

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

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

Mundo Liquor & Market Inc.
dba Mundo Liquor & Market
510 E. Sepulveda Blvd.
Carson, California 90745-5944

Licensee(s).

File No.: 20-522711

Reg. No.: 17085798

**Precedential Decision
No.: 19-04-E**

**DESIGNATION OF DECISION AS PRECEDENTIAL UNDER
GOVERNMENT CODE SECTION 11426.60**

Pursuant to Government Code Section 11425.60, the Department of Alcoholic Beverage Control hereby designates as precedential its decision, dated December 20, 2017, in the above-referenced action.

This decision is designated precedential effective November 22, 2019.

Sacramento, California

Dated: November 22, 2019

Jacob A. Appelsmith
Director

Mundo Liquor & Market Inc.
Dba Mundo Liquor & Market
20-255711; 17085798

Page 2 of 7

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DECISION UNDER GOVERNMENT CODE SECTION 11517(c)

The above-entitled matter having regularly come before the Department on October 16, 2018, 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 10, 2018, and March 29, 2018, before Administrative Law Judge Matthew G. Ainley, and the written arguments of the parties, and good cause appearing, the following decision is hereby adopted:

The Department seeks to discipline the Respondent's license on the grounds that, on or about August 27, 2015, the Respondent solicited, accepted, or permitted to be accepted on its behalf, a thing of value from a wholesaler in violation of Business and Professions Code section 25504.¹ (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 March 29, 2018.

FINDINGS OF FACT

1. The Department filed the accusation on August 3, 2017.

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

2. The Department issued a type 21, off-sale general license to the Respondent for the above-described location on August 21, 2012 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondent's license.
4. On December 16, 2015, Agent Kimberly Rodriguez (nee Johnson) entered the Licensed Premises. She observed a small refrigeration unit bearing the name "Montejo." This refrigerator contained a number of cans of Montejo beer and one can of Johnny Appleseed hard cider. Montejo beer is a Mexican-style lager distributed by Anheuser-Busch.
5. Agent Rodriguez spoke to Kyung Koo Lee and asked about the refrigerator. Lee indicated that he had received the refrigerator approximately four months earlier from an Anheuser-Busch employee named Rudy. He stated that he was leasing the unit for \$7 per month for one year.
6. Agent Rodriguez asked to see any documents relating to the refrigerator. Lee stated that he did not have any at the Licensed Premises. Agent Rodriguez handed a notice to produce to Lee, then exited.
7. The Respondent did not respond to the notice to produce. Accordingly, the Department mailed a second notice to produce on January 12, 2016. The Respondent subsequently produced a sublease agreement² and an invoice. The invoice (exhibit 5) indicated that the refrigerator was being leased for four months at a rate of \$4 per month. It bore a delivery date of August 27, 2015.
8. On February 11, 2016, Agent Rodriguez went to the Licensed Premises and spoke to Lee. She asked him for proof of payment. He indicated that he had paid the invoice, but he did not provide any documentation thereof.
9. The Department sent a third notice to produce to Lee. Eventually, he sent another copy of the same invoice, this time with "Paid cahs (sic) total \$16.00" written on it. (Exhibit 6.)
10. The Department contacted Anheuser-Busch, LLC, which holds a type 17, beer and wine wholesaler license.³ Anheuser-Busch provided a copy of a sublease covering the refrigerator provided to the Respondent. (Exhibit 7.) This sublease is dated August 21, 2015 and indicated that the rental fee for the refrigerator was \$4 per month. Anheuser-Busch also produced two invoices covering the refrigerator. (Exhibits 8-9.) Exhibit 8 matches exhibit 5, except that the

² The copy of the sublease provided by the Respondent was not introduced into evidence. Testimony established that it was the same as the copy of the sublease provided by Anheuser-Busch of Los Angeles as set forth in paragraph 10, *infra*.

³ During the testimony, Anheuser-Busch was sometimes referred to as Anheuser-Busch of Los Angeles. The sublease described in this paragraph refers to AB Beach Cities. Anheuser-Busch of Los Angeles and AB Beach Cities appear to be dbas of Anheuser-Busch, LLC.

latter is signed at the bottom. Exhibit 9 has the same invoice number, but shows a different delivery date.

11. The Department requested proof of payment from Anheuser-Busch. Anheuser-Busch responded by producing yet another copy of the same invoice with the words “Paid Cash” written on it. (Exhibit 10.) The handwriting on exhibit 10 is different than the handwriting on exhibit 6.

12. The Department’s investigation in this case was part of a larger free-goods investigation involving Anheuser-Busch and various retailers. This investigation resulted in Anheuser-Busch paying a \$400,000 fine, with \$200,000 stayed upon certain conditions.

13. 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 25504 provides that “[a]ny person violating any provision of Sections 25500 to 25503, inclusive, is guilty of a misdemeanor, and any holder of any retail on-sale or retail off-sale license who solicits any such violation or accepts or permits to be accepted on his behalf and with his consent any of the prohibited matters, articles, or acts is guilty of a misdemeanor.”

4. Section 25504 does not prohibit any activity—those prohibitions are set forth in other sections of the tied-house provisions. Instead, section 25504 provides that it is a misdemeanor to violate the tied-house provisions enumerated therein (sections 25500 through 25503, inclusive). With respect to retail licensees, section 25504 provides that it is a misdemeanor to (a) solicit a violation of the enumerated tied-house provisions or (b) accept or permit to be accepted any of the prohibited matters, articles, or acts.

5. As applied to the Respondent, the holder of a retail off-sale license, the Department alleged that it accepted or permitted to be accepted on its behalf a refrigerator without making any payment therefor. The evidence established that Anheuser-Busch provided the Respondent with a free refrigerator. The various documents—which differ from each other in key respects—are a

transparent attempt to “paper over” the true nature of this transaction. This is a violation of section 25502, subdivision (a)(2), one of the enumerated sections found in section 25504.

6. The Department provided the proper notice to Respondent in its accusation. If Respondent was confused as to the nature of the accusation brought by the Department, Government Code section 11506(a)(3) requires that the Respondent notify the Department that the accusation is indefinite or uncertain causing the Respondent to be unable to provide a defense. If there is no notification to the Department within fifteen days of service that the accusation was unclear, all objections to the form of the accusation are deemed waived under Government Code section 11506(c). In addition, the accusation in this case drafted by the Department was clear. The Department clearly had facts outlining that the Respondent was accused of violating its license by taking a thing of value from a wholesaler as an off-site retailer. The only section this could possibly pertain to was section 25502, subdivision (a)(2) since the Department specifically cited section 25504. There is nothing in the record that suggests Respondent was unaware of the nature of the accusation or that the Respondent was unable to provide a defense due to lack of notice or uncertainty in the form of the accusation.

PENALTY

The Department requested that the Respondent's license be suspended for a period of 15 days, due to the significant aggravation in that the Respondent deliberately attempted to confuse the Department by falsifying an invoice.

Tied-house violations, like the one found in this case, are not provided with a penalty guideline in Rule 144. Violations of an administrative nature commonly carry a penalty of a ten day suspension. In this case, it is clear that there is an aggravating factor since the Respondent attempted to "paper over" the true nature of the violating transaction.

ORDER

The Respondent's off-sale beer and wine license is hereby suspended for a period of 15 days.

Sacramento, California

Dated: October 16, 2018

Jacob A. Appelsmith
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.

Mundo Liquor & Market Inc.
Dba Mundo Liquor & Market
20-255711; 17085798

Page 7 of 7

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.