

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

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

WOODLEY ENTERPRISES INC.
CLUB 7557
7557-59 WOODLEY AVE
VAN NUYS, CA 91406

ON-SALE GENERAL EATING PLACE - LICENSE

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

VAN NUYS DISTRICT OFFICE

File: 47-419125

Reg: 18086345

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 7, 2019. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.

On or after February 21, 2019, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: January 11, 2019



Matthew D. Botting
General Counsel

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Alcoholic Beverage Control
Office of Legal Services

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

IN THE MATTER OF THE ACCUSATION AGAINST:

Woodley Enterprises Inc.
dba Club 7557
7557-59 Woodley Ave.
Van Nuys, California 91406

Respondent

} File: 47-419125
}
} Reg.: 18086345
}
} License Type: 47
}
} Word Count: 4,000 & 6,000
}
} Reporter:
} Samantha Ruiz & Justyne Johnson
} Kennedy Court Reporters
}
} **PROPOSED DECISION**

On-Sale General Eating Place License

Administrative Law Judge Matthew G. Ainley, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Van Nuys, California, on July 26, 2108 and October 24, 2018.

John P. Newton, Attorney, represented the Department of Alcoholic Beverage Control.

Ralph Barat Saltsman and Donna J. Hooper, attorneys-at-law, represented respondent Woodley Enterprises Inc.

The Department seeks to discipline the Respondent's license on the grounds that, on or about June 22, 2017, the Respondent permitted three different individuals to violate the prohibitions contained in rule 143.2(3),¹ rule 143.3(1)(a), and rule 143.3(1)(b) while inside the above-captioned premises. (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 October 24, 2018.

FINDINGS OF FACT

1. The Department filed the accusation on January 18, 2018.

¹ All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

2. The Department issued a type 47, on-sale general eating place license to the Respondent for the above-described location on December 27, 2004 (the Licensed Premises).

3. The Respondent's license has been the subject of the following discipline:

<u>Date Filed</u>	<u>Reg. No.</u>	<u>Violation</u>	<u>Penalty</u>
8/18/2015	15082922	B&P Code § 23402, & 4 CCR §§ 143.2(3), 143.3(1)(a), 143.3(1)(b), 143.3(1)(c) & 143.3(2)	Rev. stayed 3 years w/30-day susp.
10/28/2013	13079429	Pen. Code § 647(b), 4 CCR §§ 143.3(1)(a), 143.3(1)(b) & 143.3(2)	30-day susp. w/15 days stayed 1 year

The foregoing disciplinary matters are final. (Exhibits 2-3.)

4. On June 22, 2017, Corporal Hugo Fuentes, LAPD, entered the Licensed Premises with his partner. He ordered a beer at the bar counter, which he was served.

5. Cpl. Fuentes sat down at a table a little to the east of the bar counter. He noticed Vanessa talking to two males at the bar counter. She wore a black one-piece outfit, the lower portion of which was similar to a G-string. Both of the males began to spank the exposed portion of Vanessa's buttocks. She bent over slightly while they were doing so.

6. There was a bartender working behind the counter who was in position to see Vanessa and the men. A security guard was situated at the door approximately eight feet away who was also in a position to see this. Neither the bartender nor the security guard made any attempt to stop this behavior. No other employee attempted to stop it either.

7. Maria Magdalena testified that she is employed at the Licensed Premises as a dancer and that she uses the stage name Vanessa. She described the rules which dancers must follow while performing. Among other things, the rules prohibit dancers from coming into contact with patrons with respect to their whole body, prohibit customers from touching the dancers, and require dancers to move constantly rather than stand in one place. If a customer touches her, she is supposed to put the customers hands down and tell him no.

8. Magdalena testified that security guards are always watching the dancers. If a customer is a problem, she can call one of the security guards over. The security guards sometimes come over on their own.

9 Magdalena denied that anyone spanked her in the manner described by Cpl. Fuentes. If someone had tried to do so, she would have placed his hands down as required by the rules.

10. Magdalena testified that management is very strict and that any dancer who broke one of the rules would be fired. She indicated that there were no warnings.

11. Eddy Lemeshko testified that he is a security guard at the Licensed Premises. His duties include watching the stage and the lap dance area. He is in charge of the floor and is supposed to ensure that the dancers follow the rules. He personally informs the dancers of the rules in advance and talks to them if he sees any problems. Dancers are suspended for violating the rules and, if they continue to be a problem (e.g., break the rules three times), are ultimately fired. He believed that Vanessa may have been suspended one time.

12. Lemeshko testified that the Respondent has made some changes in the last few years to prevent problems. It brightened the lights and lowered the backs of the booths to provide greater visibility and added mirrors to allow a better view into the lap dance area. The Respondent uses two or three security guards depending upon the day of the week.

13. Lemeshko testified that he did not see anyone spanking Vanessa as described by Cpl. Fuentes.

14. The Department did not present any evidence with respect to counts 3, 4, and 5.

15. 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. Rule 143.2(3) prohibits a licensee from encouraging or permitting any person on the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person. All such acts or conduct are contrary to public welfare or morals and,

therefore, no on-sale license shall be held at any premises where a licensee permits such conduct or acts.

4. Rule 143.3(1) prohibits a licensee from permitting any person to perform acts of, or acts which simulate, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law. Rule 143.3(1) also prohibits a licensee from permitting any person to perform acts of, or acts which simulate, the touching, caressing, or fondling of the breast, buttocks, anus, or genitals as well as the displaying of the pubic hair, anus, vulva, or genitals. All such acts or conduct are contrary to public welfare or morals and, therefore, no on-sale license shall be held at any premises where a licensee permits such conduct or acts.

5. 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) for the violations of rule 143.2(3) alleged in counts 1 and 2. (Findings of Fact ¶¶ 4-6.)

6. Using the factors set forth in Evidence Code section 780, the testimony of Cpl. Hugo Fuentes describing the incident is found to be credible, while the testimony of Maria Magdalena (aka Vanessa) to the contrary is found to be not credible. Cpl. Fuentes testified in a straightforward manner and his testimony was internally consistent. Not only was Magdalena's testimony inconsistent with that of Cpl. Fuentes, but it was inconsistent with Eddy Lemeshko's testimony. For example, Lemeshko described an incremental system for enforcing the rules, while Magdalena testified that anyone violating the rules would be fired outright. Lemeshko's testimony that he did not see the incident described by Cpl. Fuentes is of no help to the Respondent since there is no evidence that he was the security guard whom Cpl. Fuentes testified was eight feet away from Magdalena and the two men or was otherwise in a position to see the incident.

7. Cause for suspension or revocation of the Respondent's license was **not** established for the violations of rules 143.2(3), 143.3(1)(a), and 143.3(1)(B) alleged in counts 3, 4, and 5. (Finding of Fact ¶ 14.)

PENALTY

The Department requested that the Respondent's license be revoked in light of the prior disciplinary actions against the Respondent for the same type of violations. In the Department's view, the violations at issue here are simply the latest in an ongoing course of conduct. The Respondent argued that, if the accusation were sustained, a short suspension would be appropriate since the evidence established only one, rather minor, violation. Both parties are correct, at least in part. It is disconcerting that this is the Respondent's third such violation and, further, that it occurred while the Respondent was under a stayed revocation. The incident in question, however, was relatively mild. As

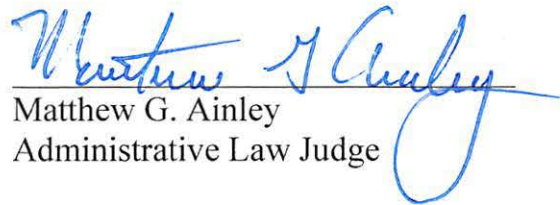
such, outright revocation is excessive for the violation at issue here. The penalty recommended herein complies with rule 144.


ORDER

Counts 1 and 2 are sustained. With respect to these violations, the Respondent's on-sale general eating place license is hereby revoked, with the revocation stayed, upon the condition that no subsequent final determination be made, after hearing or upon stipulation and waiver, that cause for disciplinary action occurred within three years from the effective date of this decision; that should such determination be made, the Director of the Department of Alcoholic Beverage Control may, in his discretion and without further hearing, vacate this stay order and reimpose the stayed penalty; and that should no such determination be made, the stay shall become permanent. Additionally, the Respondent's license shall be suspended for a period of 30 days.

Counts 3, 4, and 5 are dismissed.

Dated: November 15, 2018


Matthew G. Ainley
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: <u>1/7/19</u>