensed premises a short time later with Sgt. Dellinger and another deputy. The decoy then made a face-to-face identification of the clerk,<sup>3</sup>

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<sup>2</sup> Since the decoy is a minor, he is only identified by his initials.

<sup>3</sup> The facts of the face-to-face identification are not in dispute.

who admitted to making the sale and that she failed to ask for the decoy's identification. The clerk was subsequently cited.

The administrative law judge (ALJ) issued a proposed decision on July 2, 2019, sustaining the accusation against appellants and recommending a 15-day suspension. The Department adopted the proposed decision but reduced appellants' suspension to five days instead of fifteen on September 4, 2019. The Department issued a certificate of decision two days later.

Appellant then filed a timely appeal contending that the Department's finding that the decoy's appearance complied with rule 141(b)(2)<sup>4</sup> is not supported by substantial evidence.

#### DISCUSSION

Appellants contend that the Department's finding that the decoy's appearance complied with rule 141(b)(2) is not supported by substantial evidence. (AOB, at pp. 5-7.) Specifically, appellants argue that the decoy's training, experience, and elevated success rate gave him an appearance not generally expected of a person under 21 years old. (*Id.* at pp. 6-7.)

Rule 141(b)(2) provides:

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

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

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

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<sup>4</sup> References 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.

Here, the Department found that the decoy's appearance complied with rule 141(b)(2). (Conclusions of Law, ¶ 11.) Therefore, this Board is required to defer to those findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] ["In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]"; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] ["When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department."].) "Substantial evidence" is "evidence of ponderable legal significance, which is 'reasonable in nature, credible and of solid value.'" (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

In its decision, the Department rejected appellants' arguments that the decoy's physical appearance did not comply with rule 141(b)(2). The ALJ found that the decoy "displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with [the clerk]." (Findings of Fact, ¶ 12.) The ALJ also found that the decoy's appearance at the hearing "matched the appearance he presented to [the clerk] on the date of the operation." (Conclusions of Law, ¶ 11.) As noted above, "we are bound to construe the evidence in the light most favorable to the

ALJ's decision" and will uphold the findings so long as they are supported by substantial evidence. (*Southland, supra*, 103 Cal.App.4th at 1087.)

To support his findings, the ALJ relied on a photograph of the decoy with the clerk from the day of the operation: Exhibit D-3. (Findings of Fact, ¶¶ 4, 7, 10.) Photographs of a decoy from the day of the operation are "arguably the most important piece of evidence in considering whether the decoy displayed the physical appearance of someone under 21 years of age." (*Southland, supra*, 103 Cal.App.4th at 1094.) Further, as stated above, the ALJ relied on his personal observations of the decoy's appearance at the hearing, which the decoy credibly testified "was essentially the same" as his size and appearance on the day of the operation. (Findings of Fact, ¶4; Conclusions of Law, ¶ 11.) ALJ's are also entitled to rely on their personal observations of a decoy when the decoy testifies that his appearance and mannerisms were "the same on the stand as it was when he purchased the beer." (*Southland, supra*, 103 Cal.App.4th at 1094.)

The Board sees no error with the Department's findings regarding the decoy's appearance, which are supported by the photographs of the decoy from the date of the operation, as well as the ALJ's personal observations at the hearing. Both sources are "reasonable in nature, credible and of solid value." (*County of Los Angeles, supra*, 32 Cal.App.4th at 814.)

However, appellants contend that certain non-physical factors, such as the decoy's training, experience, and elevated success rate, made him appear older than 21 years old. (AOB, at pp. 6-7.) Although the decoy had almost two years of experience in the Explorer program at the time of the operation, testified that he was "not particularly nervous during the transaction," and previously participated in

approximately 10-15 operations for law enforcement agencies (Findings of Fact, ¶ 11), there is absolutely no evidence that this “experience” resulted in him appearing older than he actually was. Likewise, there is no evidence that this “experience” caused the clerk to sell alcohol to the decoy. As the ALJ noted, the clerk did not testify. (Findings of Fact, ¶ 12.) Thus, there is no evidence as to why the clerk made the sale, much less that it was because of the decoy’s experience, training, or success rate. As such, the Department’s decision must stand.

#### ORDER

The decision of the Department is affirmed.<sup>5</sup>

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

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<sup>5</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.

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:**

**GARFIELD BEACH CVS LLC AND  
LONGS DRUG STORES CALIFORNIA, LLC  
CVS PHARMACY 9150  
388 ELM AVENUE  
AUBURN, CA 95603-4525**

**OFF-SALE GENERAL - LICENSE**

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

**SACRAMENTO DISTRICT OFFICE**

**File: 21-477721**

**Reg: 19088635**

**CERTIFICATE OF DECISION**

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on August 27, 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 October 17, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: September 6, 2019



**Matthew D. Botting  
General Counsel**



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

**IN THE MATTER OF THE ACUUSATION  
AGAINST:**

Garfield Beach CVS LLC and  
Longs Drug Stores California LLC  
Dbas CVS Pharmacy 9150  
388 Elm Avenue  
Auburn, CA 95603-4525

Respondent(s)/Licensee(s).

File No.: 21-477721

Reg. No.: 19088635

**ORDER**

Having adopted the Proposed Decision of the Administrative Law Judge dated July 2, 2019, in the above-entitled matter, and pursuant to Business and Professions Code section 24211, the Department hereby reduces the discipline in this matter as follows:

The Respondents' off-sale general license is hereby suspended for a period of 5 days.

Sacramento, California

Dated: September 4, 2019



Matthew Botting  
General Counsel

For:       Jacob Appelsmith  
              Director

Pursuant to Government Code section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9, of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Garfield Beach CVS, LLC,	}	File: 21-477721
Long Drug Stores California, LLC	}	
DBA: CVS Pharmacy Store 9150	}	Registration: 19088635
388 Elm Avenue	}	
Auburn, California 95603-4525	}	License Type: 21
	}	
Respondent	}	Page Count: 35
	}	
	}	Reporter:
	}	Teresa Kenworthy-CSR # 6673
	}	Atkinson Baker
	}	
<u>Off-Sale General License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Auburn, California, on June 11, 2019.

Colleen Villarreal, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Donna Hooper, Attorney, represented Respondents Garfield Beach CVS, LLC and Long Drug Stores California, LLC. (Respondent)

The Department seeks to discipline the Respondent's license on the grounds that, on or about November 8, 2018 the Respondent, through their agent or employee, Rita Broome, sold, furnished, or gave alcoholic beverages to K.K.<sup>1</sup>, an individual under the age of 21 in violation of Business and Professions Code section 25658(a)<sup>2</sup> (Exhibit D-1).

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on June 11, 2019.

<sup>1</sup> In this matter, the Decoy used by the Department was under 18 years of age at the time of the hearing. He is referred to by his initials in this proposed decision to protect his privacy.

<sup>2</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

## FINDINGS OF FACT

1. The Department filed the accusation on March 15, 2019. (Exhibit D-1)
2. On June 22, 2009 the Department issued a type 21, off-sale general license to the Respondent for the above-described location (the Licensed Premises). There is no record of prior Department discipline against the Respondent's license.
3. K.K. was born on May 20, 2002 and was 16 years old on November 8, 2018. On that date, K.K. served as a minor decoy in an operation conducted by the Placer County Sheriff's Department (PCSD) at various locations, including the Licensed Premises.
4. K.K. appeared and testified at the hearing. On June 11, 2019 his appearance was generally as depicted in an image that was taken during the operation on November 8, 2018. (Exhibit D-3) His face was as depicted in an image of his California driver's license that was submitted into evidence. (Exhibit D-3) During the operation on November 8, 2018, K.K. wore a black hooded sweatshirt with the hood down and the front zippered up. K.K. wore dark jeans. His only visible jewelry was a watch. His face was fully exposed, and his hair was combed back in a neat haircut. K.K. was clean shaven during the operation. (Exhibit D-3) K.K. was approximately 5 feet, 10 inches tall and 150 pounds at the hearing. K.K. credibly testified that his size and appearance on the date of the operation were essentially the same.
5. On November 8, 2018 K.K. went to the Licensed Premises with deputies from the PCSD for the purpose of trying to buy alcohol. K.K. was instructed about the requirements of 141<sup>3</sup>. He was told to carry his identification, show it if requested, and to be truthful regarding his age if asked. K.K. carried his California driver's license to produce if asked. K.K. was briefed prior to his attempt to purchase alcohol.
6. K.K. entered the Licensed Premises at approximately 8 p.m. on November 8, 2018. After entering, he went to an aisle that had alcoholic beverages on display. K.K. selected a six-pack of Bud Light beer bottles. K.K. took the beer to the line for the register. There was one person in line, so K.K. waited behind that person for the clerk. This customer was accompanied by young children and was having difficulty completing her transaction. The clerk had her step to the side to give her more time to get organized. After that person was temporarily moved off to the side, K.K. approached the register. K.K. presented the six-pack of Bud Light beer bottles to the clerk for purchase.

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<sup>3</sup> All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

7. This clerk was the same individual in the image that was later taken of K.K. standing next to the clerk that sold the beer to him. (Exhibit D-3) The clerk took the beer and processed the purchase. The only statement by the clerk was when she told K.K. the total cost of the beer. She did not ask K.K. for identification. The clerk did not ask K.K. any age related questions. K.K. paid the clerk for the beer in cash. K.K. then took possession of the beer and the change the clerk handed to him. K.K. then left the Licensed Premises with these items and approached the vehicle where the PCSD officers were waiting.

8. K.K. told them what had just happened in the Licensed Premises. PCSD Sgt. R. Dellinger (Dellinger) had also watched parts of the transaction from where he had parked his vehicle and he was aware of who the clerk was that made the sale to K.K. Less than 5 minutes later, Dellinger and another PCSD officer went into the Licensed Premises with K.K. Dellinger approached the clerk to identify himself and why they were there. The clerk was in the process of helping other customers so Dellinger asked her to arrange for coverage at the register so they could talk to her, away from customers, about the sale to K.K. Before relocating, Dellinger explained why they were present and told the clerk that she had sold beer to a minor.

9. The officers, K.K., and the clerk went to an area away from the register to continue the discussion. After they relocated, Dellinger asked K.K. if he could identify the clerk who sold the beer. K.K. responded "yes" and pointed at the clerk who made the sale. K.K. and the clerk were about 10-15 inches away from each other. The clerk was identified as Rita Broome (Broome) during Dellinger's investigation of the sale to K.K. Broome admitted to making the sale to K.K. and that she did not ask for identification from him.

10. Broome was subsequently photographed while standing next to K.K. while K.K. held the Bud Light six-pack. (Exhibit D-3) From the initial law enforcement contact with Broome until after this photograph was taken; K.K. was in the immediate presence of Broome and the PCSD officers. Broome was subsequently issued a citation for the sale.

11. K.K. had served as a decoy on approximately 10-15 operations for law enforcement agencies prior to November 8, 2018. Each of those operations involved approximately 10 separate visits to attempt purchases. K.K. became involved as a decoy as the result of his participation in an Explorer program for nearly two years. Because of his time in the Explorer program and his experience in being a decoy, he was not particularly nervous during the transaction on November 8, 2018. K.K. did not try to act younger during any of the decoy transactions.

12. Based on K.K.'s overall appearance, i.e., his physical appearance, clothing, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and

conduct in front of Broome at the Licensed Premises on November 8, 2018, K.K. displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with Broome. Broome did not testify in this matter to explain her age related impressions of K.K. or why she sold K.K. alcohol without asking age related questions or for identification even though K.K.'s appearance was consistent with someone who was 16 years of age.

13. 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 November 8, 2018 the Respondent's clerk, Rita Broome inside the Licensed Premises, sold an alcoholic beverage to K.K., a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 2-12)
5. The Respondent argued that the decoy operation at the Licensed Premises failed to comply with rule 141 and, therefore, the accusation should be dismissed. Specifically, the Respondent argued that the face to face identification failed to comply with rule 141(b)(5) and the appearance of the decoy did not comply with rule 141(b)(2). Either of these alleged violations, if established, would be affirmative defenses and require dismissal of the accusation pursuant to rule 141(c).
6. There is no credible evidence supporting the assertions by the Respondent that there was a failure to comply with rule 141. Regarding the rule 141(b)(5) violation, *Acapulco Restaurants, Inc. v. Alcoholic Beverages Control Appeals Board* (1998) 67 Cal.App.4th 575 confirmed that a face to face must occur for compliance, but that case never

established a baseline standard for what was a compliant face to face identification. The subsequent decision in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687 held that the regulation at "section 141, subdivision (b)(5), ensures—admittedly not as artfully as it might—that the seller will be given the opportunity, soon after the sale, to come "face-to-face" with the decoy." *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687, 1698. This decision confirmed that the purpose of the face to face was to give the seller notice of who the decoy was.

7. Further clarification of what constituted a compliant face to face occurred in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2017) 18 Cal.App.5th 541. This case is particularly helpful since the identification by K.K. of Broome in this matter was substantively similar to the identification that was found to be compliant with rule 141(c) in that case. In finding that identification compliant, that court ruled:

"Here there is no violation of Rule 141, as explained above, because the decoy made a face-to-face identification by pointing out the clerk to the officer inside the store while approximately 10 feet from her, standing next to her when the officer informed her she had sold alcohol to a minor, and taking a photograph with her as the minor held the can of beer he purchased from her. She had ample opportunity to observe the minor and to object to any perceived misidentification. The rule requires identification, not confrontation. The identification here meets the letter and the spirit of Rule 141." *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2017) 18 Cal.App.5th 541, 547

8. While, general due process considerations demand a fair identification be facilitated by law enforcement, these cases makes clear that this particular regulation is focused on the more narrow concern of allowing the *seller* the opportunity to be aware of the identity of the decoy. It stands to reason that compliance with Rule 141, subdivision (b)(5) occurs if the clerk and the decoy, during the process of the investigation, prior to the citation being issued or departure of the decoy, are brought in reasonable proximity to each other to assure that the seller knows (or reasonably ought to know) that he or she is being identified as the seller by the decoy.

9. Dellinger approached Broome at the counter, got her attention and identified himself as a law enforcement officer investigating a sale of alcohol to a minor. While the sale to K.K. was discussed between Dellinger and Broome at the counter, K.K. stood inside of the store with the other officer. Right after this discussion Broome relocated to another area away from the customers. She was accompanied by Dellinger, K.K. and the other officer. After they relocated, K.K. was asked by Dellinger about who made the sale to

him. In the immediate presence of Broome, K.K. pointed out Broome as the seller. Broome was clearly aware that the decoy was K.K. because she discussed making the sale to K.K. with Dellinger while K.K. was in the immediate area. Before Broome was cited on November 8, 2018, K.K. and Broome were photographed next to each other. (Findings of Fact ¶ 10 and Exhibit D-3) Broome clearly came face to face with K.K. under circumstances that made it clear that Broome had been identified as the person who sold K.K. beer and that K.K. was the minor at issue. (Findings of Fact ¶¶ 3-12)

10. None of the evidence presented by the Respondent rebutted the credible evidence presented by the Department that this was a fully compliant identification that allowed Broome to become aware that K.K. was the decoy. Respondent has offered no evidence or argument suggesting that the identification violated state or federal due process considerations. Given the totality of the evidence presented by the Department credibly establishing compliance with rule 141(b)(5), the Respondent's assertions that compliance did not occur are unsupported. (Findings of Fact ¶¶ 3-12)

11. Respondent also asserted that the appearance of the decoy did not comply with rule 141(b)(2). As noted above, Broome did not testify in this matter to establish that her sale to K.K., without asking for identification or age related questions, was the result of K.K.'s appearance. Broome did not ask any questions of K.K. and she only stated the price of the beer, so the exchanges between her and K.K. were minimal. Further, K.K. testified in this matter and his appearance matched the appearance he presented to Broome on the date of the operation. K.K. had the appearance "which could generally be expected of a person under 21 years of age" which is the standard required by rule 141(b)(2). As previously noted, the clerk did not testify to establish facts suggesting an identification issue or whether there was anything in K.K.'s actions, manner, or appearance that led Broome to reasonably conclude that K.K. was over 21. The Department has established compliance with rule 141(b)(2) and the Respondent has failed to rebut this evidence. (Findings of Fact ¶¶ 3-12)

### **PENALTY**

The Department recommended that the Respondent's license be suspended for the standard penalty of 15 days with the appearance and actual age of the Decoy being an aggravating factor that weighed against the mitigation established because of the period of licensure without prior discipline.

The Respondent argued for a 10 day stayed penalty if the Accusation were sustained based on the long period of licensure without prior incidents.


No evidence was presented regarding the Respondent's policies to prevent sales of alcoholic beverages to underage individuals. The Respondent has been licensed since June 2009 and this is their first incident. This fact does support mitigation. However, this mitigation is somewhat diminished by the lack of evidence suggesting that the Respondent's long period of compliance was the result of vigilance on its part rather than luck.


There appear to be no specific factors in aggravation applicable to this violation beyond the appearance and actual age of the Decoy. Mitigation is found to be in balance with the aggravation. The penalty recommended herein complies with rule 144.

**ORDER**

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

Dated: July 2, 2019

  
Alberto Roldan  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt	Penalty reduced to 5 day suspension.
<input type="checkbox"/> Non-Adopt:	_____
By:	
Date:	8/27/19