

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

ELIAS T. MONTALVO)	AB-6501
dba La Copa de Oro)	
2415 West Lincoln Avenue,)	File: 47-248059
Unit B & C)	Reg: 93028829
Anaheim, CA 92801)	
Appellant/Licensee)	Department Order
)	dated February 6, 1995
v.)	
)	Date and Place of the
DEPARTMENT OF ALCOHOLIC)	Appeals Board Hearing:
BEVERAGE CONTROL,)	February 8, 1996
Respondent.)	Los Angeles, CA
)	

Elias T. Montalvo, doing business as La Copa de Oro (appellant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which vacated a stayed revocation of appellant's license and ordered that the revocation be reimposed, for appellant having failed to meet the terms of the original probation.²

Appearances on appeal include John A. Hinman and Richard D. Warren,

¹The decision of the department dated February 6, 1995 is set forth in the appendix.

²The stipulation and waiver entered into by appellant and the department, and the decision of the department dated July 22, 1993, are set forth in the appendix.

counsel for appellant; and David B. Wainstein, counsel for the department.

FACTS AND PROCEDURAL HISTORY

On July 1, 1993, an accusation was instituted alleging 20 counts of alcoholic beverage solicitation on June 11, 18, 24, 1992, and July 3, 1993. On June 6, 1993, appellant stipulated with the department that his license could be disciplined due to the alleged violations. On July 22, 1993, a decision was issued revoking the license but staying the execution of the penalty for a period of 180 days to allow the license to be transferred to an applicant acceptable to the department.

On March 1, 1994, the department ordered that the July 22, 1993 decision's penalty be stayed further until May 22, 1994. Again, on December 2, 1994, the penalty was stayed until December 31, 1994. Apparently the department allowed the additional time to provide to appellant and his buyer opportunity to finalize negotiations and file the requisite application with the department for the transfer of the license, plus the necessary time for the department to investigate the buyer/applicant.

However, since the matter apparently was stalled even after the December 31 deadline, on February 6, 1995, the department issued an order vacating the stayed penalty and reimposing revocation of the license.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raised the issue that the department did not act with dispatch in processing appellant's buyer's application for the transfer of the license.

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DISCUSSION

Appellant contended that the department did not act with dispatch in processing appellant's buyer's application for the transfer of the license.

The record shows that on February 1, 1994, an escrow was opened between appellant and buyer/applicant Oscar Tovar. Tovar filed an application with the department for the transfer of the license on February 11, 1994. At that time, Tovar accepted four conditions on the license if it were to issue, restricting appellant and a member of appellant's family from any connection with the premises.

On February 17, 1994, the Anaheim Police Department filed a protest against the transfer of the license, but proposed withdrawing the protest if Tovar would consent to the imposition of 17 additional conditions on the license.

On February 18, 1994, the department sent a letter to Tovar requesting information concerning the purchase price sources and other financial information.

On March 21, 1994, the department again requested corrections to some of the financial information.

On March 22, 1994, the department notified Tovar of the protest and the proposed conditions.

On May 5, 1994, the department requested the financial information sought by the department on March 21, and the position of Tovar on the protestant's conditions.

On June 3, 1994, the department requested financial information still not made available.

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On June 6, 1994, the department asked Tovar to respond as to whether or not he would accept the police conditions.

On August 3, 1994, the department again requested tax information and whether Tovar would consent to the conditions proposed by the police.

On August 22, 1994, the department sent a warning letter by certified mail to Tovar, who signed for the letter, that unless the department received the needed information within 20 days, it would cancel the application.

Sometime during the application process, Tovar signed the following statement: "I have been advised that this license is pending (sic) a revocation and there may be no license to transfer if the Department decides there are not sufficient grounds to extend the transfer period."

On February 6, 1995 (a period of almost 17 months following the decision revoking the license and staying the penalties' execution for six months), the department vacated the stayed revocation and reimposed the penalty of revocation.

On February 15, 1995, Rick Blake, counsel for appellant and/or Tovar requested the department to reconsider its order of revocation.

On February 24, 1995, the director of the department sent a reply letter to attorney Blake detailing the efforts of the department to conclude the application for transfer. In that letter, the director stated that there had been meetings in July and October 1994 with Tovar, which did not lead to a resolution of the problems of licensing Tovar.

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On March 14, 1995, Tovar sent a letter to the appeals board complaining of the police conditions, which letter was forwarded to the department, as no appeal was pending.

On March 31, 1995, the department advised Tovar that appellant had filed an appeal against the revocation of his license and therefore Tovar's applicant was to be held in abeyance.

The record shows dilatory action on Tovar's part in providing the department with the financial information it needed to pursue the application to transfer. As late as March 14, 1995, approximately one year after the filing of his application for the transfer of the license, Tovar was still contesting the conditions proposed by the police department.

Notwithstanding Tovar's dilatory conduct, It was appellant's ultimate responsibility to follow the application process since it was appellant's license which was in jeopardy, as well as his financial stake in the escrow agreement which was contingent on the application process. The department's extending the time for the application process for approximately 17 months, or 11 months beyond the six months original granted, shows reasonable attempts by the department to allow pursuit of the application by Tovar.

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We conclude the department acted within reason under the circumstances clearly set forth in the record on appeal.

CONCLUSION

The decision of the department is affirmed.³

RAY T. BLAIR, JR., CHAIRMAN
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

DISSENT OF JOHN B. TSU

I respectfully dissent. In the present matter, I feel it was the duty of the department to make a record of informing appellant of the department's concern and take action in processing the application of Tovar, who decided to buy the business (license). It was appellant's property right which was in jeopardy. The department must consider such rights of licensees in its conduct of processing and pursuing its

³This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.

responsibilities in safeguarding the public welfare and morals of the community.

JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD