

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

**AB-9936**

File: 20-558854; Reg: 21091160

APRO, LLC,  
dba United Oil #8883  
6500 Mack Road  
Sacramento, CA 95823-4614,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Alberto Roldan

Appeals Board Hearing: March 11, 2022  
Teleconference

**ISSUED MARCH 16, 2022**

*Appearances:*      *Appellant:* Jade Quintero, of Solomon, Saltsman & Jamieson, as  
counsel for Apro, LLC,

*Respondent:* Bryan D. Rouse, as counsel for the Department of  
Alcoholic Beverage Control.

**OPINION**

Apro, LLC, doing business as United Oil #8883 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department)<sup>1</sup> suspending its license for 10 days because its clerk sold an alcoholic beverage to a police minor decoy, in violation of Business and Professions Code section 25658, subdivision (a).<sup>2</sup>

---

<sup>1</sup> The decision of the Department, dated October 19, 2021, is set forth in the appendix.

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

## FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 27, 2016.

There is no record of prior departmental discipline against the license.

On May 3, 2021, the Department filed a single-count accusation charging that on March 5, 2021, appellant's clerk, Matthew Delavan (the clerk), sold an alcoholic beverage to 18-year-old Muhammad Abdullah (the decoy). Although not noted in the accusation, the decoy was working for the Sacramento Police Department (SPD) at the time.

At the administrative hearing held on August 5, 2021, documentary evidence was received, and testimony concerning the sale was presented by the decoy and SPD Officer Daniel Wiseman.

The district manager for Apro, LLC, Brian Cairns, testified on appellant's behalf regarding its new hire training, age-restricted products flyer, employee training on age-restricted products, secret shopper program, and store signage regarding age-restricted products.

Testimony established that on March 5, 2021, the decoy entered the licensed premises and selected a six-pack of Bud Light beer. He took the beer to the register and the clerk asked to see his identification (ID). The decoy held out his California ID, which had a portrait orientation, contained his correct date of birth, showing him to be 18 years of age, and a red stripe indicating "AGE 21 IN 2023." (Exh. D-2.) The clerk appeared to look at the ID for a few seconds, then completed the sale without asking the decoy to remove his mask, and without asking any age-related questions.

The decoy exited the premises with the beer, then returned with Officer Wiseman to make a face-to-face identification of the clerk. Officer Wiseman

approached the clerk and explained why they were there. He then asked the decoy if he could identify the person who sold him the beer. The decoy replied “he’s the one who sold to me” while pointing out the clerk. The decoy and clerk were photographed together (exh. D-3) and the clerk was issued a citation.

The administrative law judge (ALJ) issued a proposed decision on August 16, 2021, sustaining the accusation and recommending a 10-day suspension. The Department adopted the proposed decision in its entirety on October 8, 2021, and a certificate of decision was issued eleven days later.

Appellant then filed a timely appeal contending the ALJ failed to consider all the evidence in mitigation when determining the penalty, in violation of rule 144.<sup>3</sup>

#### DISCUSSION

Appellant contends that the penalty is excessive, and constitutes an abuse of discretion, because it fails to take into consideration all of the factors in mitigation presented at the administrative hearing. It specifically complains:

Appellant demonstrated the multitude of ways management communicates company policy and expectations through initial training, ongoing training, weekly and daily reminders, periodic testing through a third-party secret shopper program, and termination of employees who fail to comply with these policies. Despite this evidence, the ALJ failed to consider this evidence when he questioned if Appellant has communicated company policy effectively enough.

(AOB at pp. 1-2.)

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

---

<sup>3</sup> Cal. Code Regs., tit. 4, § 144.

discretion exercised to an end or purpose not justified by and clearly against reason, all of the facts and circumstances being considered. [Citations.]” (*Brown v. Gordon* (1966) 240 Cal.App.2d 659, 666-667 [49 Cal.Rptr. 901].)

If the penalty imposed is reasonable, the Board must uphold it even if another penalty would be equally, or even more, reasonable. “If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the Department acted within its discretion.” (*Harris v. Alcoholic Bev. Control Appeals Bd.* (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

Rule 144 provides:

In reaching a decision on a disciplinary action under the Alcoholic Beverage Control Act (Bus. and Prof. Code Sections 23000, *et seq.*), and the Administrative Procedures Act (Govt. Code Sections 11400, *et seq.*), the Department shall consider the disciplinary guidelines entitled “Penalty Guidelines” (dated 12/17/2003) which are hereby incorporated by reference. Deviation from these guidelines is appropriate where the Department in its sole discretion determines that the facts of the particular case warrant such a deviation - such as where facts in aggravation or mitigation exist.

(Cal. Code Regs., tit. 4, § 144.)

Among the mitigating factors provided by the rule are the length of licensure without prior discipline, positive actions taken by the licensee to correct the problem, cooperation by the licensee in the investigation, and documented training of the licensee and employees. Aggravating factors include, *inter alia*, prior disciplinary history, licensee involvement, lack of cooperation by the licensee in the investigation, and a continuing course or pattern of conduct. (*Ibid.*)

The Penalty Policy Guidelines further address the discretion necessarily involved in an ALJ's recognition of aggravating or mitigating evidence:

**Penalty Policy Guidelines:**

The California Constitution authorizes the Department, in its discretion[,] to suspend or revoke any license to sell alcoholic beverages if it shall determine for good cause that the continuance of such license would be contrary to the public welfare or morals. The Department may use a range of progressive and proportional penalties. This range will typically extend from Letters of Warning to Revocation. These guidelines contain a schedule of penalties that the Department usually imposes for the first offense of the law listed (except as otherwise indicated). These guidelines are not intended to be an exhaustive, comprehensive or complete list of all bases upon which disciplinary action may be taken against a license or licensee; nor are these guidelines intended to preclude, prevent, or impede the seeking, recommendation, or imposition of discipline greater than or less than those listed herein, in the proper exercise of the Department's discretion.

*(Ibid.)*

The ALJ recommended a mitigated penalty of 10 days, and made the following findings in support of that recommendation:

The Department recommended that the Respondent's license be suspended for the standard penalty of 15 days. The Department also argued against any mitigation because the period of licensure without prior discipline is so short that it should be given little, if any weight.

The Respondent argued for the dismissal of the Accusation and in the alternative, for a mitigated penalty if the Accusation were sustained, based on the lack of prior incidents, the positive actions of the Licensee-Respondent to correct the problem, and the documented training undertaken by the Licensee-Respondent prior to the incident showing that the Respondent engaged in efforts to avoid underage sales.

The lack of prior discipline, alone, can be given little weight because the period of licensure is fairly short. However, evidence was presented regarding the Respondent's policies to prevent sales of alcoholic beverages to underage individuals and positive steps taken since the incident to prevent repeat occurrences. These are appropriate mitigating factors.

The incident itself showed a serious lack of regard for the laws governing age restricted sales and the Respondent's existing policies. While this employee was later terminated, one has to question whether the Respondent is communicating the importance of these policies to employees effectively enough to have the needed impact.

There appear to be no additional factors in aggravation applicable to this violation beyond the facts of the sale itself. Mitigation is found to be applicable and there are no factors in aggravation. The penalty recommended herein complies with rule 144.

(Decision at pp. 6-7.)

Appellant faults the Department for failing to mitigate the penalty further. However, 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.

Appellant has not established that the Department abused its discretion by imposing a 10-day penalty in this matter. The standard 15-day penalty was reduced, in recognition of various factors in mitigation. The fact that appellant believes a greater reduction would have been more appropriate does not constitute error.

ORDER

The decision of the Department is affirmed.<sup>4</sup>

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

---

<sup>4</sup> This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 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.* Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: [abcboard@abcappeals.ca.gov](mailto:abcboard@abcappeals.ca.gov).

# APPENDIX



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

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

APRO, LLC  
UNITED OIL #8883  
6500 MACK ROAD  
SACRAMENTO, CA 95823-4614

OFF-SALE BEER AND WINE - LICENSE

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

SACRAMENTO DISTRICT OFFICE

File: 20-558854

Reg: 21091160

**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 October 8, 2021. 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. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after November 29, 2021, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: October 19, 2021



Matthew D. Botting  
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

APRO, LLC,  
DBA: United Oil #8883  
6500 Mack Road  
Sacramento, California 95823-4614

Respondent

Off-Sale Beer and Wine License

} File: 20-558854  
}  
} Registration: 21091160  
}  
} License Type: 20  
}  
} Word Count: 13,932  
}  
} Reporter:  
} John Fahrenwald-CSR # 14369  
} iDepo Reporters  
}  
} **PROPOSED DECISION**

Administrative Law Judge Alberto Roldan, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter, via videoconference, on August 5, 2021.

Bryan Rouse, Attorney, represented the Department of Alcoholic Beverage Control (Department).

Jade Quintero, Attorney, represented Respondent APRO, LLC. (Respondent)

The Department seeks to discipline the Respondent's license on the grounds that, on or about March 5, 2021 the Respondent-Licensee, through their agent or employee, Matthew Delavan, sold, furnished, or gave an alcoholic beverage, to-wit: beer, to Muhammad Abdullah, an individual under the age of 21 in violation of Business and Professions Code section 25658(a)<sup>1</sup> (Exhibit D-1).

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on August 5, 2021.

---

<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise noted.

## FINDINGS OF FACT

1. The Department filed the accusation on May 3, 2021. (Exhibit D-1)
2. On January 27, 2016 the Department issued a type 20, off-sale beer and wine license to the Respondent for the above-described location (the Licensed Premises). There is no record of prior Department discipline against the Respondent's license.
3. Muhammad Abdullah (Abdullah) was born on July 7, 2002 and was 18 years old on March 5, 2021. On that date, Abdullah served as a minor decoy in an operation conducted by the Sacramento Police Department (SPD) at various locations, including the Licensed Premises.
4. Abdullah appeared, via videoconference, and testified at the hearing. On August 5, 2021 his appearance was generally as depicted in an image that was taken on March 5, 2021. (Exhibit D-3) His face was as depicted in that image. (Exhibit D-3) Abdullah was clean shaven and was substantially thinner than in his California Driver's license image that was submitted into evidence. (Exhibit D-2) During the operation on March 5, 2021, Abdullah wore a red and black button up shirt and slacks. His face was partially covered because of a mask he was wearing because of COVID-19 pandemic protocols. Abdullah was approximately 6 feet tall and 160 pounds at the hearing. Abdullah credibly testified that his size and appearance on the date of the operation were essentially the same. Abdullah had lost approximately 50 pounds from the weight he was when his driver's license information was prepared. His California driver's license listed his weight as 210 pounds.
5. On March 5, 2021 Abdullah went to the Licensed Premises as a decoy for the SPD for the purpose of trying to buy alcohol. Abdullah was instructed about the requirements of 141<sup>2</sup>. He was to carry his identification, show it if requested, and be truthful regarding his age, if asked. Abdullah carried his California driver's license to produce if asked.
6. Abdullah entered the Licensed Premises. After entering, he went to where the coolers were. Abdullah selected a six-pack of Bud Light beer. Abdullah then took the beer to the register area and presented it for purchase.
7. The clerk who received the beer from Abdullah was the same individual in the image that was later taken of Abdullah standing with the clerk that sold beer to him. (Exhibit D-3) The clerk started the transaction for the beer and asked Abdullah for identification. Abdullah held up his California driver's license to the clerk, in response. (Exhibit D-2) Abdullah held up the license vertically so that it was visible to the clerk that it had a portrait, not landscape, configuration. The clerk appeared to look at the identification for a few seconds. The clerk did not ask Abdullah to remove his mask. He then proceeded to process the transaction. Even though the portrait oriented identification showed that Abdullah was 18 years old and that he would not be 21 until 2023, the clerk did not ask Abdullah any age related questions or stop the transaction. Abdullah paid the

---

<sup>2</sup> All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

clerk for the beer with cash provided by the SPD. Abdullah took possession of the beer and change the clerk handed to him. Abdullah then left the Licensed Premises.

8. Abdullah approached the vehicle where the SPD officers were waiting. Abdullah told them about what had just happened in the Licensed Premises. Less than 5 minutes later, Abdullah went back into the Licensed Premises with the officers. SPD Officer D. Wiseman (Wiseman) approached the clerk to identify himself and explain why they were there. Abdullah approached where the clerk and Wiseman were speaking.

9. Wiseman asked Abdullah if he could identify the clerk who sold the beer. Abdullah was approximately three feet away from the clerk when this was asked. Abdullah said, "he's the one who sold to me" and identified the clerk as the person who made the sale. The clerk was identified as Matthew Delavan (Delavan) during Wiseman's investigation of the sale to Abdullah. Delavan admitted to making the sale to Abdullah. He said he looked at the identification wrong and did the math wrong during the transaction.

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

11. Abdullah was working as a decoy for the first time that day. He had visited multiple locations prior to the operation at the Licensed Premises. Abdullah became involved as a decoy as the result of his work as a community service officer with the SPD.

12. Based on Abdullah's overall appearance, i.e., his physical appearance, clothing, poise, demeanor, maturity, and mannerisms shown at the hearing, and his appearance and conduct in front of Delavan at the Licensed Premises on March 5, 2021, Abdullah displayed the appearance which would generally be expected of a person less than 21 years of age during his interactions with Delavan. Delavan did not testify in this matter to explain his age related impressions of Abdullah or why he sold Abdullah alcohol without asking age related questions even though Abdullah's identification showed he was 18 years of age and his appearance was consistent with his chronological age.

13. District Manager Brian Cairns (Cairns) testified for the Respondent. Cairns testified that he is actively involved in the training of employees at the Licensed Premises and multiple other locations. He has done so since December 2019. Cairns explained that all employees go through age restricted sales training in the immediate days after hire. (Exhibit L-A) He and the local managers review these policies regularly with employees and employees go through an annual training review. The policy at the Licensed Premises, at the time of this sale, was that employees were to ask for identification if the person appeared under 30 years of age. Employees were instructed to have customers show their faces during identification checks. In addition, all of the Licensed Premises employees were required to complete retraining after this incident occurred. (Exhibits L-E and L-C) The Respondent participates in a secret shopper program called BARS to reinforce age restricted sale policies. (Exhibit L-D) The scanning of an alcoholic beverage will

trigger the register reminding the clerk to ask for identification. The register is able to scan identification cards, or the age can be manually entered. The Licensed Premises has multiple signs reminding employees and customers about age restricted sales policies. (Exhibit L-B) Delavan was initially suspended during the investigation and ultimately terminated as a result of this incident.

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

### CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
4. Cause for suspension or revocation of the Respondent's license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on March 5, 2021 the Respondent's clerk, Matthew Delavan inside the Licensed Premises, sold an alcoholic beverage to Muhammad Abdullah, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 2-12)
5. The Respondent argued that the decoy operation at the Licensed Premises failed to comply with rule 141 and, therefore, the accusation should be dismissed. Specifically, the Respondent argued that the face to face identification failed to comply with rule 141(b)(5) and the appearance of the decoy did not comply with rule 141(b)(2). Either of these alleged violations, if established, would be affirmative defenses and require dismissal of the accusation pursuant to rule 141(c).
6. There is no credible evidence supporting the assertions by the Respondent that there was a failure to comply with rule 141. Regarding the rule 141(b)(5) violation, *Acapulco Restaurants, Inc. v. Alcoholic Beverages Control Appeals Board* (1998) 67 Cal.App.4th 575 confirmed that a face to face must occur for compliance, but that case never established a baseline standard for what was a compliant face to face identification. The subsequent decision in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687 held that the regulation at "section 141, subdivision (b)(5), ensures-admittedly not as artfully as it might-that the seller will be given the opportunity, soon after the sale, to come "face-to-face" with the decoy." *Department of Alcoholic Beverage Control v. Alcoholic*

*Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687, 1698. This decision confirmed that the purpose of the face to face was to give the seller notice of who the decoy was.

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

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

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

9. Wiseman approached Delavan at the counter, got his attention and identified himself as a law enforcement officer investigating a sale of alcohol to a minor. While the sale to Abdullah was discussed between Wiseman and Delavan at the counter, Abdullah stood with Wiseman in the direct presence of Delavan. Right after this discussion, Abdullah was asked by Wiseman about who made the sale to him. In the immediate presence of Delavan, Abdullah identified Delavan as the seller. Delavan was clearly aware that the decoy was Abdullah because he discussed making the sale to Abdullah with Wiseman. Before Delavan was cited on March 5, 2021, Abdullah and Delavan were photographed next to each other. (Findings of Fact ¶ 10 and Exhibit D-3) Delavan clearly came face to face with Abdullah under circumstances that made it clear that Delavan had been identified as the person who sold Abdullah beer and that Abdullah was the minor at issue. (Findings of Fact ¶¶ 3-12)

10. None of the evidence presented by the Respondent rebutted the credible evidence presented by the Department that this was a fully compliant identification that allowed Delavan to become aware that Abdullah was the decoy. Respondent has offered no evidence or argument suggesting that the identification violated state or federal due process considerations. Given the totality of the evidence presented by the Department credibly establishing compliance with rule 141(b)(5),

the Respondent's assertions that compliance did not occur are unsupported. (Findings of Fact ¶¶ 3-12)

11. Respondent also asserted that the appearance of the decoy did not comply with rule 141(b)(2). As noted above, Delavan did not testify in this matter to establish that his sale to Abdullah was the result of Abdullah's appearance and/or demeanor. Delavan asked for identification from Abdullah but did not ask any age related questions, so the exchanges between him and Abdullah were minimal. Abdullah's poise, or lack of poise were not shown to be factors. Further, Abdullah testified in this matter and his appearance matched the appearance he presented to Delavan on the date of the operation. Abdullah had the appearance "which could generally be expected of a person under 21 years of age" which is the standard required by rule 141(b)(2). As previously noted, the clerk did not testify to establish facts suggesting an identification issue or whether there was anything in Abdullah's actions, manner, or appearance that led Delavan to reasonably conclude that Abdullah was over 21.

12. It is important to note that the Respondent referenced the appearance of Abdullah in his driver's license as a factor in its argument that Abdullah had an outward appearance that was not compliant with the requirements of rule 141(b)(2). The appearance at issue in this matter is the appearance of Abdullah, as he presented to Delavan, on the date of the operation. On that date, Abdullah was significantly less heavy than his driver's license appearance. In addition, Abdullah was clean shaven when he was acting as a decoy. The Department has established compliance with rule 141(b)(2) and the Respondent has failed to rebut this evidence. (Findings of Fact ¶¶ 3-12)

### **PENALTY**

The Department recommended that the Respondent's license be suspended for the standard penalty of 15 days. The Department also argued against any mitigation because the period of licensure without prior discipline is so short that it should be given little, if any weight.

The Respondent argued for the dismissal of the Accusation and in the alternative, for a mitigated penalty if the Accusation were sustained, based on the lack of prior incidents, the positive actions of the Licensee-Respondent to correct the problem, and the documented training undertaken by the Licensee-Respondent prior to the incident showing that the Respondent engaged in efforts to avoid underage sales.

The lack of prior discipline, alone, can be given little weight because the period of licensure is fairly short. However, evidence was presented regarding the Respondent's policies to prevent sales of alcoholic beverages to underage individuals and positive steps taken since the incident to prevent repeat occurrences. These are appropriate mitigating factors.

The incident itself showed a serious lack of regard for the laws governing age restricted sales and the Respondent's existing policies. While this employee was later terminated, one has to question whether the Respondent is communicating the importance of these policies to employees effectively enough to have the needed impact.

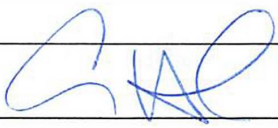
There appear to be no additional factors in aggravation applicable to this violation beyond the facts of the sale itself. Mitigation is found to be applicable and there are no factors in aggravation. The penalty recommended herein complies with rule 144.

**ORDER**

The Respondents' off-sale beer and wine license is hereby suspended for a period of 10 days.

Dated: August 16, 2021

  
Alberto Roldan  
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date: <u>10/08/21</u> _____