

ISSUED APRIL 28, 1997

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

DALBIR SINGH SINGHERRA)	AB-6787m
dba Central Market Thousand Oaks)	
1491 Thousand Oaks Blvd.)	File: 20-305798
Thousand Oaks, California 91362,)	Reg: 96035173
Appellant/Licensee,)	
)	Date and Place of the
v.)	Appeals Board Hearing:
)	February 5, 1997
DEPARTMENT OF ALCOHOLIC)	Los Angeles, CA
BEVERAGE CONTROL,)	
Respondent.)	
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Dalbir Singh Singherra, doing business as Central Market Thousand Oaks, (appellant), appeals from a decision of the Department of Alcoholic Beverage Control which suspended his off-sale beer and wine license for 25 days, for appellant's clerk having sold an alcoholic beverage to a person under the age of 21 years, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §25658, subdivision (a).

Appearances on appeal include appellant Dalbir Singh Singherra; and the Department of Alcoholic Beverage Control, appearing through its counsel Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on March 9, 1995. Thereafter, the Department instituted an accusation against appellant's license alleging that appellant's clerk sold an alcoholic beverage to a person under the age of 21 years.

An administrative hearing was held on September 18, 1996, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the alleged sale.

Subsequent to the hearing, the Department issued its decision which determined that appellant's clerk had in fact illegally sold the alcoholic beverage to the minor, and suspended the license for 25 days, and further found that appellant's license had been suspended previously for the same offense, in June 1996.

Appellant filed his notice of appeal which was received by the Appeals Board's office on December 17, 1996, a date five days past the time in which the appeal notice would have been timely filed.¹ The appeal notice, not filed, was returned by the Board to appellant.

Thereafter, appellant sent a letter to the Board dated January 6, 1997, arguing that the Department's Certificate of Decision was ambiguous as appellant

¹Business and Professions Code §23081 and Government Code §111521.

thought he had until December 19, 1996, to file an appeal.²

The Board tentatively accepted the appeal subject to a hearing before the Board to determine the issue of ambiguity raised by appellant.

DISCUSSION

The first full paragraph of the Certificate of Decision unequivocally states that the date of the decision was October 31, 1996. That date appears also at the middle left on the decision and also is the date the decision was mailed to appellant. This, quite clearly, is the date of the action from which an appeal is to be taken.

At the foot of the decision, the recipient is notified that an appeal must be made in accordance with certain statutory requisites. While it might be said that the citations to these procedural requisites are directed more to a reader familiar with the law, such as an attorney, the sentence which immediately follows invites the reader to phone the Appeals Board for further information. One interested in knowing the content of the statutory references, or when they must appeal, is given the Board's phone number.

The capitalized portion of the Certificate of Decision states: "A REPRESENTATIVE OF THE DEPARTMENT WILL CALL ON YOU ON OR AFTER DECEMBER 19, 1996 TO PICK UP THE LICENSE CERTIFICATE." This reference is notice to the licensee that the Department intends to pick up the license on the

²The January 6, 1997 letter and the Certificate of Decision, are set forth in the appendix.

date mentioned or some undetermined time thereafter.

There is nothing in the Certificate of Decision that reasonably implies that appellant had until the date the Department intended to pick up the license in which to appeal the Department's decision to impose discipline. Appellant's determination to wait until only three days before his license was to be surrendered, rather than either review the statutory references to determine his appeal responsibilities, or accept the invitation to contact the Appeals Board for further information, cannot be blamed on any ambiguity in the Certificate of Decision.³

CONCLUSION

We conclude that the failure to file appellant's appeal in a timely manner is not excusable by any action by the Department of Alcoholic Beverage Control. The appeal is dismissed.

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

³The citations to divisions and chapters of the statutes can be frustrating to the novice, and even to many lawyers. Clarity, rather than confusion, would suggest that citations be to the generally known and common names and sections of the pertinent codes.