

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

GARY MOON	)	AB-6546m
dba TNT Club)	
1011 Seventh Street	)	File: 48-046357
Sacramento, CA 95814,	)	Reg: 94029898
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	[no hearing held]
)	
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	July 1, 1996
	)	Irvine, CA

Gary Moon, doing business as TNT Club (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked appellant's on-sale general public premises license but stayed the revocation for 180 days in order to allow reactivation of the license at its original location or transfer of the license to persons and/or premises acceptable to the Department, in accordance with the California Code of Regulations, Title IV, §65 (rule 65).

Appearances on appeal include appellant Gary Moon, appearing through his

¹A copy of the stipulation and waiver form signed by appellant on November 18, 1994, the subsequent decision, and the order of revocation dated June 21, 1995, are set forth in the appendix.

counsel, David Henderson; and the Department of Alcoholic Beverage Control, appearing through its chief counsel, Kenton P. Byers.

FACTS AND PROCEDURAL HISTORY

Appellant apparently had closed his business due to illness, and prior to the events considered by this review, had surrendered his license to the Department in accordance with rule 65, on or about August 1, 1989. The rule states in pertinent part: "(a) Every licensee who...closes his licensed business for a period exceeding 15 consecutive calendar days, shall, within 15 days after closing...surrender his license...to the department.... (¶) (c) A surrendered license may be reinstated upon request made at least 10 days prior to the date of reinstatement upon certification by the licensee that there has been no change of ownership of the licensed business, and that the premises possess the same qualifications required for the original issuance of the license. (¶) (d) Any license voluntarily surrendered under paragraph (a) of this rule shall be revoked if it is not transferred to another person or for use at another premises, or redelivered and the licensed activity resumed, within one year from the date of such surrender. There shall be no extension of such surrender period except when the department finds good cause exists where:...(4) the Director in his judgment finds a case of undue hardship exists which would warrant an extension."

Appellant signed a stipulation and waiver form with the Department on November 18, 1994, consenting to having his license revoked with the penalty stayed for 180 days to allow either activation of the license at its original location, or the transfer of the license to other persons and/or premises acceptable to the Department.

Thereafter, on December 8, 1994, the Department issued its decision under the stipulation and waiver form, revoking the license and staying the execution in accordance with the terms of the stipulation and waiver form.

On June 21, 1995, the Department entered an order vacating the stayed penalty and imposing the penalty of revocation, as appellant failed to active the license or transfer it within the 180 days allowed. Appellant thereafter filed a timely notice of appeal.

Subsequently, the Department filed a Motion to Dismiss the appeal as untimely, arguing that the December 8, 1994, decision was the only appealable decision; that the statutory time for an appeal had run; and the June 21, 1995, order of revocation was only a ministerial act.

We conclude that the Department's decision of December 8, 1994, was an appealable final decision, but within the time prescribed by law, appellant failed to properly appeal. We further conclude that the Department's order of June 21, 1995, from which appellant filed a timely appeal, is reviewable by the Appeals Board even though such order was to the Department only a ministerial act. This to the Board appears to give full faith and credit to the proposition set forth in Business and Professions Code §23081 that states any aggrieved party may appeal from a final decision of the Department. We view that this position is in accordance with the intent of Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board/Hallwell (1959) 169 Cal.App.2d 785 [338 P.2d 50].

Therefore, we determine we have the authority to consider the order of

revocation and all attendant facts back to the date of the decision of December 8, 1994. The question is whether appellant has raised any reasonable issues that the action of the Department to finally revoke his license was arbitrary and unfair.

Appellant has attempted by proper declaration to set forth his activities in relocation of the license, for a period prior to the issuance of the December 8, 1994 decision to and including June 8, 1995, but nowhere in his declaration does he state that anyone in conjunction with his license, sought to file an application for the transfer of the license. Despite the many innuendos in the declaration, and after a reading of the entire record, appellant has failed to show, and we fail to find, some reasonable ground that the Department's motion should not be granted.

CONCLUSION

The motion of the Department to dismiss the appeal is granted. The appeal is dismissed.

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