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

AB-9892
File: 21-503229; Reg: 19089197

BOOTA S. SAMRA,
dba Ernie's Liquor
922 Soquel Avenue
Santa Cruz, CA 95062-2102,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: March 12, 2021
Telephonic

ISSUED MARCH 12, 2021

Appearances: *Appellant:* Dean R. Lueders, as counsel for Boota S. Samra,

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

OPINION

Boota S. Samra, doing business as Ernie's Liquor (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department)[1] revoking his license because appellant committed a public offense involving moral turpitude, to wit: purchasing or receiving cigarettes, believing them to have been stolen, in violation of

[1] The Department's Decision Under Government Code section 11517(c), dated October 5, 2020, is set forth in the appendix.

Section 11517, subdivision (c)(2)(E) permits the Department to reject the proposed decision—as it did here—and decide the case upon the record, including the transcript of the hearing.

Penal Code section 664/496(a), thereby constituting cause for revocation in accordance with Business and Professions Code section 24200, subdivisions (a) and (b) and Article XX, section 22 of the California State Constitution.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on February 4, 2011. There is no record of prior departmental discipline against the license at this location (hereinafter, Santa Cruz premises).

On September 13, 2019, the Department instituted a single-count accusation against appellant charging that appellant purchased or received cigarettes, believing them to have been stolen, in violation of Penal Code section 664/496(a), at another premises licensed to appellant — Simon's Market, located at 201 Poplar Street in Stockton, California (hereinafter, Stockton premises) — thereby constituting cause for revocation for having committed a public offense involving moral turpitude. (Exh. D-1.)

At the administrative hearing held on January 7, 2020, documentary evidence was received and testimony concerning the accusation was presented by Stockton Police Department (SPD) Officers Cody Johnson and Joseph Martin. Appellant Boota S. Samra testified on his own behalf.

Testimony established that on six separate occasions between the dates of November 8, 2017 and March 7, 2018, an undercover officer with the SPD negotiated with appellant for the sale of purportedly stolen cigarettes. These transactions occurred at the Stockton premises and appellant was the sole participant involved in both the negotiation and purchase of the purportedly stolen cigarettes. (Findings of Fact ¶¶ 4-12.)

On November 16, 2018, a six-count accusation was brought against the Stockton premises license for violations of Penal Code section 664/496(a). (Exh. D-2.) On March 13, 2019, appellant entered into a stipulation and waiver agreement to resolve the accusation. In that stipulation and waiver, appellant admitted to the conduct alleged, and agreed to an indefinite suspension — for a minimum of 25 days and continuing thereafter until the license at the Stockton premises is transferred or revoked, and a stayed revocation of 180 days — to facilitate the transfer of that license to a third party, other than a relative or member appellant's family. (*Ibid*.)

Thereafter, the single-count accusation in the instant matter was brought against the license at the Santa Cruz premises, seeking revocation of the license for having committed a public offense involving moral turpitude, and alleging that continuance of the license would be contrary to public welfare and/or morals as set forth in Article XX, section 22 of the California Constitution, and Business and Professions Code section 24200, subdivisions (a) and (b).

On February 4, 2020, the ALJ submitted a proposed decision, sustaining the accusation and recommending the license be revoked. The Department considered but rejected the proposed decision — because it failed to address a statute of limitations issue — and on October 5, 2020, issued its own decision pursuant to Government Code section 11517(c) revoking appellant's license at the Santa Cruz premises.

Appellant then filed a timely appeal alleging: (1) the Department proceeded without jurisdiction because the accusation was filed beyond the requisite statute of limitations, and (2) the penalty imposed is punitive rather than being designed to enforce compliance .

DISCUSSION

I

STATUTE OF LIMITATIONS

Appellant contends the accusation filed on September 13, 2019 was not filed within the statute of limitations, thereby depriving the Department of jurisdiction, since it was based on acts occurring between November 8, 2017 and March 7, 2018 — a year and a half before the filing of the accusation. (AOB at pp. 3-6.)

Both Article XX, section 22 of the California Constitution, and Business and Professions Code 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. Business and Professions Code section 24200(b) further provides that a licensee's 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.

Neither section 24200(a) nor 24200(b) — the sections cited as the basis for this accusation — contain a statute of limitations clause.[2]

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[2] The only sections of the ABC Act (Bus and Prof. Code §§ 23000-25672) which delineate a statute of limitations are the following:

> Bus. and Prof. Code § 24206: All accusations against licensees for violating or permitting the violation of Sections 24750 to 24757, inclusive, 24850 to 24881, inclusive, 25000 to 25010, inclusive, 25170 to 25238, inclusive, 25600, 25602, 25607, 25609, 25610, 25611, 25612, 25615, 25630, 25631, 25632, 25633, 25656, 25658, 25663, 25664, or 25665, shall be filed within one year.
>
> Bus. and Prof. Code § 24207: All accusations against licensees for violating or permitting the violation of Sections 23300, 23355, 23431, 23453, 24200.5, 25500 to 25508, inclusive, 25601, 25616, or 25657, shall be filed within three years.

In *Nunez*, the Board addressed the absence of a statute of limitations clause in section 24200:

> The Appeals Board is not willing to substitute its judgment for that of the Legislature, which apparently decided that accusations under §24200 would not be subject to the three-year limitation, while those under §24200.5 would be. Indeed, there appears to be sufficient distinction between the two sections to permit speculation as to the thinking of the Legislature. Section 24200, subdivision (d) involves situations where the licensee was convicted of, or entered a plea of guilty or nolo contendere to, a violation of law involving moral turpitude, while under §24200.5, the licensee could simply have failed to take preventive action in circumstances where he had a duty to do so. (Cf. *Laube v. Stroh* (1992) 2 Cal.App.4th 362.) **It does not seem unreasonable to suppose that the Legislature chose not to place the Department under a time limitation where the Department was dealing with a licensee having pleaded to, or been convicted of, criminal conduct involving moral turpitude**.

(*Nunez* (1998) AB-6886 at p. 6, emphasis added.)

The last sentence in the excerpt from *Nunez* is particularly on point in this case, since the Department is seeking to revoke appellant's license at the Santa Cruz premises on the basis that continuance of the license would be contrary to public welfare and morals for appellant having committed a public offense involving moral turpitude. If moral turpitude was not alleged this might be a different case.

Moral turpitude is defined as follows:

> The elusive concept of "moral turpitude" has long been the subject of judicial scrutiny; our courts have grappled with the amorphous term in a variety of factual contexts largely involving disciplinary proceedings. [Citations.]
>
> [¶ . . . ¶]
>
> While not every public offense may involve conduct constituting moral turpitude without a showing of moral unfitness to pursue a licensed activity [citation], conviction of certain types of crimes may establish moral turpitude as a matter of law. [Citation.] Thus, **moral turpitude is inherent in crimes involving fraudulent intent, intentional dishonesty for**

> **purposes of personal gain or other corrupt purpose** [Citations] but not in other crimes which neither intrinsically reflect similar inimical factors nor demonstrate a level of ethical transgression so as to render the actor unfit or unsuitable to serve the interests of the public in the licensed activity. [Citations.]

((*Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 36-37 [152 Cal.Rptr.285], emphasis added.) Attempted receipt of stolen property is a crime of moral turpitude. (*In re Conflenti* (1981) 29 Cal.3d 120, 124 [172 Cal.Rptr. 203]; also see: *People v. Wright* (1980) 105 Cal.App.3d 329, 332 [164 Cal.Rptr. 207] ["the criminality of the attempt is not dependent on whether the goods had actually been stolen"].)

Appellant acknowledges the lack of an explicit statute of limitations for the sections charged in the accusation — Business and Professions Code sections 24200 (a) and (b) — but he argues that a one-year statute of limitations should apply. In his Opening Brief he argues:

> Although the Alcoholic Beverage Control Act contains two different statutes (sections 24206 and 24027) that outline the limitation periods in which to file "[a]ll accusations," neither statute lists 24200(a), or Penal Code sections 664 or 496(a).
>
> However, Business and Profession Code section 25617 provides helpful insight. Section 25617 states, ". . . a violation of any of the provisions of this division for which another penalty or punishment is not specifically provided for in this division is guilty of a misdemeanor. . . ." Thus, section 24200(a) is a misdemeanor.

(AOB at p. 4.)

Appellant goes on to assert that since Penal Code 496a is a misdemeanor, if the property in question is worth less than $950,[3] a one-year statute of limitations should

[3] Appellant argues the property in question here is under this limit, but the record reflects a value of $1049.03. (Finding of Fact ¶ 12.)

apply. And, at oral argument, counsel for appellant declared that there is "no dispute" that the statute of limitations is one year. Accordingly, appellant argues that since a year and a half expired between the events of the underlying accusation at the Stockton premises and the accusation against the Santa Cruz premises, the matter should be dismissed as untimely. We disagree.

Appellant's argument is flawed. Penal Code statute of limitations are not applicable to administrative proceedings because, by definition, they specifically pertain to criminal prosecutions and aim to impose punishment. Administrative proceedings, by contrast, are not criminal in nature and the purpose of penalties imposed by the Department are not punishment:

> It is well settled that the revocation or suspension of a license is not penal in nature but is a mechanism by which licensees who have demonstrated their ignorance, incompetency or lack of honesty and integrity may be removed from the licensed business.

(*Lacabanne Properties, Inc. v. Department of Alcoholic Beverage Control* (1968) 261 Cal.App.2d 181, 190 [67 Cal.Rptr. 734].)

> Administrative proceedings are civil in nature. With particular reference to a proceeding to revoke or suspend a license or other administrative action of a disciplinary nature, it has been held in this state that such proceeding is not a criminal or quasi-criminal prosecution. [Citations.] The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent. [Citations.]

(*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540 [92 Cal.Rptr. 525].)

Appellant cites *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29 [40 Cal.Rptr.2d 137] in support of his position that it would be appropriate to borrow the one-year statute of limitations from the Penal Code.

However, the court rejected this proposition in *Lam*, as did the Department in this case, explaining:

> 8. Notwithstanding the Respondent's failure to analyze the issue, the use of the misdemeanor statute of limitations is not applicable here in any event. As the Court in *Lam* held, "borrowing a statute of limitations is appropriate *only* if the two actions are strongly analogous. [Citation.]" (*Id*. at p. 38; italics in original.) Similar to the plaintiff in *Lam*, the Respondent here was not charged in the administrative proceeding with a criminal violation. Rather, the basis for the license discipline action was that the continuation of the license would be contrary to public welfare and morals as a consequence of the Respondent's conduct.

(Decision at p. 7.) We agree.

Appellant was not charged in this proceeding with a criminal violation. Rather, appellant's license is being revoked in this matter because his conduct constitutes moral turpitude, and it would be contrary to public welfare and morals to allow the continuation of his license. The Board sees no reason to borrow or impose a statute of limitations in such a case where the Legislature did not see fit to impose one.

II

PENALTY

Appellant contends the penalty of revocation is punitive rather than furthering the goal of enforcing compliance. (AOB at pp. 7-8.)

The California Constitution states:

> The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude.

(Cal. Constitution, art. XX, § 22.)

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. (Cal. Code Regs., tit. 4, § 144.)

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.

(Cal. Code Regs., tit. 4, § 144.)

In the decision, the ALJ addresses the issue of penalty:

PENALTY

Following hearing, the ALJ recommended that the Respondent's license be revoked. Upon review, the Department reiterated its request that the Respondent's license be revoked given that the violation involved the Licensee-Respondent. The presumption of Rule 144 is an outright revocation when the licensee is involved, and the violations occur on the premises. Here, the violations did not occur on the premises but did occur at another licensed premises owned by the Respondent. As noted earlier, the Respondent's license at that other premises was revoked, with a stay, to allow the Respondent an opportunity to divest himself of the license to a third party. In addition, that license was suspended for a period of 25 days, and indefinitely thereafter until the license is transferred.

The Respondent's argument both at hearing and upon review was in three parts. First, the Respondent sought an outright dismissal of the stolen property allegations by challenging the reliability of the Department officers' testimony and challenging the appropriateness of the investigation as entrapment or outrageous police conduct.

As noted in the findings in this matter, that alternative narrative has been rejected. The Respondent has been found to have attempted to receive stolen property on six separate occasions.

Second, the Respondent asserts that the Department is punishing him for taking this matter to hearing (while settling the accusation involving his

other licensed premises) and that the discipline should be the same at both licensed premises.

The problem with the Respondent's argument on this point is that he chose to contest this matter and take it to hearing, whereas he and the Department agreed to resolve the other matter. Whether or not this matter could have been settled on the same or different terms is irrelevant. For whatever reason that did not happen and the Respondent cannot now claim that he is being "punished" for taking this matter to hearing or that the Department is compelled to discipline this license the same as (or at least no worse than) the discipline agreed to with respect to his other licensed premises. The Respondent offers no support for either assertion. With respect to the claim that he is being "punished" for taking this matter to hearing, the Respondent cites no evidence in the record in support. This is a baseless claim. As for the notion that the Department's hands are tied on discipline, the Respondent asserts simply, without any legal support, that "the penalty should be no harsher than that imposed for the premises where the actions took place, Mr. Boota [sic] should be allowed to transfer the license."

As indicated, the accusation against the Respondent with respect to his other licensed premises was settled by the parties prior to hearing. There could be any number of reasons why each party chose to resolve that matter rather than proceed to hearing. From the Department's perspective, early resolution and prompt removal of a violating licensee may have been determined to be preferred over extended delays caused by hearing and appeals. On the other side, the Respondent may have felt that the opportunity to sell the license and business rather than losing the license outright was a preferred result. Whatever their reasons, that settlement is independent from and irrelevant to this proceeding, and nothing about that resolution binds the Department to a particular course of action in this case since the Respondent elected to proceed to hearing.

Third, the Respondent argued that mitigation is warranted because of the Respondent's licensure without prior incidents. Although the date of issuance of the license was not established, the Respondent testified that he has held this license for ten years. There was no evidence of prior discipline of this license.

While the underlying conduct calls for a presumption of revocation, outright revocation[fn.[or stayed revocation[fn.[can be appropriate depending upon the circumstances.

In the present case, outright revocation is warranted. It was the Respondent himself who engaged in the unlawful activities. The behavior of the Respondent was not isolated. The Respondent repeatedly sought to have Johnson bring him additional stolen property. The Respondent

> entered into an ongoing criminal enterprise with a person who appeared to be acting as a go-between for a brother who was purportedly stealing property.
>
> Further, the Respondent's interactions with Johnson showed both a level of criminal sophistication and a willingness to continue the criminal enterprise into the future. The Respondent showed skill and a recognition of his position of power in the discussions with Johnson when he negotiated discounted prices. Moreover, the Respondent has failed to acknowledge any wrongdoing or accept any responsibility for his criminal actions. In fact, despite stipulating to the accusation involving his other licensed business, the Respondent claimed in this proceeding that he did nothing wrong and that he was the victim of police entrapment.
>
> The aggravating factors in this case far outweigh any mitigation from ten years of discipline-free operation.
>
> The Respondent had an affirmative obligation to ensure that the licensed premises is operated in full compliance with the law. The Respondent did not do so. The illegal activities at issue here-repeated negotiations resulting in repeated attempted purchases of purportedly stolen property from an undercover officer clearly warrants revocation because Samra is unsuitable as a license holder.
>
> The penalty recommended herein complies with Rule 144.

(Decision at pp. 11-13.)

As we have said time and again, 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 *extent* to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion — pursuant to rule 144 — and the Board may not interfere with that discretion absent a clear showing of abuse of discretion. "The fact that unconditional revocation may appear too harsh a penalty does not entitle a reviewing agency or court to substitute its own judgment therein." (*MacFarlane v. Dept. Alcoholic Bev. Control* (1958) 51 Cal.2d 84, 91 [330 P.2d 769].)

In the instant case, the underlying continuing course of conduct at the Stockton premises — by definition, a crime of moral turpitude — is an aggravating factor, as

explained in the Department's decision. Such conduct is contrary to public welfare and morals, and the penalty of revocation is for the protection of the public. It is not punitive. (See: *Copeland v. Dept. of Alcoholic Bev. Control* (1966) 241 Cal.App.2d 186 [50 Cal.Rptr.452] [Disciplining of liquor licensee convicted of crime involving moral turpitude is for protection of the public in the exercise of police power, not to punish licensee.]; also see: *Borror, supra,* ["The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent."].)

In *HD. Wallace v. Dept. of Alcoholic Bev. Control* (1969) 271 Cal.App2nd 589 [76 Cal.Rptr. 749], the court described two general types of violations that are contrary to public welfare and morals: "[F]irst, that which occurs on the licensed premises or affects the business conducted there; second, that which reveals lack of personal fitness of the person controlling the license." (*Id*. at p. 592.) In reviewing the second provision touching on personal fitness, **the court found that a violation of law involving moral turpitude is an immediate disqualification**. (*Ibid*, emphasis added.) "The moral turpitude provision is absolute, permitting license termination for an offense coming within its terms regardless of its effect upon the conduct of the licensed business." (*Id* at p. 593.)

The "standard" penalty in Department rule 144 for conviction of a crime of moral turpitude is revocation, and the Department presented substantial evidence establishing that appellant's conduct at the Stockton premises was contrary to public welfare and morals, thus disqualifying him from holding an alcoholic beverage license. This is not punitive, but for the protection of the public. Appellants have not established that the Department abused its discretion in this matter or that the penalty is punitive.

ORDER

The decision of the Department is affirmed.[4]

SUSAN A. BONILLA, CHAIR
MEGAN McGUINNESS, MEMBER
SHARLYNE PALACIO, 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 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: Samra, Boota S. DBA: Ernie's Liquor 922 Soquel Ave. Santa Cruz, CA 95062-2102 Licensee(s).	**File No.: 21-503229** **Reg. No.: 19089197**

DECISION UNDER GOVERNMENT CODE SECTION 11517(c)

The above-entitled matter having regularly come before the Department on October 5, 2020, for decision under Government Code Section 11517(c) and the Department having considered its entire record, including the transcript of the hearing held on January 7, 2020, before Administrative Law Judge Alberto Roldan (ALJ), and the written argument of the parties, and good cause appearing, the following decision is hereby adopted:

Matthew Gaughan, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Dean Lueders, Attorney, represented the Respondent Boota S. Samra (Respondent).

In the single count alleged in the Accusation, the Department seeks to discipline the Respondent's license on the grounds that, on or about and between the dates of November 8, 2017 and March 7, 2018, the Respondent-Licensee committed a public offense involving moral turpitude, in that Respondent-Licensee bought, received, withheld or concealed property, to wit: cigarettes, believing the same to have been stolen, in violation of California Penal Code section 664/496(a).

The Department further alleged that there is cause for suspension or revocation of the license of the Respondent-Licensee in accordance with section 24200(a) of the Business and Professions Code and Article XX, Section 22 of the California State Constitution.

The Department further alleged that the aforementioned public offense occurred, in whole or in part, on another premises licensed to Respondent-Licensee Boota S. Samra, to wit: Simon's Market, license number 20-579365. (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 January 7, 2020.

The ALJ issued a proposed decision on February 4, 2020, a copy of which was mailed to the parties. By letter dated March 5, 2020, the Respondent's counsel asserted that the proposed decision did not address, among other things, a statute of limitations issue raised at hearing. The proposed decision was thereafter rejected pursuant to Government Code section 11517(c).

FINDINGS OF FACT

1. The Department filed the Accusation on September 13, 2019. (Exhibit D-1)

2. There is no record of prior Department discipline against the Respondent's license number 21-503229. The Respondent does business, under this type 21 license, as Ernie's Liquor at 922 Soquel Avenue in Santa Cruz, California.

3. Evidence was received through certified Department documents that, at the time of the hearing in this matter, the Respondent also held license number 20-579365 for a type 20 licensed premises at 201 West Poplar Street in Stockton, California. This evidence further established that Boota S. Samra (Samra), the Respondent in this matter, in registration number 18088263, entered into a stipulation and waiver to resolve a six-count accusation brought against license number 20-579365. The Respondent entered into a stipulation and waiver where he admitted to the underlying conduct alleged in the present accusation as the basis for disciplining the subject license in this proceeding. In that matter, the Respondent agreed to an indefinite suspension, for a minimum of 25 days and continuing thereafter until the license is transferred or revoked, and a stayed revocation of 180 days to facilitate the transfer of that license to a third party, other than a relative or member the Respondent's family. (Exhibit D-2)

4. On October 11, 2017, Officer C. Johnson (Johnson) of the Stockton Police Department (SPD) conducted an undercover investigation at a licensed premises located at 201 West Poplar Street in Stockton, California that was doing business as Simon's Market (Simon's). Johnson entered Simon's that day in plain clothes. Johnson observed that Samra was working at the register. Johnson was aware that Samra was the owner of Simon's. Johnson selected a single can of beer from the coolers and approached the counter where Samra was working. Johnson asked Samra if he would sell him individual cigarettes in addition to the beer. Samra provided 3 individual cigarettes to Johnson and took payment for the can of beer and the three individual

cigarettes. After paying Samra for the items, Johnson left with the 3 individual cigarettes and the beer.

5. Johnson returned to Simon's on November 8, 2017. Johnson entered Simon's in an undercover capacity. Johnson observed Samra behind the counter of Simon's, which was open for business. Johnson approached Samra and struck up a conversation. Johnson was carrying a black backpack with him. During the conversation, Johnson told Samra that he had two cartons of Newport brand menthol cigarettes to sell. Johnson told Samra that his brother "boosted" them from his workplace. Johnson showed the cigarettes to Samra from the backpack. Johnson initially offered to sell each carton to Samra for $60. Samra negotiated for a cheaper price for the cigarettes. At one point during the negotiation, he offered $40 for each carton. Samra ultimately agreed to pay $45 a carton for a total of $90 for both cartons.

6. Johnson returned to Simon's on December 11, 2017, and spoke with Samra. Johnson asked Samra if he was again interested in cigarettes. Samra expressed receptiveness and Johnson then sought information on when Samra would again be working at Simon's. Johnson returned on December 14, 2017, with two cartons of Newport brand cigarettes in his black backpack. During the process of showing Samra the cigarettes and negotiating a price, Johnson again remarked that the cigarettes were stolen by his brother. Samra again agreed to pay $45 a carton for a total of $90 for both cartons.

7. Johnson returned to Simon's on January 3, 2018. He again approached Samra to speak with him about his interest in 3-4 cartons of cigarettes. During this conversation, Johnson again referenced his brother taking the cigarettes from his employer and his brother almost getting caught. During this interaction, Johnson noticed that Samra would wait until customers were out of earshot before talking about the potential transaction.

8. Johnson returned to Simon's on January 18, 2018. Like on his previous visits, Johnson brought 2 cartons of Newport cigarettes that had been purchased with Department funds for investigative purposes. Johnson offered the cigarettes to Samra for purchase. Samra agreed to pay $45 a carton which Johnson accepted. Johnson sold two cartons to Samra with the understanding that $90 was to be paid. After leaving, Johnson discovered that Samra had only paid him $80 cash. Johnson returned and Samra gave him the $10 cash that was missing from the original payment. Johnson stopped by Simon's on January 31, 2018, and engaged in small talk with Samra. During the conversation, Johnson agreed to return on a future date with more cigarettes.

9. Johnson returned to Simon's on February 7, 2018. Johnson contacted Samra and showed him 2 cartons of Newport menthol cigarettes and 1 carton of Newport King cigarettes. Samra declined the Newport King cigarettes. Samra stated that the brand did not sell well as his reason

for not wanting them. Samra accepted the two cartons of Newport cigarettes and he paid Johnson $90 cash for them.

10. Johnson returned to Simon's on February 14, 2018. Johnson spoke with Samra and showed him 2 cartons of Newport cigarettes. They negotiated the same price of $45 a carton. Samra accepted the two cartons of Newport cigarettes and paid Johnson $90 cash for the cartons. Samra and Johnson then discussed a date for Johnson to return with more cigarettes in the future.

11. Johnson returned to Simon's on March 7, 2018. Johnson contacted Samra and engaged in small talk with him. During their conversation, Johnson offered to sell Samra 2 cartons of Newport cigarettes. Johnson again referenced his brother stealing the cigarettes as the source of them. Samra accepted 2 cartons of Newport cigarettes from Johnson after paying $90 cash for them.

12. In each of the transactions that Samra completed with Johnson, the purchase price of $90 for 2 cartons of Newport cigarettes was substantially below the retail cost that was paid by the Department. The Department purchased the cigarettes around the time of each transaction. The retail price for two cartons of Newport cigarettes varied from $170.02 to $183.77 depending on the month and retail location used for the purchase. In total, the Department spent $1,049.03 for the cigarettes that were sold to Samra from November 8, 2017 through March 7, 2018. Samra paid a total of $540 to Johnson to purchase the cigarettes during this same period.

15. After Johnson departed Simon's on March 7, 2018, SPD law enforcement officers entered to contact Samra and gather evidence. Johnson did not participate in that portion of the investigation. SPD Detective J. Martin (Martin) spoke with Samra at this time. Samra admitted to selling the cigarettes to Johnson but stated that he did not know the cigarettes were stolen. (Exhibit D-4) Recordings of Samra's interactions with Johnson were also preserved during the investigation. (Exhibit D-4)

16. Samra testified in this matter. Samra's testimony was in English. Samra testified that he came to the United States when he was 27 years old and that he was 49 on the date of the hearing. Samra testified that he thought Johnson was obtaining the cigarettes from his roommate. Samra testified that he did not know what the word "boosted" meant. Samra denied hearing Johnson describing the cigarettes as being stolen. Samra testified that his main motivation for buying the cigarettes was to help out Johnson because he understood Johnson to be going through difficult financial circumstances. Samra referenced Johnson buying diapers during one transaction and Johnson mentioning that he had a young child. Samra testified that Newport menthol cigarettes (the type he bought from Johnson during each of the purchases)

were cigarettes that he regularly bought from wholesalers at a similar price and that he did not gain financially by purchasing them from Johnson.

17. One of the documents provided by the Respondent in support of this assertion showed that, at wholesale, Newport menthol cigarettes cost $78.35 a carton in December 2017. (Exhibit L-1) Samra asserted in testimony that the ultimate price of the cigarettes was actually lower than the listed wholesale price because retailers received rebates for selling cigarettes. In support of this assertion, the Respondent presented a rebate ledger for a total of $95 that was issued on December 15, 2017. (Exhibit L-2) The Respondent offered three invoices from Saveco Distributers that show the Respondent was invoiced for wholesale cigarette purchases on November 6, 2017 in the amount of $1,586.50 (Exhibit L-3), on November 20, 2017 in the amount of $1,487.78 (Exhibit L-4), and on December 18, 2017 in the amount of $1,476.66 (Exhibit L-1).

STATUTE OF LIMITATIONS

1. As indicated above, in response to the proposed decision issued in this matter, the Respondent complained that the ALJ did not address his argument that the Department's action is barred by the statute of limitations. In closing argument at the hearing, the Respondent asserted that the Department failed to file the Accusation in this matter within the requisite limitations period, arguing that a one-year statute of limitations applies. In this, the Respondent is not correct.

2. The Department registered (filed) the Accusation on September 13, 2019. The Accusation alleges that the Respondent's license is subject to suspension or revocation under Business and Professions Code section 24200, subdivisions (a) and (b), on the basis of the commission of a public offense involving moral turpitude, as a result of the Respondent having "bought, received, withheld or concealed property, to wit: cigarettes, believing the same to have been stolen, in violation of Penal Code section 664/496(a)." The underlying acts are alleged to have occurred on and between November 8, 2017, and March 7, 2018.

3. Business and Professions Code sections 24206 and 24207 provide limitations periods of one year and three years, respectively, for accusations alleging violations of various specified provisions of the ABC Act. It is undisputed that neither section identifies section 24200 as being subject to either limitations period. As such, there is no particularized statute of limitations for accusations alleging violations of section 24200 as the basis for the disciplinary action sought. As such, the question is what, if any, limitations period applies to such an action.

4. The Respondent contends that the one-year statute of limitations for a misdemeanor violation of Penal Code section 496(a) applies. In support of this position, the Respondent cites, without

analysis, that the principle of statutory construction, holding that courts will interpret a law to promote its general purpose and not in a manner that will have absurd consequences, requires application of this misdemeanor statute of limitations. In making this assertion, the Respondent argues simply that it would be absurd for the Department to conclude that there is no statute of limitations for violations of section 24200(a) and Penal Code section 496(a). Rather, it is contended that the "logical interpretation" is to use the statute of limitations for the "corresponding" criminal action.

5. In contrast, the Department urges that since the administrative disciplinary action is for the protection of the public welfare and morals, and directly involves the Respondent's moral fitness to hold a license, no statute of limitations exists. In support of this position, the Department cites, among other cases, *Lam v. Bureau of Sec. & Investigative Servs.* (1995) 34 Cal.App.4th 29.

6. The *Lam* case is particularly instructing. There, the Court analyzed statutes of limitation in the context of a laches defense. In doing so, the Court stated that, "Statutes of limitation and the doctrine of laches are both designed '"'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" [Citations.]' (*Brown, supra*, 166 Cal.App.3d at p. 1161.) These policies also guard against other injuries caused by a change of position during a delay. While a statute of limitations bars proceedings without proof of prejudice, laches 'requires proof of delay which results in prejudice or change of position.' (*Ibid.*) Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. (*Id.* at p. 1159.) What makes the delay unreasonable in the case of laches is that it results in prejudice. (*Ibid.*)" (*Lam, supra,* 34 Cal.App.4th, at 36.) The Court further held that, "There is one circumstance in which unreasonable delay may be found as a matter of law. 'In cases in which no statute of limitations directly applies but there is a statute of limitations governing an analogous action at law, the period may be borrowed as a measure of the outer limit or reasonable delay in determining laches. [Citations.] Whether or not such a borrowing should occur depends upon the strength of the analogy.' (*Brown, supra*, 166 Cal.App.3d at pp. 1159-1160.) The effect of the violation of the analogous statute of limitations is to shift the burden of proof to the plaintiff to establish that the delay was excusable and the defendant was not prejudiced thereby. (*Id.* at p. 1161.)" (*Id.* at p. 37.)

7. Although not expressly articulated as such, the Respondent here is essentially asserting that since there is no express statutory limitations period for the violation alleged by the Department, the limitations period applicable to misdemeanor Penal Code violations should be accepted as an analogous statute of limitations. However, as indicated above, the Respondent presents no analysis of this issue, asserting instead that it is merely "logical" to do so. For this reason alone,

the Respondent has failed to meet its initial burden and has therefore failed to shift the burden to the Department to establish that the delay was excusable and no prejudice existed.

8. Notwithstanding the Respondent's failure to analyze the issue, the use of the misdemeanor statute of limitations is not applicable here in any event. As the Court in *Lam* held, "borrowing a statute of limitations is appropriate *only* if the two actions are strongly analogous. [Citation.]" (*Id.* at p. 38; italics in original.) Similar to the plaintiff in *Lam*, the Respondent here was not charged in the administrative proceeding with a criminal violation. Rather, the basis for the license discipline action was that the continuation of the license would be contrary to public welfare and morals as a consequence of the Respondent's conduct.

9. Further, the Court in *Lam* drew a stark distinction between administrative license revocation or suspension proceedings and criminal proceedings. In doing so, the Court held that it was not appropriate to "borrow" the criminal statute of limitations and the burden never shifted to the defendant to justify the delay and establish lack of prejudice. (*Id.* at p. 38-39.) Indeed, the Court noted that, "while criminal proceedings are punitive in nature, permit or license revocation proceedings are not. 'Administrative proceedings are civil in nature. With particular reference to a proceeding to revoke or suspend a license or other administrative action of a disciplinary nature, it has been held in this state that such proceeding is not a criminal or quasi-criminal prosecution. [Citations.] The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.' (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540 [92 Cal.Rptr. 525].)" (*Id.* at p. 38.)

10. Since the criminal misdemeanor statute of limitations does not apply, it remained the Respondent's burden to establish that the Department's delay in proceeding with the case was unreasonable and resulted in prejudice. (See, *Lam, supra,* 34 Cal.App.4th, at p. 39.) Here the Respondent did not present any evidence nor make any argument that the asserted delay in the Department filing the instant accusation was unreasonable. Moreover, the Respondent presented no evidence that it was in any way prejudiced in defending itself in the action. To the contrary, the Respondent testified plainly and clearly and without any indication of confusion or difficulty in recalling facts due to the passage of time. No argument was made that the alleged delay resulted in the loss or degradation of evidence or the unavailability of witnesses. Indeed, the Respondent did not even assert that he was prejudiced in any way by the alleged delay. In fact, the statute of limitations was not even raised until closing argument. Even then, the argument was simply that the one-year misdemeanor statute of limitations should be applied and there was no assertion of prejudice.

11. Whether or not it is accurate that alleged violations of section 24200 are not subject to any statutory limitations period, it is unnecessary to resolve this issue in the instant case. However, it is noted that the Court in *Lam* referred with approval to the administrative law judge's discussion in addressing what the appropriate statute of limitations might be in a similar circumstance: "The administrative law judge also rejected the idea of borrowing a statute of limitations. He stated in his decision: 'The statutes of limitation that govern civil or criminal matters do not apply to administrative actions to discipline a license and there is no specific limitation of such actions in the Business and Professions Code *nor is there any statute of limitation for some comparable action to this that could be applied by analogy*. The nearest that can be found would be the three[-]year statute of limitation in the Code of Civil Procedure section 338 for actions based upon a liability created by statute. If that statute were applied to this matter, then the action was filed in a timely manner.' (Italics added.) The cited statute, Code of Civil Procedure section 338, subdivision (a), provides a three-year limitations period for '[a]n action upon a liability created by statute, other than a penalty or forfeiture.'" (*Id.* at p. 39.) Again, and similar to *Lam*, there is no occasion to resolve this issue here other than to observe that if the limitations period in Code of Civil Procedure section 338 applies (or, alternatively and perhaps more appropriately, the four-year "catch all" limitations period in Code of Civil Procedure section 343), the Department's action here was timely filed.

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. Penal Code section 496(a) provides that every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the value of the property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of

subdivision (e) of section 667 or for an offense requiring registration pursuant to subdivision (c) of section 290.

4. Penal Code section 664 criminalizes the act of attempting to commit any crime, but failing, when the act is prevented or intercepted in its perpetration by an outside force beyond the force of the perpetrator.

5. Penal Code section 496(a) is a crime of moral turpitude, as are attempts to violate this section. *In re Conflenti* (1981) 29 Cal.3d 120.

6. With respect to the Accusation, 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, in the person of Boota S. Samra, the actual license holder, on six separate occasions, attempted to buy stolen property, to wit, cigarettes, in violation of section 496 of the Penal Code. (Findings of Fact ¶¶ 2-17)

7. Since the property was not, in fact stolen, the question is whether the provisions of attempt pursuant to Penal Code section 664 apply. Under the facts of this case, the purchases by Samra from Johnson that occurred on November 8, 2017; December 14, 2017; January 18, 2018; February 7, 2018; February 14, 2018; and March 7, 2018 were clearly *attempts* by Samra to receive stolen property. On each date, Samra paid money for the cigarettes that he was told were stolen on multiple occasions by Johnson. He then took possession of the cigarettes. On each occasion, he took possession of the cigarettes inside of Simon's, a licensed premises. The overall scheme made it clear that Samra was acquiring this inventory for use in Simon's. Within Samra's knowledge, he believed that he had completed the purchase (at steep discounts) of cigarettes that were stolen by the brother of Johnson. The "seller" was the brother of the purported thief and was acting as an intermediary. Beyond Samra's control and knowledge was the fact that these cigarettes and the "seller" were law enforcement props in a sting operation. Had the thefts actually occurred, these purchases by Samra would be completed violations of Penal Code section 496(a). (Findings of Fact ¶¶ 2-17)

8. The testimony of Johnson is found to be reliable and consistent with the physical evidence that was received. The Respondent developed no evidence upon which the sworn testimony of Johnson could be disregarded as untrue or unreliable. Johnson was clear in his testimony that Samra was explicitly on notice, prior to the first transaction, that the cigarettes were purportedly stolen. Samra' actions were consistent with this knowledge. Samra paid a steeply reduced price for the purported stolen items. On at least one occasion, Samra was furtive in his actions to avoid detection. (Findings of Fact ¶¶ 2-17)

9. Samra's testimony that he did not know the cigarettes were stolen and that he was purchasing them out of altruism to Johnson is found to unreliable and at odds with the evidence received in this matter. While Samra spoke in an accented voice, he was conversant in the English language such that he would be knowledgeable of terms of common usage. Even if he did not specifically know what the word "boosted" meant, he had the remainder of his conversations with Johnson to figure out the context of what Johnson was describing. Samra and Johnson engaged in negotiations regarding the price of the cigarettes with Samra making an effort to negotiate the price down from the $60 that was initially proposed by Johnson. Samra lowered his voice around customers when he spoke with Johnson which demonstrated he did not want to be overheard. Samra regularly bought the same brand of cigarettes at wholesale for approximately $78 a carton during the same period and he was aware that the $45 a carton price was well below what he was being charged. The evidence offered by the Respondent reinforced that Samra was obtaining product from Johnson at a substantial discount. All of the contrary assertions made by Samra stand at odds with the objective evidence in this matter. As such, Samra's testimony is disregarded as unreliable.

10. The Respondent also argued, without any supporting authorities, that the Department's investigation was outrageous conduct designed to induce the Respondent to act unlawfully. This argument is rejected. *People v. Smith* (2003) 31 Cal.4th 1207 offers helpful guidance regarding this proposition. *Smith*, in affirming the criminal convictions of the defendant in that matter and finding the conduct of the law enforcement officers to be "unremarkable" declined to apply federal sentence manipulation or the federal standard outrageous conduct doctrine to California. *Smith* did cite with approval California's settled law on the concept of entrapment established in *People v. Barraza* (1979) 23 Cal.3d 675:

"We hold that the proper test of entrapment in California is the following: was the conduct of the law enforcement agent likely to induce a normally law-abiding person to commit the offense? For the purposes of this test, we presume that such a person would normally resist the temptation to commit a crime presented by the simple opportunity to act unlawfully. Official conduct that does no more than offer that opportunity to the suspect - for example, a decoy program - is therefore permissible; but it is impermissible for the police or their agents to pressure the suspect by overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime." (23 Cal.3d at 689-690 fn. omitted)

11. In applying the appropriate standard of *Barraza* to this matter, there is no evidence that entrapment or outrageous conduct took place. Here, none of the actions of Johnson involved anything more than offering the opportunity to buy purportedly stolen cigarettes at a discount to Samra. As in *Smith*, this was a completely unremarkable investigation. None of the conduct of Johnson involved badgering, cajoling, importuning, or other affirmative actions that induced

Samra to commit the acts alleged in the Accusation. Samra chose to receive stolen property of his own free will. It would have taken little effort for Samra to tell Johnson that he was not interested in the cigarettes. Samra, instead, expressed interest, negotiated a more favorable price, and repeatedly encouraged Johnson to bring him more stolen inventory after each successive sale. Entrapment and outrageous conduct have not been shown in this matter. (Findings of Fact ¶¶ 2-17)

12. The remaining issue in this matter is that the conduct occurred at another licensed premises rather than at the premises of the license at issue in this case. It has long been established that a violation does not need to occur at or near a licensed premises for a violation to be sustained, as long as it is shown that the conduct has a rational relationship with the operation of the licensed premises at issue. *Kirby v. Alcoholic Bev, etc. App. Bd.* (1970) 7 Cal.App.3d 126.

13. In this matter, the Respondent-Licensee Samra, himself, engaged in repeated acts of moral turpitude that reveal a lack of fitness for controlling a license. The finding in this matter that the Accusation is sustained is consistent with the holding of *H.D. Wallace v. ABC* (1969) 271 Cal.App.2d 589 where the court found a similar nexus between conduct amounting to moral turpitude and unsuitability to remain licensed as the result of conduct away from a licensed premises. Here, the nexus is even closer given that the conduct was in furtherance of the unlawful operation of a licensed business, albeit at a different premises, owned by the very same person.

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

PENALTY

Following hearing, the ALJ recommended that the Respondent's license be revoked. Upon review, the Department reiterated its request that the Respondent's license be revoked given that the violation involved the Licensee-Respondent. The presumption of Rule 144 is an outright revocation when the licensee is involved, and the violations occur on the premises. Here, the violations did not occur on the premises but did occur at another licensed premises owned by the Respondent. As noted earlier, the Respondent's license at that other premises was revoked, with a stay, to allow the Respondent an opportunity to divest himself of the license to a third party. In addition, that license was suspended for a period of 25 days, and indefinitely thereafter until the license is transferred.

The Respondent's argument both at hearing and upon review was in three parts. First, the Respondent sought an outright dismissal of the stolen property allegations by challenging the

reliability of the Department officers' testimony and challenging the appropriateness of the investigation as entrapment or outrageous police conduct.

As noted in the findings in this matter, that alternative narrative has been rejected. The Respondent has been found to have attempted to receive stolen property on six separate occasions.

Second, the Respondent asserts that the Department is punishing him for taking this matter to hearing (while settling the accusation involving his other licensed premises) and that the discipline should be the same at both licensed premises.

The problem with the Respondent's argument on this point is that he chose to contest this matter and take it to hearing, whereas he and the Department agreed to resolve the other matter. Whether or not this matter could have been settled on the same or different terms is irrelevant. For whatever reason that did not happen and the Respondent cannot now claim that he is being "punished" for taking this matter to hearing or that the Department is compelled to discipline this license the same as (or at least no worse than) the discipline agreed to with respect to his other licensed premises. The Respondent offers no support for either assertion. With respect to the claim that he is being "punished" for taking this matter to hearing, the Respondent cites no evidence in the record in support. This is a baseless claim. As for the notion that the Department's hands are tied on discipline, the Respondent asserts simply, without any legal support, that "the penalty should be no harsher than that imposed for the premises where the actions took place, Mr. Boota [sic] should be allowed to transfer the license."

As indicated, the accusation against the Respondent with respect to his other licensed premises was settled by the parties prior to hearing. There could be any number of reasons why each party chose to resolve that matter rather than proceed to hearing. From the Department's perspective, early resolution and prompt removal of a violating licensee may have been determined to be preferred over extended delays caused by hearing and appeals. On the other side, the Respondent may have felt that the opportunity to sell the license and business rather than losing the license outright was a preferred result. Whatever their reasons, that settlement is independent from and irrelevant to this proceeding, and nothing about that resolution binds the Department to a particular course of action in this case since the Respondent elected to proceed to hearing.

Third, the Respondent argued that mitigation is warranted because of the Respondent's licensure without prior incidents. Although the date of issuance of the license was not established, the Respondent testified that he has held this license for ten years. There was no evidence of prior discipline of this license.

While the underlying conduct calls for a presumption of revocation, outright revocation[1] or stayed revocation[2] can be appropriate depending upon the circumstances.

In the present case, outright revocation is warranted. It was the Respondent himself who engaged in the unlawful activities. The behavior of the Respondent was not isolated. The Respondent repeatedly sought to have Johnson bring him additional stolen property. The Respondent entered into an ongoing criminal enterprise with a person who appeared to be acting as a go-between for a brother who was purportedly stealing property.

Further, the Respondent's interactions with Johnson showed both a level of criminal sophistication and a willingness to continue the criminal enterprise into the future. The Respondent showed skill and a recognition of his position of power in the discussions with Johnson when he negotiated discounted prices. Moreover, the Respondent has failed to acknowledge any wrongdoing or accept any responsibility for his criminal actions. In fact, despite stipulating to the accusation involving his other licensed business, the Respondent claimed in this proceeding that he did nothing wrong and that he was the victim of police entrapment.

The aggravating factors in this case far outweigh any mitigation from ten years of discipline-free operation.

The Respondent had an affirmative obligation to ensure that the licensed premises is operated in full compliance with the law. The Respondent did not do so. The illegal activities at issue here—repeated negotiations resulting in repeated attempted purchases of purportedly stolen property from an undercover officer clearly warrants revocation because Samra is unsuitable as a license holder.

The penalty recommended herein complies with Rule 144.

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[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

The Respondent's Off-Sale General License is hereby revoked.

Sacramento, California

Dated: October 5, 2020

Eric Hirata
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.