

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

DS gmc

IN THE MATTER OF THE ACCUSATION AGAINST:

22 Pier LLC
Dragon Restaurant
22 Pier Avenue
Hermosa Beach, CA 90254

ON-SALE GENERAL PUBLIC EATING PLACE LICENSE

FILE : 47 - 397636

REG. : 08068109

DECISION

JUL 21 2008

Respondent(s)/Licensee(s)
under the Alcoholic Beverage Control Act.

The above-entitled matter having regularly come before the Department for decision; and it appearing to the Department that the respondent(s) has filed a stipulation and waiver in connection with the accusation herein in which respondent(s) waives right to hearing, reconsideration and appeal; and good cause appearing therefor, the Department now finds as follows:

That cause for disciplinary action has been established.

Determination of issues presented: That respondent(s) violated or permitted violation of Business & Professions Code Section(s) 23804, California Penal Code Section(s) 347(b) and Health & Safety Code Section(s) 110545, 110620, and 110560.

Grounds for suspension or revocation have been established under Article XX, Section 22 of the State Constitution and Business and Professions Code Section 24200(a&b).

Wherefore, it is hereby ordered that the license(s) issued to respondent(s) at the above-mentioned premises be suspended for a period of 20 days.

**A REPRESENTATIVE OF THE DEPARTMENT WILL CALL ON YOU ON
OR AFTER SEPTEMBER 4, 2008 TO PICK UP THE LICENSE.**

CERTIFICATE OF DECISION

It is hereby certified that on July 17, 2008 the Department of Alcoholic Beverage Control adopted the foregoing as its decision in the proceeding therein described effective immediately.

Sacramento, California
Dated: July 17, 2008

Helen McConville
Helen McConville

By _____
Supervisor, Hearing & Legal Unit

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

RECEIVED
MAR 19 2008
Dep. Dir.

In the Matter of the Accusation Against:

22 PIER LLC

DBA: Dragon Restaurant

PREMISES: 22 Pier Avenue
Hermosa Beach, CA 90254

LICENSE(S): On-Sale General Eating Place

FILED

MAR - 6 2008

ALCOHOLIC BEVERAGE CONTROL

File: 47-397636

Reg: 05008103

ACCUSATION UNDER
ALCOHOLIC BEVERAGE
CONTROL ACT AND
STATE CONSTITUTION

I hereby complain and accuse the above respondent(s), holding the above license(s), based on the following statement of facts:

COUNT 1

On or about January 1, 2006 through March 31, 2006, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand, by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.*

COUNT 2

On or about April 1, 2006 through June 30, 2006, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand, by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.*

COUNT 3

On or about July 1, 2006 through September 30, 2006, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand, by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.*

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22 PIER LLC
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COUNT 4

On or about October 1, 2006 through December 31, 2006, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand,* by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.

COUNT 5

On or about January 1, 2007 through March 31, 2007, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand,* by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.

COUNT 6

On or about April 1, 2007 through June 30, 2007, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand,* by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.

COUNT 7

On or about July 1, 2007 through September 30, 2007, respondent-licensee violated a condition placed upon the license, to wit: *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand,* by exceeding alcoholic beverage sales to food sales, in violation of Business and Professions Code Section 23804.

COUNT 8

On or about September 22, 2007, respondent-licensee violated a condition placed upon the license, to wit: *There will be no dancing allowed on the premises,* by allowing patrons to dance, in violation of Business and Professions Code Section 23804.

COUNT 9

On or about October 27, 2007, respondent-licensee violated a condition placed upon the license, to wit: *There will be no dancing allowed on the premises,* by allowing patrons to dance, in violation of Business and Professions Code Section 23804.

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COUNT 10

On or about December 11, 2007, respondent-licensee(s), sold furnished or gave away or offered to sell, furnish or give away, an alcohol solution of a potable nature containing a deleterious or poisonous substance in violation of Penal Code Section 347b, to wit:

<u>NO.</u>	<u>LABEL/BRAND</u>	<u>CONTAMINANT</u>
1	Jack Daniels Single Barrel Whiskey (750 mL)	insects and/or debris
2	Jack Daniels Single Barrel Whiskey (750 mL)	insects and/or debris
3	Sauza Tequila (1 Litre)	insects and/or debris
4	Johnnie Walker Red Label Whiskey (1 Litre)	insects and/or debris
5	Macallan Scotch (unknown size)	insects and/or debris

COUNT 11

Or or about December 11, 2007, respondent-licensee(s), upon the above-designated licensed premises, held and offered for sale bottles of alcoholic beverages, a food as defined in Section 109935 of the California Health and Safety Code, which were adulterated in whole or in part by a diseased, contaminated, filthy, putrid or decomposed substance, or were otherwise unfit for food, in violation of Health and Safety Code Sections 110545, 110560, and 110620, to wit:

<u>NO.</u>	<u>LABEL/BRAND</u>	<u>CONTAMINANT</u>
1	Jack Daniels Single Barrel Whiskey (750 mL)	insects and/or debris
2	Jack Daniels Single Barrel Whiskey (750 mL)	insects and/or debris
3	Sauza Tequila (1 Litre)	insects and/or debris
4	Johnnie Walker Red Label Whiskey (1 Litre)	insects and/or debris
5	Macallan Scotch (unknown size)	insects and/or debris

COUNT 10

On or about January 19, 2008, respondent-licensee violated a condition placed upon the license, to wit: *There will be no dancing allowed on the premises*, by allowing patrons to dance, in violation of Business and Professions Code Section 23804.

COUNT 11

On or about January 20, 2008, respondent-licensee violated a condition placed upon the license, to wit: *There will be no dancing allowed on the premises*, by allowing patrons to dance, in violation of Business and Professions Code Section 23804.

For the purpose of the imposition of penalty, if any, arising from this proceeding, it is further alleged that the respondent-licensee(s) has/have suffered the following disciplinary history.


<u>DATE</u>	<u>VIOLATION</u>	<u>PENALTY</u>	<u>REG. NO.</u>
07/23/07	23804 B & P	10 days suspension,	07066427

Licensee(s) Previous Record: Licensed as above since April 23, 2003, with the above record of disciplinary action.

(1) That by reason of the foregoing facts, grounds for suspension or revocation of such license(s) exist and the continuance of such license(s) would be contrary to public welfare and morals, as set forth in Article XX, Section 22, State Constitution, and Section(s) 24200 (a) and (b) of the Business and Professions Code;

WHEREFORE, I recommend that a hearing be held on this accusation.

Dated this 26th day of February 2008.



District Administrator
Department of Alcoholic Beverage Control

Reviewed: 

Pursuant to Government Code Section 11507.6 discovery is requested to be provided to: Dept. of Alcoholic Beverage Control, 12750 Center Court Drive, Suite 700, Cerritos, CA 90703 (562) 402-0659.

STATEMENT TO RESPONDENT(S)

Unless a written request for a hearing, signed by you, or on your behalf, is delivered, or mailed, to the Department of Alcoholic Beverage Control within fifteen (15) days after the foregoing accusation was personally served on you or mailed to you, the Department of Alcoholic Beverage Control may proceed upon the accusation without a hearing to take action thereon as provided by law. The request for a hearing may be made by delivering or mailing the enclosed form entitled: "Notice of Defense", or by delivering or mailing a Notice of Defense to the Department of Alcoholic Beverage Control, 3927 Lennane Dr., Ste. 100, Sacramento, California 95834, as provided by Section 11506 of the Government Code. The "Notice of Defense" forwarded herewith, if signed and returned to the Department of Alcoholic Beverage Control, shall be deemed a specific denial of all parts of the accusation, but you will not be permitted to raise any objection to the form of the accusation, unless you file a further Notice of Defense as provided, in Section 11506 of the Government Code within said 15 days after service of said accusation upon you. At any or all stages of these proceedings, you have the right to be represented by counsel at your own expense or to represent yourself without legal counsel. You are not entitled to the appointment of an attorney to represent you.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify this agency within 10 working days after you discover the good cause. Failure to notify this agency within 10 days will deprive you of a postponement.

Incident Report Hermosa Beach Police Department

07-4167

ORIG



Reported Date
12/11/2007
Crime/Incident
347BPC
Officer
SELLAN, DONAVAN

(310) 318-0360

Administrative Information

Agency Hermosa Beach Police Department		Report No 07-4167	Supplement No ORIG	Reported Date 12/11/2007	Reported Time 12:06
CAD Call No 073450293	Status REPORT	Crime/Incident POISONOUS ALCOHOL			
Location 22 PIER PZ			City HERMOSA BCH	Rep Dist HB5 /HB6 /HB8 /	
From Date 12/11/2007	From Time 12:06	Officer 10168/SELLAN, DONAVAN		Entered by 10168	RMS Transfer Successful
Approving Officer 10123		Approval Date 12/11/2007	Approval Time 23:23:21		

Person Summary

Invl	Invl No	Type	Name	MNI	Race	Sex	Date of Birth
CIT	1	I	MATTAROCCHI, [REDACTED]	927507	W	M	[REDACTED]/1969

Property Summary

Property Type EVD
Description ARTICLE: FOOD/LIQUOR/CONSUMABLES XXX 2 jack daniel's, tequila, johnnie walker, macallan

Summary Narrative

The owner of the Dragon bar was cited for having bugs contained inside 5 of their alcohol bottles.

Incident Report

Hermosa Beach Police Department

07-4167

ORIG

CITED 1: MATTAROCCHI, MICHAEL

Involvement CITED	Invl No 1	Type Individual	Name MATTAROCCHI, [REDACTED]				MNI 927507				
Race WHITE	LiveScan OK	Sex MALE	Date of Birth [REDACTED] 1969	Age 38	Juvenile? NO	Height 6'08"	Weight 240#	Hair Color RED/AUBURN	Eye Color HAZEL		
Type WORK/BUSINESS		Address 22 PIER PZ					City HERMOSA BCH				
State CALIFORNIA		ZIP Code 90254									
Type OPERATOR LICENSE			ID No [REDACTED]								
Phone Type CELL	Phone No [REDACTED]										
Involvement CITED	Arrest Type CITATION	Arrest Date 12/11/2007	Arrest Time 13:00:00	Status CITED							
Charge 347BPC			Level M	Charge Literal MANUFACTURE/ETC POIS							

see narrative

Property

Item 1	Property Type EVIDENCE	In Custody? Yes	Tag No 8551	Item No 1							
Description 2 jack daniel's, tequila, johnnie walker, macallan											
Type A	Cat FOOD/LIQUOR/CONSUMABLES	Article PENDING ENTRY									

Narrative

Source:

On 12-11-07 from the hours of 1200 hours to 1600 hours, Officer Kansaku and I conducted Alcohol Beverage Control Inspections at on-sale and off-sale establishments throughout the city. We were wearing police uniforms and provided each establishment that we visited with a copy of our inspection sheet and a free ABC book explaining the inspection.

Details:

At approx. 1240 hours, we conducted an on-sale inspection at The Dragon bar (22 Pier Ave) and spoke with [REDACTED] Mattarocci who identified himself as the owner and [REDACTED] Hunt who identified himself as the manager of the establishment. We advised both of them that we were going to conduct an Alcohol Beverage Control impact inspection and provided them with a free booklet explaining the inspection. Officer Kansaku went over the inspection sheet with Mattarocci and Hunt while I conducted the actual inspection.

During my inspection behind the bar area, I recovered 5 alcohol bottles (2 Jack Daniel's single barrel, Sauza Tequila, Johnnie Walker Red, Macallan Scotch) containing dead bugs inside them. All five bottles appeared to be used and I was advised by Mattarocci that the 5 bottles that I recovered were used to serve drinks to patrons that visit his establishment. After I recovered these bottles, I stopped inspecting the rest of the bottles located in the bar area (I only checked half of the bottles behind the bar). I then advised Mattarocci and Hunt that I was with ABC officers in September of 2007 conducting an inspection at their establishment and the ABC officers and I found bugs in their bottles during that inspection. The ABC officers warned the on duty manager and told him to correct the problem before the next inspection.

Report Officer 10168/SELLAN, DONAVAN	Printed At 12/12/2007 11:48	Page 2 of 3
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Incident Report

Hermosa Beach Police Department

07-4167

ORIG

Narrative

Arrest:

Based on the above, I cited Mattarocci for 347 b PC (Alcoholic beverage containing deleterious substance) under citation number H376962.

Additional:

Officer Kansaku and Mattarocci examined the 5 bottles that I recovered with bugs in them while I was filling out the citation and Mattarocci acknowledged that there were bugs in all five bottles. It should be noted that Officer Kansaku and I were recording our contact with Mattarocci and Hunt and that their acknowledgement of the violation was recorded.

Evidence:

Officer Kansaku booked four of the bottles into the HBPD property room for evidence. The Macallan Scotch bottle was accidentally dropped by Officer Kansaku when he was carrying it to the station. The shattered pieces were thrown away.

MATTAROCCHI

ADDRESS
1174 ST.

CITY STATE ZIP CODE
MANHATTAN BEACH CA

DRIVER LIC. NO. STATE CLASS COMMERCIAL AGE BIRTH DATE
CA 169

SEX HAIR EYES HEIGHT WEIGHT RACE OTHER DESCRIPTION
M BRN HZL GR 240 W

VEH. LIC. NO. or VIN STATE REG. MO/YR COMMERCIAL VEHICLE (Veh. Code, § 15210b)

YR. OF VEH. MAKE MODEL BODY STYLE COLOR HAZARDOUS MATERIAL (Veh. Code, § 383)

EVIDENCE OF FINANCIAL RESPONSIBILITY POLICY NUMBER

REGISTERED OWNER OR LESSEE SAME AS DRIVER
N/A

ADDRESS SAME AS DRIVER
CITY STATE ZIP CODE

Correctable Violation (Veh. Code, § 40810)	Booking Required (see reverse)	Misdemeanor or Infraction (Circle)
Year	No	Code and Section
<input type="checkbox"/>	<input type="checkbox"/>	34780 PC BUGS IN M I
<input type="checkbox"/>	<input type="checkbox"/>	BOTTLES M I
<input type="checkbox"/>	<input type="checkbox"/>	M I
<input type="checkbox"/>	<input type="checkbox"/>	M I

Speed Approx. P.F./Max Spd. Veh. Lmt. Safe Radar Continuation Form Issued

Location of Violation(s) City/County of Occurrence
at 22 PEBBLE AVE HERRMANN BLVD LOS ANGELES WE E
WEATHER Road Cond. TRAFFIC ACCIDENT
 Dry Wet Fog Heavy Medium Light S

Violations not committed in my presence, declared on information and belief.
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed at (place) Violation location
SELLAN 169 to
Arresting or Citing Officer Serial No. Date Off

Date Name of Arresting Officer, if different from Citing Officer Serial No. Date Off

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.
X Signature Mattarocchi

WHEN: ON OR BEFORE THIS DATE: 2 11 709 08:15 AM

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE
WHERE: 825 Maple Ave., Torrance 90503 (213) 742-8800
 County Seat 505 S. Centre, San Pedro 90731 (213) 742-1884
 Juvenile Traffic Court, Appear 08:30 AM or 1:30 PM at:
3221 Torrance Blvd., Torrance, CA 90503 (310) 222-8878
Parent or guardian must accompany juvenile to court.
 Other

To be notified You may arrange with the clerk to appear at a night session of the court.



H376962

1929

COURT COPY

