

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

AB-9963

File: 21-406082; Reg: 22091936

ANUPAMKUMAR PUNAMCHAND SWAMI and
SHILPABEN ANUPAMKUMAR SWAMI,
dba Reyes Adobe Liquor
30310 Canwood Street, Suite 21
Agoura Hills, CA 91301,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: July 14, 2023
Telephonic / Sacramento, CA

ISSUED JULY 17, 2023

Appearances: *Appellants:* Anupamkumar Punamchand Swami, *in propria persona*, on behalf of himself and Shilpaben Anupamkumar Swami

Respondent: Alanna K. Ormiston, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Anupamkumar Punamchand Swami and Shilpaben Anupamkumar Swami, doing business as Reyes Adobe Liquor (appellants), appeal from a decision of the Department of Alcoholic Beverage Control (Department)¹ suspending their license for 20 days because one of the appellants sold alcohol to two minors, in violation of

¹ The decision of the Department, dated January 10, 2023, is set forth in the appendix.

Business and Professions Code section 25658, subdivision (a),² and suspending their license for 30 days because they failed to produce records, in violation of sections 25753 and 25616. The suspensions are to run concurrently.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on December 22, 2003. There are three prior instances of discipline against the license — two in 2005, and one in 2016 — for the sale of alcohol to minors.

On March 1, 2022, the Department instituted a three-count accusation against appellants charging that, on July 30, 2021, one of the appellants sold alcohol to two minors (counts 1 and 2), and, that between July 30, 2021 and September 30, 2021, appellants failed to produce records that had been demanded by the Department (count 3).

At the administrative hearing held on July 14, 2022, documentary evidence was received and testimony concerning the violations charged was presented by Department Agents Charlotte Clark and Lily Zhao, and Supervising Agent Victoria Wood. Anupamkumar Swami appeared *in pro per* on behalf of appellants.

Testimony established that on July 30, 2021, Department Agents Clark, Zhao, and Perez observed two youthful-looking women exiting the licensed premises and getting into a car while carrying alcoholic beverages. Agent Clark approached the vehicle and identified herself as a police officer. She asked the woman in the driver's seat (who had a can of Truly Lemon Tea Hard Seltzer in her lap) how old she was, and

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

the woman replied that she was 19 years old. This was confirmed when she showed Agent Clark her California driver's license. (Exh. 5.)

While the woman was retrieving her California ID, Agent Clark noticed another ID in her wallet, which was subsequently determined to be a fake Texas ID. The fake ID indicated that she was 22 years old and listed an incorrect eye color for her. (*Ibid.*) The young woman stated that she did not use the fake ID at the licensed premises because the clerk never checks for identification. Agent Clark escorted the woman back to the premises where she pointed at the clerk, Anupamkumar Swami, and indicated that he was the one who sold her the alcohol.

Agents Zhao and Perez spoke to the other woman, who told them she was 19 years old. She did not have identification with her, but her age was confirmed by the California Highway Patrol. She had a can of Truly Strawberry Lemonade and a can of White Claw Hard Seltzer in her possession, which she carried out of the licensed premises. Photographs were taken of the two young women. (Exhs. 6 & 9.)

Agent Clark returned and spoke to Mr. Swami. He said that he asked the young women their ages before selling the alcohol to them, and that both of them replied that they were 21. Agent Clark asked Mr. Swami for the video footage from the security cameras for the time period covering 10:00-10:30 p.m. Mr. Swami and Agent Zhao went to the back room to review the video, but a system prompt prevented them from accessing it. Agent Clark left a Notice to Produce Records with Mr. Swami. (Exh. 8.)

On September 1, 2021, Agent Clark spoke to Mr. Swami about the video. Mr. Swami indicated that he was out of state for a funeral, needed to talk to his video tech, and asked if he could send the video to her phone. Agent Clark provided her phone number, but told Mr. Swami that he needed to download the video to a disc or hard

drive, and that September 4, 2021 was the deadline to respond. On September 3, 2021, Agent Clark went to the licensed premises and spoke to a clerk, who called Mr. Swami. Agent Clark was told that Mr. Swami would have the video ready by September 7, 2021, but the Department never received the video.

Following the hearing, the administrative law judge (ALJ) issued a proposed decision sustaining all counts of the accusation and recommending that the license be suspended for 20 days for counts 1 and 2, and 30 days for count 3, with the suspensions to run concurrently. The Department adopted the proposed decision in its entirety on January 5, 2022, and a certificate of decision was issued five days later.

Appellants then filed a timely appeal contending (1) they should not be penalized for selling alcohol to the minors because they relied on false identification shown by one of the individuals, (2) they were unable to produce the requested records for reasons beyond their control, and (3) the penalty is excessive.

DISCUSSION

I

FALSE IDENTIFICATION

In their opening brief, appellants maintain they relied on what they believed to be a valid out-of-state identification during the transaction in question:

Around 10:30p.m. the lady customer came in she was looking to me over 21 years of age when she walked in the store, she went to our Beer Door (Alcohol Section) and grab couple of items from that door, when she came at register to pay I asked her Are you Over 21 years of age she Replied yes, then I asked her to show me ID and she showed me Some ID from different state which I was not aware of that state ID but I checked the year it says 1999 and it looked real to me so I sold the alcohol beverages to her which is the part of the business.

After she left, she met couple of guys who said that they are ABC officers and they need to check her ID and then Officer find out that the person

was carrying 2 different kind of state ID in her wallet from 2 different state (California and Texas),

California Id DOB is under 21 years of age.

Texas ID DOB is Over 21 years of age.

which I was not aware of it if she would have showed me California ID I would have not sell her any of the alcoholic or tobacco products from my stores due to ABC Regulation but she have Showed me Texas Id which shows her age is over 21 Years so after checking her id I sold her the alcoholic beverages. [sic]

(AOB at p. 2, emphasis added.)

However, this version of events differs considerably from the one presented at the administrative hearing, where Mr. Swami indicated that he was unaware of the fake ID until the hearing:

But my questions is, when the officers say they have the fake ID, why they did not tell me that day? They say, "Oh, you checked the ID?" I said, "I checked the ID all the time. But I don't know. I check ID for who?" They did not bring the person inside my store. They did not say, "You sell this to two ladies with fake IDs." And those things, I found out after the court hearing in Van Nuys. **And I just found out today, they have the fake ID, as well -- Texas ID or something like that.** That's all.

(RT at p.49, emphasis added.)

In Findings of Fact paragraph 13, the ALJ found:

13. Agent Clark returned and spoke to Swami. He said that he asked Griffin and Beesley their ages before selling the alcohol to them. He said that both of them replied that they were 21.

(Decision at p. 3.) At no time prior to their opening brief did appellants contend that the sale of alcohol was made after viewing identification — fake or otherwise. Instead, the record reflects that Mr. Swami asked the minors how old they were and they told him they were 21. There is no mention of the fake ID in the findings, nor any ruling on a fake ID defense, because this issue was not raised at the administrative hearing.

Numerous cases have held that the failure to raise an issue or assert a defense at the administrative hearing level bars its consideration when raised or asserted for the first time on appeal. (*Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 377 [55 Cal.Rptr. 23]; *Hooks v. California Personnel Board* (1980) 111 Cal.App.3d 572, 577 [168 Cal.Rptr. 822]; *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,576 [146 Cal.Rptr. 653]; *Reimel v. House* (1968) 259 Cal.App.2d 511, 515 [66 Cal.Rptr. 434]; *Harris v. Alcoholic Beverage Control Appeals Board* (1961) 197 Cal.App.2d 182, 187 [17 Cal.Rptr. 167].) The Board is entitled to consider this issue waived (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §400, p. 458), however we will address it here briefly.

A defense to a sale-of-alcohol-to-a-minor accusation is found in Business and Professions Code Section 25660(c) which provides:

Proof that the defendant-licensee, or his or her employee or agent, demanded, was shown, and acted in reliance upon [a government-issued identification or identification purporting to be government-issued] shall be a defense to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon.

(*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2004) 118 Cal.App.4th 1429, 1444-1445 [13 Cal.Rptr.3d 826, 837] (*Masani*).)

However, section 25660 must be narrowly construed and the licensee has the burden of establishing the defense. (*Lacabanne Properties, Inc. v. Alcoholic Beverage etc. Appeals Board* (1968) 261 Cal.App.2d 181, 189-190 [67 Cal.Rptr. 734] (*Lacabanne*).)

First, a licensee must show that reliance on the false identification was reasonable. (*Lacabanne, supra*, at p. 189; *5501 Hollywood v. Dept. of Alcoholic Bev. Control* (1957) 155 Cal.App.2d 748, 753-754 [318 P.2d 820] (*5501 Hollywood*).) In

other words, a licensee (or employee) must exercise the caution that a reasonable and prudent person would show in the same or similar circumstances. (*Lacabanne, supra*, at p. 189; *Farah v. Alcoholic Bev. Control Appeals Bd.* (1958) 159 Cal.App.2d 335, 339 [324 P.2d 98]; *5501 Hollywood, supra*, at p. 753.) Second, reasonable reliance cannot be established if the appearance of the person presenting the identification is “too young in appearance to be 21.” (*5501 Hollywood, supra*, at p. 754.)

In the instant case, appellants failed to meet their burden to establish a 25660 defense. First, the issue should have been raised and argued at the administrative hearing. Second, and most importantly, appellants have not shown that they reasonably relied on a fake ID. And third, substantial evidence is lacking to demonstrate that appellants were even aware of the fake ID’s existence prior to the administrative hearing, much less at the time of the sale.

For all these reasons, appellants’ 25660 defense must fail and counts 1 and 2 must be sustained.

II

INSPECTION OF RECORDS

In their opening brief appellants allege:

. . . also on same night Officer asked for video footage of the store I showed officer where is the Camera DVR and offered them to take anything from that DVR which they Refused to do it to take the recording from my system on same night.

After few weeks some person from ABC showed up at my store and they need access of my camera for that night I told them the DVR is inside the store and you can take the recording of that time but officer refused to take the recording from my DVR system and stated that I have to provide them the recording so I called my Camera person told him the story what happened and he came very next day to take the recording out from DVR system and that time we find out that there was only 15 days of recording can save in my DVR so that time have Passed and the recording of the

incident have got deleted which I just find out on that day but due to lack of communication on between myself and Abc Officer we lost the recording for that day. . . . I was not aware of the situation that Camera recording is the main key Factor in this case.

(AOB at p. 3.) In short, appellants contend it is not their fault they could not comply with the Department's request for records.

The two Business and Professions Code section at issue in this matter are as follows:

Section 25753 provides:

The department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division.

And section 25616 provides:

Any person who knowingly or willfully files a false license fee report with the department, and any person who refuses to permit the department or any of its representatives to make any inspection or examination for which provision is made in this division, or who fails to keep books of account as prescribed by the department, or who fails to preserve such books for the inspection of the department for such time as the department deems necessary, or who alters, cancels, or obliterates entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this division is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

(Bus. and Prof. Code §§ 25753 and 25616.)

In the decision, the ALJ made the following findings of fact regarding the inspection of the videotape record:

13. Agent Clark returned and spoke to Swami. He said that he asked Griffin and Beesley their ages before selling the alcohol to them. He said that both of them replied that they were 21.

14. Agent Clark asked Swami for the video footage from the Licensed Premises' security cameras for the time period covering 10:00-10:30 p.m. Swami and Agent Zhao went to the back room to review the video, but a system prompt prevented them from accessing it. Agent Clark left a Notice to Produce Records with him. (Exhibit 8.)

15. On September 1, 2021, Agent Clark spoke to Swami about the video. Swami indicated that he was out of state for a funeral and needed to talk to his video tech. He asked if he could send the video to her phone. She gave him her number, but told him that he needed to download it to a disc or hard drive. September 4, 2021 was set as the deadline for him to respond.

16. On September 3, 2021, Agent Clark went to the Licensed Premises and spoke to a clerk, who called Swami. Swami indicated that he would have the video ready by September 7, 2021.

17. The Department never received the video.

(Decision at p. 4.) Based on these findings, the ALJ reached the following conclusions:

8. 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 refused to permit the Department or its representative inspect or examine its books and records in violation of sections 25753 and 25616. (Findings of Fact ¶¶ 13-17.)

9. Although Swami attempted to provide the agents with access to the video on July 30, 2021, technical issues prevented them from viewing it, much less downloading it. Despite several subsequent requests and at least two extensions, Swami never provided the video footage of the sale requested by the Department.

(*Id.* at pp. 4-5.)

Here, the Department found that appellants failed to permit the Department and its representatives to make an examination of appellants' records. (Conclusions of Law ¶¶ 8-9.) Therefore, this Board is required to defer to those findings so long as they are supported by substantial evidence. (See *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (Southland)* (2002) 103 Cal.App.4th 1084, 1094 [127 Cal.Rptr.2d 652, 659] [citing *Kirby v. Alcoholic Beverage Control Appeals Bd.*

(1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] [“In considering the sufficiency of the evidence issue the court is governed by the substantial evidence rule[;] any conflict in the evidence is resolved in favor of the decision; and every reasonably deducible inference in support thereof will be indulged. [Citations.]”; see also *Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1972) 25 Cal.App.3d 331, 335 [101 Cal.Rptr. 815] [“W hen two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the department.”].) “Substantial evidence” is “evidence of ponderable legal significance, which is ‘reasonable in nature, credible and of solid value.’ ” (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 814 [38 Cal.Rptr.2d 304, 307–308], internal citations omitted.)

The evidence in the record establishes that the Department made three separate requests for records, but no video was ever produced by appellants. (Findings of Facts, ¶¶ 14-17.) This constitutes substantial evidence to affirm the Department’s decision on count 3.

III

PENALTY

In their opening brief appellants request a complete elimination of the penalty, stating: “[b]ased on the Humanity Grounds and situation I am Requesting to Dismiss this case.” (AOB at p. 4.)

This Board may examine the issue of excessive penalty if it is raised by an appellant. (*Joseph's of Cal. v. Alcoholic Bev. Control Appeals Bd.* (1971) 19 Cal.App.3d 785, 789 [97 Cal.Rptr. 183].) However, the Board will not disturb the Department's penalty order in the absence of an abuse of discretion. (*Martin v.*

Alcoholic Bev. Control Appeals Bd. & Haley (1959) 52 Cal.2d 287, 291 [341 P.2d 296].)

An administrative agency abuses its discretion when it “exceeds the bounds of reason.”

(*County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171

Cal.App.4th 1577, 1582 [90 Cal.Rptr.3d 394, 397].) However, “[i]f reasonable minds

might differ as to the propriety of the penalty imposed, this fact serves to fortify the

conclusion that the Department acted within its discretion.” (*Harris v. Alcoholic Bev.*

Control Appeals Bd. (1965) 62 Cal.2d 589, 594 [43 Cal.Rptr. 633].)

In determining disciplinary action, the Department is required to consider the penalty guidelines incorporated in California Code of Regulations, title 4, section 144. The standard penalty for a sale of alcohol to a minor is a 15-day suspension, and the standard penalty for refusing to allow the Department to inspect records is a 30-day suspension, and indefinite thereafter until records are produced. (Cal. Code Regs., tit. 4, § 144.) Nevertheless, rule 144 allows the Department to deviate from the standard penalty when, “*in its sole discretion*[, it] determines that the facts of the particular case warrant such deviation — such as where facts in aggravation or mitigation exist.” (*Ibid.*, emphasis added.)

Factors in aggravation include prior disciplinary history, prior warning letters, licensee involvement, premises located in high crime area, lack of cooperation by the licensee in investigation, and continuing course or pattern of conduct. (Cal. Code Regs., tit. 4, § 144.) Factors in mitigation include the length of licensure at the subject premises without prior discipline or problems, positive action by the licensee to correct the problem, documented training of the licensee and the employees, and cooperation by the licensee in the investigation. However, neither list of factors is exhaustive; the

Department may use its discretion to determine whether other aggravating or mitigating circumstances exist. (*Ibid.*)

The ALJ found as follows in regards to the penalty:

The Department requested that the Respondents' license be suspended for 20 days for the two sales-to-minor violations and 35 days for the failure to produce records, arguing that the Licensed Premises has a reputation for selling alcohol to minors. The Respondents argued that fake IDs are a problem and that the police don't help them with this problem. Rule 144 provides that the standard penalty for selling alcohol to a minor is a 15-day suspension. For refusing to produce records, rule 144 provides that the standard penalty is a 30-day suspension and indefinitely thereafter until the records are produced.

When questioned, Griffin indicated that, not only did the clerk not ask her for ID, he never asks to see ID. Furthermore, the Respondents have been disciplined three times for selling alcohol to minors. On the other hand, two of those cases are 16 years old and [the] third is five years old. On balance, some aggravation is warranted.

With respect to the failure-to-produce-records violation, the Department no longer needs (nor seeks) the video. Accordingly, the indefinite portion of the suspension is no longer necessary. Although the Respondents offered to provide the video on July 30, 2021, they did not make any serious attempt to produce it thereafter (at most, they placed a few phone calls). Nonetheless, there is nothing in the evidence which warrants aggravation for this count. The penalty recommended herein complies with rule 144.

(Decision at p. 6.)

Here, appellants received a 20-day suspension for the sale of alcohol to two minors and a concurrent 30-day suspension for the failure to produce records. Based on the evidence in the record and the reasoning in the decision, the Board cannot say that the Department abused its discretion. As noted in numerous Board opinions, the extent to which the Department considers mitigating or aggravating factors is a matter entirely within its discretion. The Board cannot say that the penalty imposed here is unreasonable or excessive. Therefore, the penalty must stand.

ORDER

The decision of the Department is affirmed.³

SHARLYNE PALACIO, ACTING CHAIR
MEGAN McGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ 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.

APPENDIX

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

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

ANUPAMKUMAR PUNAMCHAND SWAMI &
SHILPABEN ANUPAMKUMAR SWAMI
REYES ADOBE LIQUOR
30313 CANWOOD ST., STE 21
AGOURA HILLS, CA 91301

OFF-SALE GENERAL - LICENSE

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

VAN NUYS DISTRICT OFFICE

File: 21-406082

Reg: 22091936

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on January 5, 2023. 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, 400 R St, Suite 320, Sacramento, CA 95811. 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 February 22, 2023, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: January 10, 2023

RECEIVED

JAN 10 2023

Alcoholic Beverage Control
Office of Legal Services



Matthew D. Botting
General Counsel

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Anupamkumar Punamchand Swami &
Shilpaben Anupamkumar Swami
dba Reyes Adobe Liquor
30313 Canwood St., Ste. 21
Agoura Hills, California 91301

Respondents

Off-Sale General License

} File: 21-406082
}
} Reg.: 22091936
}
} License Type: 21
}
} Word Count: 9,000
}
} Reporter:
} Skyy Chung
} Kennedy Court Reporters
}
} **PROPOSED DECISION**

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Van Nuys, California, on July 14, 2022.

John P. Newton, Assistant Chief Counsel, represented the Department of Alcoholic Beverage Control.

Anupamkumar Punamchand Swami appeared and represented himself and co-licensee Shilpaben Anupamkumar Swami.

The Department seeks to discipline the Respondents' license on the grounds that, on or about July 30, 2021, the Respondents, through their agent or employee, sold, furnished, or gave alcoholic beverages to Jennifer Griffin and Maya Beesley, individuals under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit 1.)

The Department also seeks to discipline the Respondents' license on the grounds that, between the dates of July 30, 2021 and September 30, 2021, the Respondents refused to permit the department or its representatives to make an inspection or examination of its books or records in violation of sections 25753 and 25616. (Exhibit 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 July 14, 2022.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

FINDINGS OF FACT

1. The Department filed the accusation on March 1, 2022.
2. The Department issued a type 21, off-sale general license to the Respondents for the above-described location on December 22, 2003 (the Licensed Premises).
3. The Respondents' license has been the subject of the following discipline:

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
4/26/2005	05059462	BP § 25658(a)	15-day susp.
10/27/2005	05060990	BP § 25658(a)	25-day susp.
11/08/2016	16084913	BP § 25658(a)	10-day susp.

The foregoing disciplinary matters are final. (Exhibits 2-4.) They were not pled for the purposes of aggravation.

4. On July 30, 2021, Agent C. Clark, Agent L. Zhao, and Agent Perez were standing in the parking lot outside the Licensed Premises. They noticed two youthful-appearing females exit the Licensed Premises carrying alcoholic beverages. The two females got into a car.
5. Agent Clark approached one of the females, Jennifer Griffin, who was sitting in the driver's seat, and identified herself as a police officer. Agent Clark asked Griffin how old she was. Griffin replied that she was 19 years old. Griffin had a can of Truly Lemon Tea Hard Seltzer in her lap.
6. Agent Clark asked to see Griffin's ID. Griffin showed Agent Clark her California ID, which indicated that she was born on January 16, 2002, making her 19 years old. (Exhibit 5.)
7. While Griffin was obtaining her California ID from her wallet, Agent Clark noticed a fake Texas ID in Griffin's wallet. The fake ID had a date of birth of January 16, 1999. The fake ID incorrectly listed Griffin's eye color as hazel (they are brown). (Exhibit 5.) Griffin stated that she did not use the fake ID at the Licensed Premises because the clerk never checks for ID.
8. At the same time, Agents Zhao and Perez contacted the other female, Maya Beesley. Agent Perez asked Beesley how old she was; she replied that she was 19. Since Beesley did not have any ID in her possession, Agent Zhao verified her age and identity through CHP dispatch.

9. Beesley had a can of Truly Strawberry Lemonade and a can of White Claw Hard Seltzer in her possession. They were the same two cans she carried out of the Licensed Premises.

10. Truly Lemon Tea Hard Seltzer is an alcoholic beverage containing 5% alcohol by volume. Truly Strawberry Lemonade is an alcoholic beverage containing 5% alcohol by volume. White Claw Hard Seltzer is an alcoholic beverage containing 5% alcohol by volume. (Exhibits 7 & 10.)

11. Agent Clark escorted Griffin to the front of the Licensed Premises. She pointed to the clerk, Anupamkumar Swami, and indicated that he had sold her the alcohol. Swami saw them and said hello. Agent Clark indicated that she would be right back.

12. The agents took photos of Griffin and Beesley. (Exhibits 6 & 9.) The photos accurately reflect their appearance on July 30, 2021.

13. Agent Clark returned and spoke to Swami. He said that he asked Griffin and Beesley their ages before selling the alcohol to them. He said that both of them replied that they were 21.

14. Agent Clark asked Swami for the video footage from the Licensed Premises' security cameras for the time period covering 10:00-10:30 p.m. Swami and Agent Zhao went to the back room to review the video, but a system prompt prevented them from accessing it. Agent Clark left a Notice to Produce Records with him. (Exhibit 8.)

15. On September 1, 2021, Agent Clark spoke to Swami about the video. Swami indicated that he was out of state for a funeral and needed to talk to his video tech. He asked if he could send the video to her phone. She gave him her number, but told him that he needed to download it to a disc or hard drive. September 4, 2021 was set as the deadline for him to respond.

16. On September 3, 2021, Agent Clark went to the Licensed Premises and spoke to a clerk, who called Swami. Swami indicated that he would have the video ready by September 7, 2021.

17. The Department never received the video.

18. 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. Section 25753 provides that the department may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this division.
5. Section 25616 provides that, "[a]ny person who knowingly or willfully files a false license fee report with the department, and any person who refuses to permit the department or any of its representatives to make any inspection or examination for which provision is made in this division, or who fails to keep books of account as prescribed by the department, or who fails to preserve such books for the inspection of the department for such time as the department deems necessary, or who alters, cancels, or obliterates entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this division is guilty of a misdemeanor."
6. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on July 30, 2021, co-licensee Anupamkumar Punamchand Swami sold or furnished an alcoholic beverage to Jennifer Griffin, a person under the age of 21, in violation of section 25658(a). (Findings of Fact ¶¶ 4-12.)
7. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution, and sections 24200(a) and (b) on the basis that, on July 30, 2021, co-licensee Anupamkumar Punamchand Swami sold or furnished an alcoholic beverage to Maya Beesley, a person under the age of 21, in violation of section 25658(a). (Findings of Fact ¶¶ 4-12.)
8. 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 refused to permit the Department or its representative inspect

or examine its books and records in violation of sections 25753 and 25616. (Findings of Fact ¶¶ 13-17.)

9. Although Swami attempted to provide the agents with access to the video on July 30, 2021, technical issues prevented them from viewing it, much less downloading it. Despite several subsequent requests and at least two extensions, Swami never provided the video footage of the sale requested by the Department.

PENALTY

The Department requested that the Respondents' license be suspended for 20 days for the two sales-to-minor violations and 35 days for the failure to produce records, arguing that the Licensed Premises has a reputation for selling alcohol to minors. The Respondents argued that fake IDs are a problem and that the police don't help them with this problem. Rule 144² provides that the standard penalty for selling alcohol to a minor is a 15-day suspension. For refusing to produce records, rule 144 provides that the standard penalty is a 30-day suspension and indefinitely thereafter until the records are produced.

When questioned, Griffin indicated that, not only did the clerk not ask her for ID, he never asks to see ID. Furthermore, the Respondents have been disciplined three times for selling alcohol to minors. On the other hand, two of those cases are 16 years old and third is five years old. On balance, some aggravation is warranted.

With respect to the failure-to-produce-records violation, the Department no longer needs (nor seeks) the video. Accordingly, the indefinite portion of the suspension is no longer necessary. Although the Respondents offered to provide the video on July 30, 2021, they did not make any serious attempt to produce it thereafter (at most, they placed a few phone calls). Nonetheless, there is nothing in the evidence which warrants aggravation for this count. The penalty recommended herein complies with rule 144.

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

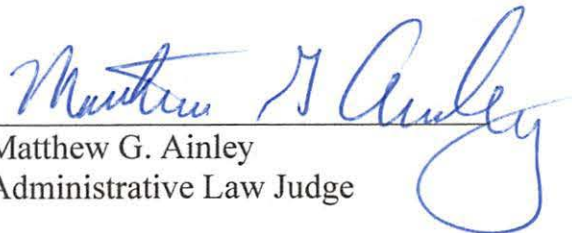
ORDER

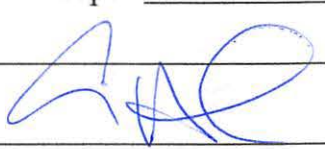
The Respondents' off-sale general license is hereby suspended for 20 days for the two sales-to-minor violations set forth in counts 1 and 2.

The Respondents' off-sale general license is hereby suspended for 30 days for the failure-to-produce-records violation set forth in count 3.

The suspensions are to run concurrently.

Dated: November 30, 2022


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By:  _____
Date: <u>01/05/23</u> _____