

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

AB-9841

File: 21-357436; Reg: 19088787

PARAMJIT SINGH DHALIWAL and PARMINDER KAUR DHALIWAL,
dba Beacon Food & Liquor
3110 West Shields Avenue
Fresno, CA 93722,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: April 3, 2020
Telephonic

ISSUED APRIL 8, 2020

Appearances: *Appellant:* Dean R. Lueders, of ACTlegally, as counsel for Paramjit Singh Dhaliwal and Parminder Kaur Dhaliwal,

Respondent: Sean Klein, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Paramjit Singh Dhaliwal and Parminder Kaur Dhaliwal, doing business as Beacon Food & Liquor, appeal from a decision of the Department of Alcoholic Beverage Control¹ revoking their license (with the revocation stayed for two years provided no further cause for discipline arises during that time) and suspending it for twenty days because they permitted an assault and battery on the premises, in violation of Penal Code sections 245, subdivision (a)(1) and 243, subdivision (d) — both violations being

¹The decision of the Department, dated September 11, 2019, is set forth in the appendix.

cause for discipline under Business and Professions Code section 24200, subdivision (a).²

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on October 4, 1999. There is no prior record of departmental discipline against the license.

On May 1, 2019, the Department instituted a two-count accusation against appellants charging that, on October 4, 2018, during business hours in the licensed premises, appellants' clerk permitted an individual to commit an assault likely to cause great bodily injury against a customer, in violation of Penal Code section 245(a)(1) (count 1), and; the clerk permitted an individual to commit a battery, causing serious bodily injury against a customer, in violation of Penal Code section 243(d) (count 2).

Penal Code section 245(a)(1) provides:

Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(Pen. Code § 245(a)(1).) An assault is defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (Pen. Code § 240.)

Penal Code section 243(d) provides:

When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

² Business and Professions Code section 24200(a) (as well as Article XX, section 22 of the California Constitution) 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.

(Pen. Code § 243(d).) A battery is defined as “any willful and unlawful use of force or violence upon the person of another.” (Pen. Code § 242.)

At the administrative hearing held on July 16, 2019, documentary evidence was received and testimony concerning the violation charged was presented by Fresno Police Department (FPD) Corporal Stephanie Pope, FPD Detective Parvinder Dhillon, and Department Agent Lori Kohman. Appellant Paramjit Dhaliwal testified on his own behalf.³ Neither the clerk, customer, nor his attacker testified at the hearing.

Testimony established that in the early evening hours of October 4, 2018, at approximately 5:15 p.m., an individual named Edward Conway (Conway) approached a customer named Jerry Salazar (Salazar) who was standing near the register with his small dog on a leash to make a purchase. Conway struck Salazar repeatedly on his head and sides with his fists, and Salazar fell to the ground. Conway then kicked Salazar multiple times while stating that he should kill him. Conway also kicked Salazar’s dog intermittently, then exited the premises.

The attack took place in full view of the clerk, Taranjit “Tony” Bhatia (the clerk) on the other side of the counter. The clerk remained behind the counter and spoke a few words to Conway but did not forcibly intervene or seek to obtain aid for Salazar. A female customer began to assist Salazar, and asked the clerk to call 911. The clerk told her he did not want to get involved, and did not call 911.

Conway re-entered the premises and went back to where Salazar remained crumpled on the ground and bleeding. The female customer moved away in fear. Conway resumed yelling and kicking Salazar, then left the store. A customer called

³ We use the spelling found in the majority of documents in the record. The last name was spelled “Dahliwal” in the reporter’s transcript.

911, then handed her phone to the clerk so that he could give the operator the address of the premises. The only call the clerk made was to a manager identified as “Gary” to whom he explained what had occurred. A second clerk, Pandher, also observed these events from behind the counter.

Cpl. Pope arrived at the premises and saw Salazar lying on the floor with no one tending to him. She attempted to speak to the clerk about what happened but he told her he did not want to be involved. He said the altercation had happened outside and refused to provide information to the officer about what happened, even though he was told the information was needed by medical responders. When asked about surveillance footage, the clerk said he did not have access to it and that the officer would have to ask the manager who would be in the next day. The clerk would only identify himself as “Tony” to the officer.

Det. Dhillon spoke to the clerk and asked him what happened. He declined to tell her anything, and said he did not want to be involved. Later, Det. Dhillon, who is fluent in Punjabi, and Agent Kohman viewed the surveillance video showing the attack. In the video, the two clerks are heard saying to each in Punjabi that they were going to tell the police they didn’t see anything and that they didn’t want to be involved. (Exhs. D-4 and D-5.)

The FPD obtained information that Salazar suffered a broken jaw and five broken ribs as a result of the attack. Conway, the attacker, was identified from the surveillance video, arrested by the FPD, and subsequently prosecuted by the Fresno County District Attorney’s Office. Criminal charges were filed against Conway for violation of Penal Code sections 243(d), battery causing serious bodily injury; 245(a)(1),

assault likely to cause great bodily injury; 597(b), cruelty to an animal; and 21310, carrying a concealed fixed blade knife. (Exh. D-5.)

The administrative law judge (ALJ) issued his proposed decision on August 1, 2019, sustaining both counts of the accusation and recommending that the license be revoked (with revocation stayed for a period of two years provided no further cause for discipline arises during that time) and suspended for 20 days. The Department adopted the proposed decision in its entirety on September 9, 2019 and a certificate of decision was issued on September 11, 2019. Appellant filed a Motion for Reconsideration with the Department on October 8, 2019, but it was not granted.

Appellants then filed a timely appeal making the following contentions: (1) the Department failed to meet its burden of proof at the administrative hearing, (2) appellants' due process rights were violated, (3) appellants did not permit the second assault by their inaction, and (4) the penalty is excessive and constitutes an abuse of discretion.

DISCUSSION

I

ISSUE CONCERNING BURDEN OF PROOF

Appellants contend the Department failed to meet its burden of proof at the administrative hearing when it failed to call as witnesses the parties involved in the fight or any percipient witnesses. (AOB at p. 3.) Stated another way, appellants are alleging that the charges of the accusation are not supported by substantial evidence absent such testimony.

The Department presented surveillance footage as evidence of the two assaults (exhs. 3 and 4), as well as testimonial evidence by the police officers called to the

scene and the Department's investigating agent. Appellants did not deny, nor did they offer any evidence, that the assaults did not occur.

Based on the evidence presented, the ALJ determined that substantial evidence existed in the record to support the conclusion that two instances of assault and battery occurred and that appellants' clerks had failed to act with conscious disregard for the assault and battery occurring before them.

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, 112 [28 Cal.Rptr.74].)

In short, the Appeals Board must determine in each case 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*, 212 Cal.App.2d at p. 114.)

We have carefully examined the record in this case and find no error in the Department's decision. The absence of testimony by the individuals involved in the fight, or witnesses to it, does not negate the evidence which was presented to support the charges in the accusation. The findings in the decision are supported by substantial evidence and we are not at liberty to reweigh the evidence to reach a disparate conclusion.

II

ISSUE CONCERNING DUE PROCESS

Appellants accuse the Department's attorney of unethical behavior prior to the administrative hearing, and claim this conduct constitutes a Constitutional due process violation. (AOB at p. 4.) The complained of behavior was the offer, during pre-hearing settlement negotiations, of a lower penalty if the matter could be settled prior to a hearing, and the declaration that a higher penalty would be pursued following a full hearing.

The Department counters that the accusation of unethical conduct is unsupported, and that it arises from pre-hearing settlement discussions which are not

part of the record. (RRB at p. 7.) Furthermore, they point out that appellants cite no case law, rules, regulations, or citations to statutory authority to support their position, but instead resort to unsupported finger pointing. (*Ibid.*) Finally, as the Department points out, the Court of Appeal has held that the offering of one penalty before hearing and the request of another (higher) penalty at hearing is both appropriate and acceptable. (*Id.*, citing: *Kirby v. Alcoholic Bev. Control Appeals Bd.*⁴)

Business and Professions Code section 23083 limits the Board's review to evidence which is included in the administrative record, and does not include pre-hearing settlement discussions. Section 23083 states, in pertinent part, "the board shall not receive any evidence other than that contained in the record of the proceedings of the department." (Bus and Prof. Code § 23083.) Section 1038(a) of the California Code of Regulations defines the items to be included in the administrative record — none of which includes pre-hearing settlement discussions. (See Cal. Code Regs., tit. 1,

⁴ [T]here is a public policy in favor of negotiations for compromise . . .

The licensee who rejects a proffered settlement hopes that the hearing will clear -- or at least partially excuse -- him and he hopes that, even if he is not found innocent, he will be dealt with less harshly than the department proposes. But if the department can never, no matter what a hearing may develop, assess a penalty greater than that proposed in its offer, a licensee has little to lose by rejection. Only the cost of a hearing is risked; he could not be otherwise harmed. In that situation, licensees would be induced to gamble on the chance of prevailing at the trial, while the department would lose much of its inducement to attempt settlement. The law should not permit that kind of tactic by an accused.

It follows that the mere fact -- if it be a fact -- that the department had once offered a settlement more favorable than the discipline ultimately imposed, is not, in and of itself, a ground for setting aside the penalty ultimately adopted.

(*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1971) 17Cal.App.3d 255, 260-261 [94 Cal.Rptr. 514, 518.]

§ 1038(a.)

A properly compiled administrative record is both legally and practically sufficient for the Board to determine whether the findings in the decision are supported by substantial evidence. Conversations which occurred off the record and outside the administrative record simply cannot be considered by this Board. Accordingly, we must decline appellants' invitation to enlarge the scope of our jurisdictional parameters to include pre-hearing settlement discussions.

III

ISSUE CONCERNING PERMITTING OF ASSAULT

Appellants contend they should not be held liable for "permitting" the assaults which occurred on the premises. They maintain they had no reason to believe or suspect that this assault would take place and therefore the clerks' behavior should not be imputed to the licensees. (AOB at pp. 5-8.)

Both this Board and the courts have consistently found that a licensee may be held liable for the actions of his agents or employees.

The owner of a liquor license has the responsibility to see to it that the license is not used in violation of law and as a matter of general law the knowledge and acts of the employee or agent are imputable to the licensee. [Citation.]

(*Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 172, 180

[17 Cal.Rptr. 315].) The *Laube* court noted:

A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly.

(*Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367 [3 Cal.Rptr.2d 779].) Similarly, in *Reimel* the court stated:

[A] licensee can draw no protection from his lack of knowledge of violations committed by his employees or from the fact that he has taken reasonable precautions to prevent such violations. There is no requirement . . . that the licensee have knowledge or notice of the facts constituting its violation. [Citations.]

(*Reimel v. Alcoholic Bev. Control Appeals Bd.* (1967) 252 Cal.App.2d 520, 522 [60 Cal. Rptr. 641], internal quotations omitted.)

The doctrine of *respondeat superior* provides that an employer or principal is vicariously liable for the wrongful conduct of his or her employees or agents committed within the scope of the employment or agency. (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967 [227 Cal.Rptr. 106].) And it is well-settled in alcoholic beverage case law that an agent or employee's on-premises knowledge and misconduct is imputed to the licensee/employer. (See *Yu v. Alcoholic Bev. Control Appeals Bd.* (1992) 3 Cal.App.4th 286, 295 [4 Cal.Rptr.2d 280]; *Kirby v. Alcoholic Bev. Control Appeals Bd.* (1973) 33 Cal.App.3d 732, 737 [109 Cal.Rptr. 291].)

Indeed, earlier in *Laube*, the court observed that the ALJ's factual findings — notably not subject to review on appeal — include:

[T]he element of the licensee's knowledge of illegal and improper activity on his or her premises; this knowledge may be either actual knowledge or constructive knowledge imputed to the licensee from the knowledge of his or her employees.

(*Laube, supra*, 2 Cal.App.4th at p. 367, citing *Fromberg v. Dept. of Alcoholic Bev. Control* (1959) 169 Cal.App.2d 230, 233-234 [337 P.2d 123].) Importantly, as the court of appeals observed in *McFaddin*:

It is not necessary for a licensee to knowingly allow its premises to be used in a prohibited manner in order to be found to have permitted its use. . . . Further, the word "permit" implies no affirmative act. It involves no intent. It is mere passivity, *abstaining from preventative action*.

(*McFaddin San Diego 1130, Inc. v. Stroh* (1989) 208 Cal.App.3d 1384, 1389-1390 [257 Cal.Rptr. 8], internal quotations omitted, emphasis in original.)

The ALJ explains his rationale for holding the licensees liable for their employees' actions as follows:

7. It is undisputed that Conway attacked Salazar, in the Licensed Premises, right in front of Bhatia. During the course of two, separate, extended attacks, Conway broke Salazar's jaw and five of his ribs causing serious bodily injury. Conway's attack was clearly in violation of both Penal Code sections alleged in the Accusation. The remaining questions to be resolved are whether Bhatia "permitted" these crimes to occur on the Licensed Premises and whether Bhatia's actions (or inactions) can be imputed to the Respondent.

8. The Respondent cited *Laube v. Stroh* (1992) 2 Cal.App.4th 364 in asserting that the conduct of Conway should not be imputed to the Respondent through Bhatia. In making this assertion, the Respondent focused on the initial attack of Conway and how the Respondent and its agents could not have foreseen the attack or intervened safely. Were the analysis to end with the initial attack, the Respondent would have an argument. However, the Respondent's analysis ignores the actions and inaction of Bhatia and the other agents of the Respondent during the period following the initial attack. A close reading of *Laube* and a consideration of the specific facts of this case supports the conclusion that imputed liability is appropriate.

In discussing imputed liability, the *Laube* court noted that:

"A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly. Once a licensee knows of a particular violation of the law, that duty becomes specific and focuses on the elimination of the violation. Failure to prevent the problem from recurring, once the licensee knows of it, is to "permit" by a failure to take preventive action." *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 379.

9. Bhatia witnessed the vicious attack on Salazar by Conway, so he became specifically aware of this violation of law. During the initial attack, it was not unreasonable for Bhatia to avoid physically confronting Conway given the violence shown by him. The moment Conway departed, Bhatia had a number of actions he was duty bound to act on, but he instead did next to nothing. He failed to call 911. He failed to close the door to

prevent the return of Conway. This led to a second, vicious attack on Salazar. This second attack was entirely preventable without putting Bhatia in any particular danger.

10. Even after the second attack, Bhatia and his co-worker continued to evade the duties the circumstances called for. Bhatia and Pandher chose not to render any aid to Salazar even though customers, with no duty to act, were stepping up and assisting him. They continued to not contact 911 even though it was clear, Salazar was seriously injured. Bhatia and Pandher plotted to not speak with law enforcement about what they knew. Their refusal to assist the officers and their evasive and deceptive answers significantly hampered and delayed the medical effort and law enforcement investigation. Bhatia specifically failed to assist law enforcement and he was evasive and deceptive in his communications with the police.

11. In short, Bhatia and Pandher, as agents of the Respondent, permitted the criminal violations committed by Conway. Their inactions permitted Conway's violations to continue, unabated during the second attack. Their failure to assist law enforcement contributed to Conway's criminal behavior potentially going unchecked. The Department has established, by a preponderance of the evidence, both counts in the Accusation and they have shown that continuation of the license, without consequence, would be contrary to public welfare or morals.

(Conclusions of Law, ¶¶ 7-11.)

In sum, as the ALJ explains, it was appellants' employees actions after the first attack which were contrary to public welfare and morals: failure to call 911 after the first attack, failure to lock the door to prevent the attacker's re-entry, and conspiring to deceive law enforcement. Appellants' employees actions thereby permitted the second attack, which was foreseeable conduct by Conway. Since they were acting as agents and employees of appellants at the time, their knowledge and permission was properly imputed to appellants. (*Morell v. Dept. of Alcoholic Bev. Control* (1962) 204 Cal.App.2d 504, 514 [22 Cal.Rptr. 405].) Licensees are vicariously liable for — and responsible for preventing — such foreseeable misconduct by individuals in the licensed premises.

IV

ISSUE CONCERNING PENALTY

Appellants contend the penalty imposed is excessive and that it constitutes an abuse of discretion.

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].) 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 its discretion." (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

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.*)

The ALJ explains the basis and rationale for the penalty imposed at length:

PENALTY

Though the Respondent has no prior discipline during the 19 years it has been licensed, the Department requested that the Respondent's license be revoked, with a stay for 2 years and a 20 day suspension, given the severity of the violations. The Respondent's argument was in two parts. First, the Respondent sought an outright dismissal of the allegations by arguing that the actions of Conway, a third party, cannot be imputed to the Respondent through its agents. As noting the findings in this matter, that alternative narrative has been rejected. The Respondent's agent, Bhatia, has been found to have permitted the felonious assaults charged in counts one and two. These counts are alternative statements of the same conduct, so it would be inappropriate to punish the counts separately.

Second, the Respondent argued that mitigation is warranted because of the Respondent's long period of licensure without incident. The Respondent has a 19 year period of operating without prior violations. This is an appropriate factor in mitigation pursuant to Rule 144. There is no particular penalty schedule for the violations in this matter. The nature of the offenses is analogous to a disorderly house violation pursuant to Business and Professions Code section 25601 or the failure to correct an objectionable condition pursuant to Business and Professions Code sections 24200(e) or (f). Those sections call for penalties ranging from a 30 day suspension to revocation, depending on the severity. In cases of a revocation, outright revocation^[fn.] or a stayed revocation^[fn.] can be appropriate depending upon the circumstances.

In the present case, a stayed revocation is warranted. While the Respondent has no prior discipline over 19 years, the indifference to human suffering shown by the Respondent's agents was appalling. Their subsequent failure to cooperate with law enforcement hindered an important investigation into the attack on Salazar. Their actions permitted a serious crime that occurred in the Licensed Premises to worsen during the second attack and then continue without consequence to the attacker. These men were the Respondent's agents and the Respondent is accountable for their behavior.

The penalty herein complies with rule 144.

(Decision at p. 8.)

Appellants' disagreement with the penalty imposed does not mean the Department abused its discretion. This Board's review of a penalty looks only to see whether it can be considered reasonable, and, if it is reasonable, the Board's inquiry ends there. The penalty here is within the bounds of the Department's discretion and constitutes a thoughtful balance of factors in aggravation and mitigation. The Board is simply not empowered to reach a contrary conclusion from that of the Department — and substitute its own judgment — when, as here, the penalty is reasonable and the decision is supported by substantial evidence.

ORDER

The decision of the Department is affirmed.⁵

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

⁵This 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:**

**PARAMJIT SINGH DHALIWAL &
PARMINDER KAUR DHALIWAL
BEACON FOOD & LIQUOR
3110 W. SHIELDS AVENUE
FRESNO, CA 93722**

OFF-SALE GENERAL - LICENSE

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

FRESNO DISTRICT OFFICE

File: 21-357436

Reg: 19088787

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 September 9, 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 22, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: September 11, 2019



**Matthew D. Botting
General Counsel**

RECEIVED

SEP 11 2019

**Alcoholic Beverage Control
Office of Legal Services**

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Paramjit Singh Dhaliwal and Parminder Kaur Dhaliwal
dba Beacon Food & Liquor
3110 W. Shields Avenue
Fresno, California 93722

Respondent

} File: 21-357436

} Reg.: 19088787

} License Type: 21

} Page Count: 68

} Reporter:

} Theresa Mendoza CSR# 12338
} Atkinson Baker

Off-Sale General License

PROPOSED DECISION

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Fresno, California on July 16, 2019.

Sean Klein, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Dean Leuders, Attorney represented Paramjit Singh Dhaliwal and Parminder Kaur Dhaliwal (Respondent).

The Department seeks to discipline Respondent's license pursuant to two counts alleged in the Accusation on the grounds that:

- (1) On or about October 4, 2018, Respondent-Licensee's agent or employee, Taranjit Bhatia, permitted Edward Conway to commit an assault likely to cause great bodily injury against Jerry Salazar, upon the Licensed Premises, in violation of California Penal Code section 245(a)(1), such violation being grounds for suspension or revocation of the license under Business and Professions Code section 24200(a), and
- (2) On or about October 4, 2018, Respondent-Licensee's agent or employee, Taranjit Bhatia, permitted Edward Conway to commit a battery causing serious bodily injury against Jerry Salazar, upon the Licensed Premises, in violation of

California Penal Code section 243(d) such violation being grounds for suspension or revocation of the license under Business and Professions Code section 24200(a),

In each of the above two counts alleged in the Accusation, the Department further alleged that there is cause for suspension or revocation of the license of the Respondent in accordance with section 24200 and sections 24200(a) and (b) of the Business and Professions Code. The Department further alleged that the continuance of the license of the Respondent would be contrary to public welfare and/or morals as set forth in Article XX, Section 22 of the California State Constitution and sections 24200(a) and (b) of the Business and Professions Code.

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 July 16, 2019.

FINDINGS OF FACT

1. The Department filed the Accusation on May 1, 2019.
2. There is no record of prior Department discipline against the Respondent's license which was issued on October 4, 1999.
3. During the early evening hours of October 4, 2018 Taranjit "Tony" Bhatia (Bhatia) and Mohinderpal Singh Pandher (Pandher) were working as clerks at the Licensed Premises, a food and liquor store located at 3110 W. Shields Avenue in Fresno, California. The business name was Beacon Food and Liquor. The Licensed Premises was open for business and Bhatia was working at the register at approximately 5:15 p.m. At this time, a customer by the name of Jerry Salazar (Salazar) was repeatedly struck and kicked by another customer. The attacker was later identified as Edward Conway (Conway). The attack took place just on the other side of the register counter from Bhatia in his full view. (Exhibits D-2 through D-4)
4. Conway approached Salazar while he was standing near the register to purchase a can of beer. Salazar had a small dog on a leash with him and they were merely waiting when Conway approached. Conway suddenly punched Salazar repeatedly on his head and side with his fists. Salazar fell to the floor after being struck by Conway. Conway then began to forcefully kick Salazar, in the torso, multiple times while Salazar was crumpled on the ground. During the attack, Conway repeatedly stated that he should kill Salazar. Conway briefly paused during the attack of Salazar, then he resumed kicking him while he

remained crumpled on the ground. Conway also intermittently kicked Salazar's dog. Conway then walked out of the Licensed Premises while Salazar remained crumpled on the ground, bleeding. (Exhibit D-3)

5. During the attack, Bhatia remained behind the counter. Other than stating a few words of discouragement to Conway, Bhatia took no actions to intervene in the attack of Salazar or to afterwards obtain aid for Salazar, who was visibly injured. A female customer began to assist Salazar while he was on the ground, moaning in pain. That customer asked Bhatia to call 911. Bhatia appeared to initiate a call, but then abandoned making any calls to 911. He stated to the customer that he did not want to get involved. The only persons who called 911 were customers who saw the attack or its aftermath when Salazar was on the ground injured and bleeding. (Exhibits D-3 and D-4)

6. The only person who rendered first aid to Salazar, before the police and paramedics arrived, was a female customer in the Licensed Premises. Bhatia continued to allow customers into the Licensed Premises and ring up their purchases as Salazar remained bleeding and incoherent on the ground next to the register area. Bhatia did not lock the door to prevent Conway from returning even though Conway had repeatedly expressed a desire to kill Salazar in Bhatia's presence. (Exhibits D-3 and D-4)

7. A few minutes after leaving the Licensed Premises, Conway returned through the open door and walked up to where Salazar remained crumpled on the ground. The customer who was assisting Salazar moved away out of fear. Conway resumed yelling at Salazar and kicking him in the torso even though Salazar did not say or do anything to Conway during the second encounter. After repeatedly kicking Salazar, Conway again walked out of the Licensed Premises. (Exhibits D-3 and D-4)

8. During the second attack, Pandher was behind the register counter along with Bhatia. Both men witnessed the second attack. Despite watching Conway attack Salazar a second time, Bhatia and Pandher remained behind the counter during this attack and after Conway left again. The only persons who made calls to 911 were customers. At one point after the second attack, a customer handed her phone to Bhatia so he could give the 911 operator the address of the Licensed Premises. At no point did Bhatia or Pandher initiate calls to 911. (Exhibits D-3 and D-4) Pandher did make a phone call to a manager identified as "Gary". During this call, Pandher told the manager what occurred. (Exhibits D-4 and D-5)

9. Officer S. Pope (Pope) of the Fresno Police Department (FPD) arrived on scene shortly after the second attack by Conway. No one waved her down as she pulled up and when she entered the Licensed Premises, she saw Salazar sprawled on the floor with no

one tending to him. Pope saw Bhatia and Pandher working behind the counter. When she tried to speak with Bhatia about the incident, he repeatedly told her he did not want to be involved. Bhatia misrepresented to Pope that the assault had occurred outside during their initial conversation. Bhatia refused to provide information to Pope about where Salazar was struck, even though Pope explained that she needed this information for the medical responders. When Pope asked Bhatia about whether there was surveillance footage, he said he did not have access to it and that "Gary" the manager would be in tomorrow for her to talk with him about it. Bhatia was evasive in identifying himself beyond the name "Tony" to Pope. (Exhibits D-2 and D-5)

10. Bhatia and Pandher spoke to each other in Punjabi after the second attack and during the period while Pope was assisting Salazar and trying to assess what had occurred. This conversation was captured in the surveillance footage that was obtained the following day by law enforcement. FPD Detective P. Dhillon (Dhillon) reviewed the footage captured of the attack and the aftermath. Dhillon is a native speaker of Punjabi and she was able to understand clearly what Bhatia and Pandher were saying to each other. Dhillon had been one of the responding officers after the attack and Bhatia and Pandher had been evasive and uncooperative with her, as well. During their conversation after the second attack, Bhatia told Pandher about the specific threats and statements Conway made to Salazar during the attack. Shortly after Pope's arrival, Bhatia and Pandher discussed that they would say that they did not see anything. Bhatia told Pandher that they were not obligated to cooperate. Bhatia told officers that he was concerned about retaliation but offered no particular reason why this was the case. (Exhibits D-4 and D-5)

11. In the surveillance video, Pandher asked Bhatia at approximately 5:42 p.m. to find out from the officers if they were allowed to clean up the blood from the attack. Rather than checking with the officers, Bhatia told Pandher to clean up since the paramedics had already moved Salazar. Pandher then went to the area where the blood was, and he proceeded to mop even though neither man had asked the officers if this was allowed. On October 23, 2018 Bhatia spoke with Department Agent L. Kohman (Kohman) about the attack and their actions in response. During this interview, Bhatia misrepresented to Kohman that Dhillon had given him permission to mop up the blood. (Exhibits D-4 and D-5)

12. On October 5, 2018 Kohman and FPD Detective B. Brown (Brown) went to the Licensed Premises and obtained the surveillance videos of the incident. (Exhibits D-3, D-4 and D-5) These were the videos reviewed by Dhillon. On October 9, 2018 Brown obtained information that Salazar suffered a broken jaw and five broken ribs as a result of the attack. Conway's identity was determined during the process of his identification and

arrest by FPD and subsequent prosecution by the Fresno County District Attorney's Office. (Exhibit D-5)

13. Respondent Parmanjit Singh Dhaliwal (Dhaliwal), the co-Licensee, testified in this matter. Dhaliwal asserted that the neighborhood around the Licensed Premises, in his opinion, is a generally safe area and that he did not anticipate an issue like this occurring. Bhatia resigned approximately one month after the incident. No concrete information was offered by Respondent about training or expectations that were established for employees like Bhatia and Pandher when interacting with law enforcement on behalf of the Respondent.

14. 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. Business and Professions Code 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. In determining whether a violation of the above sections has been caused or permitted by the licensee, the knowledge of the licensee itself and its agents will be examined and weighed. "[T]his knowledge may be either actual knowledge or constructive knowledge imputed to the licensee from the knowledge of his or her employees. (See *Fromberg v. Dept. Alcoholic Bev. Control* (1959) 169 Cal.App.2d 230, 233-234, 337 P.2d 123; *Endo v. State Board of Equalization* (1956) 143 Cal.App.2d 395, 401-402, 300 P.2d 366.)" *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 367.

4. Penal Code section 245(a) provides in relevant part:

(1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

...

(4) Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

5. Penal code section 242 provides that a battery is any willful and unlawful use of force or violence upon the person of another. Penal code section 243(d) provides that when a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. Penal code section 243 further defines "Serious bodily injury" as a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

6. With respect to counts 1 and 2, cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and section 24200(a) on the basis that on October 4, 2018, Respondent's employee, Taranjit Bhatia, upon the Licensed Premises, permitted Edward Conway to commit an assault likely to cause great bodily injury against Jerry Salazar, in violation of California Penal Code section 245(a)(1), and permitted Edward Conway to commit a battery causing serious bodily injury against Jerry Salazar, in violation of California Penal Code section 243(d). (Findings of Fact ¶¶ 2-12)

7. It is undisputed that Conway attacked Salazar, in the Licensed Premises, right in front of Bhatia. During the course of two, separate, extended attacks, Conway broke Salazar's jaw and five of his ribs causing serious bodily injury. Conway's attack was clearly in violation of both Penal Code sections alleged in the Accusation. The remaining questions to be resolved are whether Bhatia "permitted" these crimes to occur on the Licensed Premises and whether Bhatia's actions (or inactions) can be imputed to the Respondent.

8. The Respondent cited *Laube v. Stroh* (1992) 2 Cal.App.4th 364 in asserting that the conduct of Conway should not be imputed to the Respondent through Bhatia. In making this assertion, the Respondent focused on the initial attack of Conway and how the Respondent and its agents could not have foreseen the attack or intervened safely. *Were* the analysis to end with the initial attack, the Respondent would have an argument. However, the Respondent's analysis ignores the actions and inactions of Bhatia and the other agents of the Respondent during the period following the initial attack. A close

reading of *Laube* and a consideration of the specific facts of this case supports the conclusion that imputed liability is appropriate.

In discussing imputed liability, the *Laube* court noted that:

“A licensee has a general, affirmative duty to maintain a lawful establishment. Presumably this duty imposes upon the licensee the obligation to be diligent in anticipation of reasonably possible unlawful activity, and to instruct employees accordingly. Once a licensee knows of a particular violation of the law, that duty becomes specific and focuses on the elimination of the violation. Failure to prevent the problem from recurring, once the licensee knows of it, is to “permit” by a failure to take preventive action.” *Laube v. Stroh* (1992) 2 Cal.App.4th 364, 379

9. Bhatia witnessed the vicious attack on Salazar by Conway, so he became specifically aware of this violation of law. During the initial attack, it was not unreasonable for Bhatia to avoid physically confronting Conway given the violence shown by him. The moment Conway departed, Bhatia had a number of actions he was duty bound to act on, but he instead did next to nothing. He failed to call 911. He failed to close the door to prevent the return of Conway. This led to a second, vicious attack on Salazar. This second attack was entirely preventable without putting Bhatia in any particular danger.

10. Even after the second attack, Bhatia and his co-worker continued to evade the duties the circumstances called for. Bhatia and Pandher chose not to render any aid to Salazar even though customers, with no duty to act, were stepping up and assisting him. They continued to not contact 911 even though it was clear, Salazar was seriously injured. Bhatia and Pandher plotted to not speak with law enforcement about what they knew. Their refusal to assist the officers and their evasive and deceptive answers significantly hampered and delayed the medical effort and law enforcement investigation. Bhatia specifically failed to assist law enforcement and he was evasive and deceptive in his communications with the police.

11. In short, Bhatia and Pandher, as agents of the Respondent, permitted the criminal violations committed by Conway. Their inactions permitted Conway's violations to continue, unabated during the second attack. Their failure to assist law enforcement contributed to Conway's criminal behavior potentially going unchecked. The Department has established, by a preponderance of the evidence, both counts in the Accusation and they have shown that continuation of the license, without consequence, would be contrary to public welfare or morals.

PENALTY

Though the Respondent has no prior discipline during the 19 years it has been licensed, the Department requested that the Respondent's license be revoked, with a stay for 2 years and a 20 day suspension, given the severity of the violations. The Respondent's argument was in two parts. First, the Respondent sought an outright dismissal of the allegations by arguing that the actions of Conway, a third party, cannot be imputed to the Respondent through its agents. As noted in the findings in this matter, that alternative narrative has been rejected. The Respondent's agent, Bhatia, has been found to have permitted the felonious assaults charged in counts one and two. These counts are alternative statements of the same conduct, so it would be inappropriate to punish the counts separately.

Second, the Respondent argued that mitigation is warranted because of the Respondent's long period of licensure without incident. The Respondent has a 19 year period of operating without prior violations. This is an appropriate factor in mitigation pursuant to Rule 144. There is no particular penalty schedule for the violations in this matter. The nature of the offenses is analogous to a disorderly house violation pursuant to Business and Professions Code section 25601 or the failure to correct an objectionable condition pursuant to Business and Professions Code sections 24200(e) or (f). Those sections call for penalties ranging from a 30 day suspension to revocation, depending on the severity. In cases of a revocation, outright revocation¹ or a stayed revocation² can be appropriate depending upon the circumstances.

In the present case, a stayed revocation is warranted. While the Respondent has no prior discipline over 19 years, the indifference to human suffering shown by the Respondent's agents was appalling. Their subsequent failure to cooperate with law enforcement hindered an important investigation into the attack on Salazar. Their actions permitted a serious crime that occurred in the Licensed Premises to worsen during the second attack and then continue without consequence to the attacker. These men were the Respondent's agents and the Respondent is accountable for their behavior.

The penalty recommended herein complies with rule 144.

¹ See, e.g., *Greenblatt v. Martin*, 177 Cal. App. 2d 738, 2 Cal. Rptr. 508 (1960) (outright revocation imposed for violations of section 24200.5).

² See, e.g., *Harris v. Alcoholic Beverage Control Appeals Board*, 244 Cal. App. 2d 468, 36 Cal. Rptr. 697 (1964) (revocation stayed coupled with suspension imposed for violations of section 24200.5).


ORDER

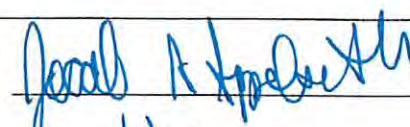
Both counts are sustained. The Respondent's Off-Sale General License is hereby revoked, with the revocation stayed for two years from the effective date of this decision, upon the condition that no subsequent final determination is made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within the period of the stay.

Should such a determination be made, the Director of the Department of Alcoholic Beverage Control may, in the Director's discretion and without further hearing, vacate this stay order and revoke Respondent's license, and should no such determination be made, the stay shall become permanent.

In addition, the license shall be suspended for 20 days.

Dated: August 1, 2019


Alberto Roldan
Administrative Law Judge

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