

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

AB-9861

File: 02-523719; Reg: 19088963

H.V.P. U.S.A., LLC,
dba Dominion Tantara
2330 Westgate Road,
Unit 7, 10, 17, & 20
Santa Maria, CA 93455-1018,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: July 2, 2020
Telephonic

ISSUED JULY 6, 2020

Appearances: *Appellant:* Dean R. Lueders, of ACTlegally, as counsel for H.V.P
U.S.A., LLC,

Respondent: Colleen Villarreal, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

H.V.P U.S.A., LLC, doing business as Dominion Tantara (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ revoking its license because it: 1) misrepresented a material fact in its application for a license, in violation of Business and Professions Code² section 24200(c), and; 2) permitted an individual to exercise a privilege or perform an act upon the premises under the authority of a

¹ The decision of the Department, dated January 24, 2020, is set forth in the appendix.

² All statutory references are to the California Business and Professions Code unless otherwise stated.

license without being the true owner of the business, in violation of sections 23300 and 23355.

FACTS AND PROCEDURAL HISTORY

Appellant's winegrower license was issued on September 26, 2012. There is no prior record of departmental discipline against the license.

On June 18, 2019, the Department filed an accusation against appellant charging that on or about August 21, 2011, it misrepresented a material fact in its license application, and, beginning on September 27, 2012, permitted an individual, Carlos Coelho (Coelho), to exercise a privilege or perform an act upon the premises under the authority of a license without being the true owner of the business.

Documentary evidence and testimony was offered at the administrative hearing held on November 5, 2019. Supervising Agent Robert Olshaskie testified on behalf of the Department. Coelho and his corporate attorney, Howard Kooger (Kooger), testified on appellant's behalf.

Evidence established that appellant submitted a series of documents to the Department as part of its alcoholic beverage license application. In a limited liability company questionnaire, dated November 5, 2010, appellant indicated that HI Holdinvest was its sole member and listed Jose Jorge and Agnes Ingeborg Kistamas (Kistamas) as its managers. (Exh. 3.) Appellant also submitted a limited liability company questionnaire for HI Holdinvest. This questionnaire listed Kooger as the manager and La Dolce Ltd. as the sole member. (Exh. 6.)

At the Department's request, a corporate questionnaire was submitted on May 23, 2011, showing Jesse Hester (Hester) and Matthew Stokes (Stokes) as the corporate

officers and Kooger as the authorized representative. Stokes was listed as the sole shareholder. Respondent also submitted a certificate of registration, which included the first page of a declaration of trust for the Xeneixe Trust. (Exh. 10.) The reason for inclusion of the trust was unclear to the Department at the time

In a series of emails and letters, the Department attempted to determine the exact nature of the ownership structure of the Respondent. During this exchange, the Department indicated, among other things, that Hester and Stokes would need to be fingerprinted. Coelho was one of the individuals involved in this exchange. (Exhs. 11-13.)

In an email dated June 21, 2011, Kooger indicated that “the shareholder structure will be changed in the near future as Carlos Coelho and his wife [Kistamas] are to become sole shareholders of HVP USA Inc.” (Exh. 15.) The email further indicated that the negotiations had been pending for some time and that the transfer should have been finalized a year ago, were it not for a major point of disagreement between buyers and seller. The email indicated that both parties now seemed to agree and inquired if it would be possible for Coelho and Kistamas to fill out the necessary forms for HVP. (Exhs. 14-15.)

On August 21, 2011, appellant submitted a limited liability company questionnaire listing Coelho and Jorge as managers and Coelho as the sole member. (Exh. 17.) It also submitted a resolution of its members, signed by Coelho as a member, appointing himself and Jorge as managers. Attached to the resolution was an amendment to the operating agreement listing Coelho as appellant’s sole member. (Exh. 18.) At the same time, Coelho and Kistamas submitted individual personal affidavits. (Exhs. 19-20.)

Another limited liability questionnaire was submitted on July 5, 2012 containing substantially the same information. (Exh. 21.)

Coelho subsequently sent an email in which he stated that the Swiss entity sold the entire interest to him and that he was now the sole owner. (Exh. 16.) The email further indicated that he had submitted a new application and had been fingerprinted. (*Ibid.*) Based on the foregoing documents, the Department qualified Coelho and Kistamas and issued appellant its winegrower license.

After receiving a complaint, the Department opened an investigation into the ownership of appellant. As part of the investigation, the Department received an affidavit from Kooger, which indicated that: 1) appellant's sole owner was HI Holdinvest; 2) La Dolce was the sole owner of HI Holdinvest, and; 3) Willem Marthinus de Beer was the sole director and registered shareholder of La Dolce. However, the affidavit also indicated that de Beer held these shares as nominee on behalf of Coelho as beneficiary. (Exh. 25.)

Kooger also testified at the administrative hearing that he is a corporate attorney and Coelho has been a client for over 30 years. Kooger testified that the Xeneixe Trust is an irrevocable discretionary trust and the beneficiaries are Coelho and his family. However, decisions regarding trust assets are vested with the trustees, or in this instance, with La Dolce as the trustee of the Xeneixe Trust. Kooger is the protector of the trust with a power of attorney, which gives him the authority to issue instructions relating to trust assets, which are then carried out by the trustee.

The original managers of La Dolce were Hester and Stokes. De Beer is the current manager and is also the nominee shareholder (i.e. he holds the shares for Coelho as

beneficiary). Although a change in the ownership of appellant was discussed, it never took place.

Kooger indicated that such a transfer is not as simple as transferring assets to Coelho because of the limitations of Swiss law (even though he is the ultimate beneficiary). Coelho testified, and Kooger agreed, that he did not understand the ownership structure of the various companies and the trust. Coelho relied upon lawyers (Kooger) to ensure that he and his family were protected. He believed that he was the ultimate owner of appellant because the assets were being held on his behalf. Because the application process was taking a long time, Coelho asked the Department what could be done to speed the process along. The Department indicated that it would be faster if he were the sole owner of appellant.

On December 4, 2013, the administrative law judge (ALJ) issued a proposed decision sustaining both counts of the accusation and recommended revoking the license. The ALJ found that the August 2011 and July 2012 limited liability company questionnaires (exhs. 17 and 21) listed Coelho as appellant's sole owner. Coelho is also listed as a member on the signature page of the application and as the owner in the certification regarding tied-house restrictions. (Exhs. 22-23.) This information was repeated in the resolution and the amendment to the operating agreement submitted in conjunction with the application (Exh. 18.) However, at the time the foregoing documents were submitted, appellant's sole owner was HI Holdinvest, which in turn, was owned by La Dolce Ltd. Willem Marthinus de Beer was the sole director and registered shareholder of La Dolce.

The ALJ further found that, even though Coelho was the beneficiary of this business arrangement, he was not a trustee or owner of any of the entities in the chain of ownership. This is important because the Department qualifies trustees and owners, not beneficiaries. By listing himself as the owner, Coelho prevented the Department from qualifying appellant's true owners. Further, the ALJ found that Coelho falsely informed the Department that appellant sold the entire interest to him and that he had become the sole owner. The ALJ, thus, rejected Coelho's testimony that he merely believed he was the owner because he was the ultimate beneficiary.

The Department adopted the ALJ's proposed decision in full and issued a certificate of decision on January 24, 2020. Appellant filed a timely appeal contending that: 1) substantial evidence does not support the Department's finding that appellant misrepresented a material fact in its application for a license, and; 2) the penalty is unreasonable.

DISCUSSION

I

SUBSTANTIAL EVIDENCE

This Board is required to defer to the Department's 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.)

Appellant contends that the Department’s finding that appellant misrepresented a material fact in its application for a license is not supported by substantial evidence. (AOB, at pp. 3-5.) Specifically, appellant maintains that there is no evidence establishing that Coelho knew that he was not appellant’s sole owner. (*Id.* at pp. 3-4.) Further, appellant argues that this statement was not material, as Coelho was ultimately the sole beneficiary of appellant’s shares. (*Id.* at p. 5.)

The Department found that appellant misrepresented a material fact when it listed Coelho as appellant’s sole owner in the August 2011 limited liability questionnaire, the July 2012 limited liability questionnaire, and in a certification regarding tied-house restrictions. (Conclusions of Law, ¶ 8.) Further, appellant listed Coelho as a “member” on the application signature page. (*Ibid.*) This information was repeated in the resolution and the amendment to the operating agreement submitted in conjunction with the application. (*Ibid.*)

The evidence that Coelho was listed as appellant’s sole owner in its application was undisputed at the hearing and is undisputed on appeal. It is also undisputed that Coelho is not appellant’s sole owner. (Conclusions of Law, ¶ 9.)

Appellant's only contention is that the Department must prove that its misrepresentation was intentional (i.e., that it was lying), and that the Department offered no such evidence at the hearing. (AOB, at pp. 4-5.) We disagree with appellants and find that there is substantial evidence to support that appellant, through Coelho, intentionally misrepresented a material fact in its license application.

This evidence comes from Coelho's own testimony at the hearing that he believed he was the ultimate owner of appellant because the assets were being held on his behalf. This testimony directly conflicts with Coelho's statements during the application process that he purchased appellant and that he was the sole owner. (Exh. 16.) The Department was well within its role as the trier of fact to reject Coelho's testimony at the hearing.

(*People v. Burton* (1958) 162 Cal.App.2d 790, 792 [328 P.2d 492, 493].)

Further, Coelho's statement that he was the sole owner was made after he asked the Department what could be done to speed the application process along and was told that it would be faster if he were the sole owner of appellant. A reasonable inference based on this exchange is that Coelho falsely told the Department that he was appellant's sole owner to speed up the application process and receive the license. The Department is entitled to the benefit of this reasonable inference and, on this basis, its findings that Coelho misrepresented a material fact³ must stand. (*Kirby, supra*, 261 Cal.App.2d at 122.)

II

³ The Board also rejects appellant's argument that this fact was immaterial. (AOB, at p. 5.) As the Department found, even though Coelho was the beneficiary of this business arrangement, he was not a trustee or owner of any of the entities in the chain of ownership. This is important because the Department qualifies trustees and owners, not beneficiaries. By listing himself as the owner, Coelho prevented the Department from qualifying appellant's true owners. (Conclusions of Law, ¶ 10.)

PENALTY

Appellant contends the penalty is unreasonable because it is an “arbitrary and punitive penalty for a simple mistake.” (AOB, at p. 6.)

This Board may examine the issue of excessive penalty if it is raised by an appellant. (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183].) However, 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].) An administrative agency abuses its discretion when it “exceeds the bounds of reason.” (*County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582 [90 Cal.Rptr.3d 394, 397].) However, “[i]f 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].)

Here, appellant's sole argument against the penalty is that it is based on a “simple mistake,” and is “punishment for punishment's sake.” (AOB, at p. 6.) However, as discussed above, there is substantial evidence to support the Department's finding that appellant's misrepresentation was not a simple mistake. Further, the standard penalty for a violation of section 24200(c) is revocation, which is exactly the penalty appellant received here. (Cal. Code Regs., tit. 4, § 144.) There is no evidence in the record or other argument that the Department's imposed penalty is unreasonable and an abuse of discretion. Therefore, the penalty must stand.

ORDER

The decision of the Department is affirmed.⁴

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

⁴ 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 APPEAL BY:

H.V.P. U.S.A., LLC.
DBA: DOMINION TANTARA
2330 WESTGATE RD UNITS 7, 10, 17 & 20
SANTA MARIA, CA 93455-1018

WINEGROWER - LICENSE

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.



SAN LUIS OBISPO DISTRICT OFFICE

File: 02-523719

Reg: 19088963

AB: 9861

CERTIFICATION

I, Yuri Jafarinejad, do hereby certify that I am a Senior Legal Analyst for the Department of Alcoholic Beverage Control of the State of California.

I do hereby further certify that annexed hereto is a true, correct and complete record (not including the Hearing Reporter's transcript) of the proceedings held under Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code concerning the petition, protest, or discipline of the above-listed license heretofore issued or applied for under the provisions of Division 9 of the Business and Professions Code.

IN WITNESS WHEREOF, I hereunto affix my signature on April 24, 2020, in the City of Sacramento, County of Sacramento, State of California.

Office of Legal Services

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

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

H.V.P. U.S.A. LLC
DOMINION TANTARA
2330 WESTGATE RD., UNIT 7, 10, 17 & 20
SANTA MARIA, CA 93455-1018

WINEGROWER - LICENSE

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

SAN LUIS OBISPO DISTRICT OFFICE

File: 02-523719

Reg: 19088963

CORRECTED

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 January 9, 2020. 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 5, 2020, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: January 24, 2020

RECEIVED

JAN 27 2020

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

H.V.P. U.S.A. LLC
dba Dominion Tantara
2330 Westgate Rd., Units 7, 10, 17 & 20
Santa Maria, California 93455-1018

Respondent

Winegrower License

} File: 02-523719
}
} Reg.: 19088963
}
} License Type: 02
}
} Word Count: 31,500
}
} Reporter:
} Savanna Wynn
} Kennedy Court Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Lompoc, California, on November 5, 2019. It was heard together with a companion case involving a different license held by the same licensee.¹ A decision was prepared for each case based on the joint record.

Colleen R. Villareal, Attorney, represented the Department of Alcoholic Beverage Control.

Dean R. Lueders, attorney-at-law, represented respondent H.V.P. U.S.A. LLC. Carlos Coelho was present.

The Department seeks to discipline the Respondent's license on the grounds that, on or about August 21, 2011, the Respondent misrepresented a material fact in its application for a license in violation of Business and Professions Code section 24200(c).² (Exhibit 2.)

The Department also seeks to discipline the Respondent's license on the grounds that, from September 27, 2012 through the present, the Respondent permitted Carlos Coelho to exercise a privilege or perform an act upon the premises under the authority of a license, without being the true owner of the business, in violation of sections 23300 and 23355. (Exhibit 2.)

¹ File # 17-508523, Reg. # 19088962.

² All statutory references are to the Business and Professions Code unless otherwise noted.

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 5, 2019.

FINDINGS OF FACT

1. The Department filed the accusation on June 18, 2019.
2. The Department issued a type 02, winegrower license to the Respondent for the above-described location on September 26, 2012 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.³
4. The Respondent filed an application for a winegrower license in July 2012. (Exhibit 22.) As part of its application (and as part of the companion application for a beer and wine wholesaler license), the Respondent submitted a series of documents to the Department.
5. In a limited liability company questionnaire dated November 5, 2010, the Respondent indicated that HI Holdinvest was its sole member. It listed Jose Jorge and Agnes Ingeborg Kistamas as its managers.⁴ (Exhibit 3.) The Respondent also submitted an individual personal affidavit and an individual financial affidavit for Kistamas. (Exhibits 4-5.)
6. The Respondent also submitted a limited liability company questionnaire for HI Holdinvest. This questionnaire lists Howard Jan Kooger as the manager and La Dolce Ltd. as the sole member. (Exhibit 6.) The Respondent also submitted a general power of attorney designating Kistamas as its attorney-in-fact/agent for the purposes of establishing a real estate holding company in the United States and purchasing shares on behalf of HI Holdinvest in any company incorporated in the United States. (Exhibit 8.)
7. At the Department's request, on May 23, 2011, a corporate questionnaire for La Dolce was submitted showing Jesse Hester and Matthew Stokes as the corporate officers and Kooger as the authorized representative. Stokes was listed as the sole shareholder. (Exhibit 7.) A certificate of incorporation and supporting documents for La Dolce was also submitted. (Exhibit 9.)

³ The accusation alleged that the Respondent had a disciplinary matter filed against it in 2014, but the Department did not submit any evidence in support of this allegation.

⁴ In later documents, to Agnes Ingeborg Kistamas' name is listed as Agnes Ingeborg Coelho, reflecting her marriage to Carlos Coelho. To avoid confusion, she will be referred to as Kistamas throughout this proposed decision.

8. For reasons that were unclear to the Department at the time, the Respondent submitted a certificate of registration, including the first page of a declaration of trust, for The Xeneixe Trust. (Exhibit 10.)

9. In a series of e-mails and letters, the Department attempted to determine the exact nature of the ownership structure of the Respondent. Among other things, during this exchange, the Department indicated that Hester and Stokes would need to be fingerprinted. Carlos Coelho was one of the individuals involved in this exchange. (Exhibits 11-13.)

10. In an e-mail dated June 21, 2011, Kooger indicated that "the shareholder structure will be changed in the near future as Carlos Coelho and his wife Ingeborg are to become sole shareholders of HVP USA Inc." The e-mail further indicated that the negotiations had been pending for some time and that the transfer should have been finalized a year ago, were it not for a major point of disagreement between buyers and seller. The e-mail indicated that both parties now seemed to be in agreement and inquired if it would be possible for Coelho and Kistamas to fill out the necessary forms for HVP. (Exhibits 14-15.)

11. Coelho subsequently sent an e-mail in which he stated that the Swiss entity sold the entire interest to him and that he was now the sole owner. The e-mail further indicated that he had submitted a new application and had been fingerprinted (Kistamas having previously been fingerprinted). (Exhibit 16.)

12. On July 11, 2012, the Respondent filed an application for a winegrower's license. It was signed by Coelho and Jorge as members. (Exhibit 22.) In connection with this application, the Respondent submitted a certification regarding tied-house restrictions signed by Coelho as owner. (Exhibit 23.)

13. On August 21, 2011 (but dated August 22, 2011), the Respondent submitted a limited liability company questionnaire listing Coelho and Jorge as managers and Coelho as the sole member. (Exhibit 17.) It also submitted a resolution of its members, signed by Coelho as a member, appointing Coelho and Jorge as managers. Attached to the resolution was an amendment to the operating agreement listing Coelho as the Respondent's sole member. (Exhibit 18.) At the same time, Coelho and Kistamas submitted individual personal affidavits. (Exhibits 19-20.) Another limited liability company questionnaire was submitted on July 5, 2012 containing substantially the same information. (Exhibit 21.)

14. Based on the foregoing documents, the Department qualified Coelho and Kistamas and issued the winegrower license to the Respondent.

15. In response to a complaint, the Department opened an investigation into the ownership of the Respondent. As part of its investigation, the Department received an affidavit from Kooger. The affidavit indicated that the Respondent's sole owner was HI Holdinvest, that La Dolce was the sole owner of HI Holdinvest, and that Willem Marthinus de Beer was the sole director and registered shareholder of La Dolce. However, the affidavit indicated that de Beer held these shares as nominee on behalf of Coelho as beneficiary. (Exhibit 25.)

16. Kooger testified that he is a corporate attorney. Coelho has been a client for over 30 years. The Xeneixe Trust is an irrevocable discretionary trust. The beneficiaries of the trust are Coelho and his family, but decisions regarding trust assets are vested with the trustees. La Dolce is the trustee of The Xeneixe Trust. Kooger is the protector of the trust with a power of attorney, which gives him the authority to issue instructions relating to trust assets (which are then carried out by the trustee).

17. The original managers of La Dolce were Hester and Stokes. De Beer is the current manager. He also is the nominee shareholder (e.g., he holds the shares for Coelho as beneficiary).

18. A change in the ownership of the Respondent was discussed, but it never took place. Kooger indicated that such a transfer is not as simple as transferring assets to Coelho, even though he is the ultimate beneficiary, because of the limitations of Swiss law.

19. Coelho testified that he did not understand the ownership structure of the various companies and the trust. Kooger agreed with this assessment. Coelho relied upon lawyers to ensure that he and his family were protected. He believed that he was ultimate owner of the Respondent because the assets were being held on his behalf.

20. Because the application process was taking a long time (among other things, the people involved in the various companies were not available to be fingerprinted), Coelho asked the Department what could be done to speed along the application process. The Department indicated that it would be faster if he were the sole owner of the Respondent.

21. 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 24200(c) provides that the misrepresentation of a material fact by an applicant in obtaining a license constitutes grounds for suspension or revocation of the license.
4. Section 23300 provides that "no person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."
5. Section 23355 provides that, except as otherwise provided in the Alcoholic Beverage Control Act and subject to the provisions of Section 22 of Article XX of the Constitution, a license "authorize[s] the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued."
6. 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, during the application process, the Respondent misrepresented a material fact in its application for a license in violation of Business and Professions Code section 24200(c). (Findings of Fact ¶¶ 4-20.)
7. 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 the Respondent permitted Carlos Coelho to exercise a privilege or perform an act upon the premises under the authority of a license, without being the Respondent's true owner, in violation of sections 23300 and 23355. (Findings of Fact ¶¶ 4-20.)
8. Specifically, in the August 2011 limited liability company questionnaire (exhibit 17) and the July 2012 limited liability company questionnaire (exhibit 21), the Respondent listed Coelho as its sole owner. Coelho is also listed as a member on the signature page of the application and as the owner in the certification regarding tied-house restrictions. (Exhibits 22-23.) This information was repeated in the resolution and the amendment to the operating agreement submitted in conjunction with the application. (Exhibit 18.)
9. In fact, at the time the foregoing documents were submitted, the Respondent's sole owner was HI Holdinvest, which, in turn, was owned by La Dolce Ltd. Willem Marthinus de Beer was the sole director and registered shareholder of La Dolce (replacing Jesse Hester and Matthew Stokes).

10. Even though Coelho was the beneficiary of this business arrangement, he was not a trustee or owner of any of the entities in the chain of ownership. This is important—the Department qualifies trustees and owners, not beneficiaries. By listing himself as the owner, Coelho prevented the Department from qualifying the Respondent's true owners.

11. If the proposed transfer of ownership to Coelho had taken place, then the documents submitted to the Department would have been correct. But it did not. Importantly, Coelho falsely informed the Department that the Swiss entity sold the entire interest to him and that he had become the sole owner. (Finding of Fact ¶ 11.) This statement is at odds with his testimony that he believed he was the owner because he was the ultimate beneficiary. Coelho's testimony on this point is rejected and his contemporaneous e-mail—which showed that he based his claim of ownership on a transfer which had not taken place—is believed.

PENALTY

Rule 144⁵ provides that the penalty for misrepresenting a material fact in connection with an application is revocation, while the penalty for a hidden ownership ranges from a 15-day suspension and indefinitely thereafter until the hidden owner is qualified (assuming that the hidden owner can be qualified) to revocation (if the hidden owner is not qualified).

The Department requested that the Respondent's license be revoked for the two violations. The Department reasoned that the true identity of the Respondent's owner is not only a material fact, but the misrepresentation prevented the Department from determining if the true owner was, in fact, qualified to hold the license. In the Department's view, Carlos Coelho's statements about the transfer of ownership having taken place was intentional, not a mistake.

The Respondent, on the other hand, interpreted Coelho's misstatements as the result of his misunderstanding of the nature of the ownership structure. The Respondent noted that the only thing missing was a bill of sale—once the sale to Coelho was completed, the information submitted to the Department would have been accurate. Further, Coelho has already been qualified by the Department. The Respondent requested that its license be suspended for a period of 30 days, stayed six months to permit the transfer of ownership.

Coelho's affirmative statements that the transfer had taken place appear to be intentional (e.g., he indicated that he was *now* the owner, not that he had always been the ultimate owner). This misrepresentation prevented the Department from qualifying the Respondent's true owners. Conversely, the transfer which he described was, in fact,

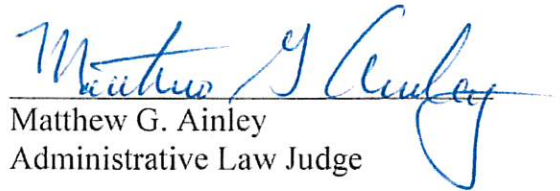
⁵ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

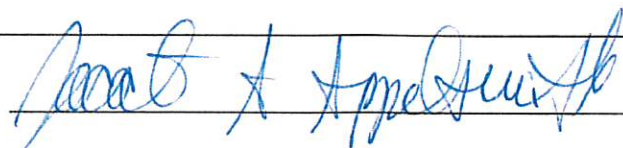
pending at the time. Had it gone through, the information submitted would have accurately described the Respondent's ownership structure. Unfortunately for the Respondent, the transaction did not go through either at the time or in the intervening seven years. Under the circumstances, a harsh penalty is warranted. The penalty recommended herein complies with rule 144.

ORDER

Counts 1 and 2 are sustained. With respect to these violations, the Respondent's winegrower license is hereby revoked

Dated: December 4, 2019


Matthew G. Ainley
Administrative Law Judge

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

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

H.V.P. U.S.A., LLC,
dba Dominion Tantara
2330 Westgate Road, Units 7,
10, 17, & 20
Santa Maria, CA 93455-1018,
Appellant/Licensee,

v.

DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL,
Respondent.

) AB-9861

) File: 02-523719

) Reg: 19088963

) **DECLARATION OF SERVICE
BY MAIL**

I, MARIA SEVILLA, declare that I am over the age of eighteen (18) years, and not a party to the within action; that my place of employment and business is 1325 J Street, Suite 1560, Sacramento, CA; that on the 6th day of July, 2020, I served a true copy of the attached **Decision** of the Alcoholic Beverage Control Appeals Board in the above-entitled proceeding on each of the persons named below:

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below:

Dean R. Lueders
ACTlegally
P. O. Box 254491
Sacramento, CA 95865-4491
dean.lueders@actlegally.com

Department of ABC
Office of Legal Services
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
yuri.jafarinejad@abc.ca.gov

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Sacramento, California, on the 6th day of July, 2020.

Maria Sevilla

MARIA SEVILLA