

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

AB-10019
File: 48-645296; Reg: 24094580

Mazatlan Sin, Inc,
dba Yuppie
709 B Street
San Mateo, CA, 94401
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Department Hearing: N/A

Appeals Board Hearing: July 11, 2025
Sacramento, CA/Videoconference

ISSUED JULY 15, 2025

Appearances: John Kevin Crowley, as counsel for Appellant;

Joseph J. Scoleri III, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

Mazatlan Sin, Inc., dba Yuppie, ("appellant") appeals from an order of the Department of Alcoholic Beverage Control.¹ (hereinafter referred to as the "Department") denying its Motion to Vacate Default and Default Judgment. For the following reasons, the Department's order is affirmed.

¹ The Department's Order on Motion for Relief from Default ("Order"), dated March 11, 2025, is set forth in the appendix.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

The Department filed an accusation against appellant's license on or about July 8, 2024. The accusation and accompanying documents were served on appellant by certified mail the same day. Appellant failed to file and serve a Notice of Defense on the Department within the operative filing period. On August 6, 2024, the Department served a Decision Following Default ("Decision") by certified mail on appellant. The United States Postal Service tracking shows the Decision was "Delivered, Left with Individual" on August 8, 2024. (Exhibit C to the Department's Opposition.)

On November 8, 2024, appellant, through its attorney, submitted a letter to the Department indicating its intent to file a Motion for Relief from Default ("Motion"). Appellant filed its Motion on November 15, 2024. Appellant re-filed its Motion on January 27, 2025, after the Department issued an Order to Show Cause why the Motion should be granted. The Department filed its opposition to the Motion on February 6, 2025.

The Department issued an Order denying appellant's Motion on March 11, 2025 on the grounds that it was not timely filed. The Order stated that appellant failed "to explain why the Motion was not timely filed."

Appellant then filed a timely appeal with the Board contending that appellant "did not physically receive the Default Decision until two months after it was allegedly served by the Department." (Appellant's Opening Brief at p. 2.)

For the following reasons, the Board finds that the Department did not abuse its discretion in denying appellant's Motion.

II. STANDARD OF REVIEW

The scope of the Board's review is defined by section 23084². The Board is not a trier of fact, and it does not reweigh evidence, evaluate witness credibility, or substitute its judgment for that of the Department. The Board's review is limited to determining:

1. Whether the Department has proceeded without or in excess of its jurisdiction;
2. Whether the Department has proceeded in the manner required by law;
3. Whether the Department's decision is supported by its findings, and;
4. Whether the findings are supported by substantial evidence in light of the whole record.

Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The Board does not reweigh conflicting evidence but instead considers whether the Department's findings are supported by such evidence in light of the whole record. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 287, 291.)

The Board also considers whether any procedural error or evidentiary ruling prejudiced the appellant. Reversal is not warranted unless the appellant

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

affirmatively demonstrates that an error resulted in prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Reimel v. House* (1969) 268 Cal.App.2d 780, 787; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308.) The burden is on the party seeking reversal to show that it is reasonably probable a more favorable result would have been reached absent the alleged error. (*City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51–52; *Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 200.)

This standard imposes a high threshold. The Board may not overturn a decision simply because different inferences could be drawn from the evidence. The question is not whether the Board would have reached the same result, but whether the Department's findings are supported by substantial evidence and whether appellant has shown prejudicial error.

III. ANALYSIS

Under Government code section 11520(c), the recipient of a Decision Following Default may serve a written motion on the Department requesting that the decision be vacated within seven (7) days following service. After receiving said motion, the Department has discretion to vacate the decision and grant a hearing — provided the respondent has demonstrated good cause. "Good cause" includes (but is not limited to): failure to receive notice, mistake, inadvertence, surprise, or excusable neglect. (See *Ray Kizer Constr. Co. v. Young* (1968) 257 Cal.App.2d 766, 65 [Cal.Rptr. 267] (“[A] default may not be

set aside unless the moving party fulfills the burden of showing its entry through mistake, inadvertence, surprise, or excusable neglect.”)

Here, the record established that the Department sent notice of the accusation to the licensed premises via certified mail on July 8, 2024. After not receiving a Notice of Defense, the Department sent the Default Decision on August 6, 2024, which was delivered two days later, as established in the record.

Appellant argues that service was not perfected because its principal co-owner, Gerardo Quintero, did not receive actual notice of the Decision until after appellant's license was revoked. (AOB at p. 5.) In its Order, however, the Department stated:

[W]hile Mr. Quintero suggests that he did not receive the Decision (since he claims that the USPS only provided him with a copy of the Accusation), he does not assert that he never received a copy of the Decision (only that he ‘was never personally served with the Accusation, Notice of Defense, Statement re Discovery and the Department's Request for Discovery in this case.’)

(Order at p. 2.)

We agree with the Department. There is nothing in the record to establish that appellant failed to receive the Department's certified mail at the licensed premises, or evidence establishing that appellant requested notice to be sent to an address other than the licensed premises. To the contrary, the record reflects that the accusation and the default decision were delivered and received at the licensed premises.

Further, there is no legal authority cited in appellant's brief that service via certified mail, which is allowed by law, cannot be addressed to the licensed premises, or that it must be received by a principal (or someone other than an employee of the licensee). To say otherwise would be akin to the Board adding an additional service requirement, which it does not have the authority to do. Finally, such a rule would allow principals of a licensed premises to avoid service by refusing to check the mail, or directing their employees to disregard any mail received from the Department.

Based on the above, the Department is entitled to the inference that appellant received the accusation and subsequent default decision, as evidence of service is supported by the record. (*Kirby v. Alcoholic Beverage Control Appeals Bd.* (1968) 261 Cal.App.2d 119, 122 [67 Cal.Rptr. 628] “[E]very reasonably deducible inference in support [of the Department’s decision] will be indulged. [Citations.]” In short, the Department did not abuse its discretion by denying appellant's Motion after appellant failed to timely file a Motion to Vacate a Default Decision within seven (7) days of receiving the decision, and where the record does not establish good cause for setting aside the default. (Gov. Code, §§ 11520(a), (c).)

IV. CONCLUSION

For the above reasons, the appeal is denied, and the Department's Order is affirmed.

ORDER

Pursuant to Business and Professions Code section 23085, the decision of the Department is affirmed.³

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

³ This final order is filed in accordance with Business and Professions Code section 23088, and it shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

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.

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

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

Mazatlan Sin, Inc.
Dbá Yuppíe
709 S. B Street
San Mateo, CA 94401

Licensee.

File No.: 48-645296

Reg. No.: 24094580

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MAR 11 2025

Alcoholic Beverage Control
Office of Legal Services

ORDER ON MOTION FOR RELIEF FROM DEFAULT

An Accusation was filed against the subject license on or about July 8, 2024. The Accusation and accompanying documents were served on Licensee by certified mail on that same date. No Notice of Defense (“NOD”) was received by the Department. On August 6, 2024, a Decision Following Default (“Decision”) was issued and served by certified mail on Licensee.

On November 8, 2024, Licensee’s attorney submitted a letter indicating an intent to file a Motion for Relief from Default (“Motion”). At that time, the Department indicated its intent to oppose the Motion. On November 15, 2024, Licensee filed the Motion, together with written argument and a supporting declaration. The Department indicated its continued intent to oppose the Motion. An Order to Show Cause (“OSC”) why the Motion should be granted was served on the parties on or about January 9, 2025. Licensee then re-filed the same Motion and supporting declaration. On January 27, 2025, the Department filed its Opposition. Licensee then filed a Reply on February 6, 2025.

The Motion asserts that Licensee did not receive the Accusation. According to the declaration of Gerardo Quintero, principal co-owner of the Licensee corporation, notification of certified mail was left at the licensed premises. This was received by an employee of Licensee but was not brought to the attention of Mr. Quintero until some

“two months” later. A second notification of certified mail was left at the premises. Although no date is specified, Mr. Quintero states that at that time, both notifications were brought to his attention.

Based upon the United States Postal Service (“USPS”) tracking information, the Decision was “Delivered, Left with Individual” on August 8, 2024. (Exhibit C to Department Opposition.)

Government Code section 11520, subdivision (c), provides that a written request seeking relief from default must be made within seven (7) days following service of a decision following default. Failure to do so renders any subsequent request untimely.

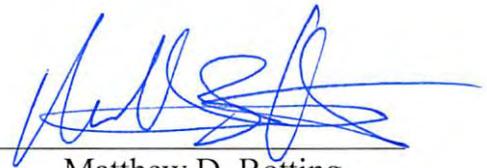
The record establishes that the Decision in this matter was properly served on August 8, 2024. Any written request for the Decision to be vacated must therefore have been made on or before August 15, 2024. The Motion was not made November 8, 2024. As such, the Motion was untimely.

Neither the Motion itself nor the supporting declaration of Mr. Quintero attempt to explain why the Motion was not timely filed. To the extent the timeline provided in Mr. Quintero’s declaration purports to address this issue, it fails to explain it at all. First, the “two months” that passed between receipt of the first and second USPS notifications, at which point both were purportedly brought to his attention and he “went down to the United States Postal Service”, does not correspond to the actual timing of the service of the Decision, which was only one month after the service of the Accusation. Second, while Mr. Quintero suggests that he did not receive the Decision (since he claims that the USPS only provided him with a copy of the Accusation), he does not assert that he never received a copy of the Decision (only that he “was never personally served with the Accusation, Notice of Defense, Statement re Discovery and the Department’s Request for Discovery in this case.”).

For the foregoing reasons, the Motion is denied on the grounds that it was not timely filed. In light of this determination, there is no need to address any of the grounds asserted as a basis for relief from default. This Order is effective immediately.

Sacramento, California

Dated: March 11, 2025



Matthew D. Botting
General Counsel

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.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089 within 10 calendar days of this Order. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R Street, Ste. 320, Sacramento, CA 95811 or email your appeal to abcboard@abcappeals.ca.gov. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov/> (or simply scan the QR code below) or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.



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