

ISSUED OCTOBER 24, 2000

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

R.I.P. ROCAS, INC.	)	AB-7354a
dba Playtime Bar)	
13324 Sherman Way	)	File: 48-158499
North Hollywood, CA 91605,	)	Reg: 98044519
Appellant/Licensee,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Ronald M. Gruen
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	September 7, 2000
	)	Los Angeles, CA

This is an appeal from a Decision of the Department Following Appeals Board Decision which ordered appellant's on-sale general license revoked, but which stayed revocation, subject to service of an actual 25-day suspension and a two-year period of discipline-free operation, for having permitted entertainers to engage in conduct violative of Department Rule 143 (4 Cal. Code Regs. §143.3(2)).

Appearances on appeal include appellant R.I.P. Rocas, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on July 25, 1984.

In a decision entered February 4, 1999, the Department sustained charges of an accusation alleging that appellant had permitted entertainers to dance topless while within six feet of patrons, in violation of Rule 143.3(2), and further alleging that one of the entertainers had solicited an act of prostitution, in violation of Penal Code §647, subdivision (b), and entered an order revoking appellant's license, but which stayed revocation subject to a 30-day suspension and a two-year probationary period.

The Appeals Board, in a decision filed March 30, 2000, sustained the Department's decision with respect to the Rule 143.3(2) violations, but reversed the determination regarding the Penal Code violation, and remanded the case to the Department for reconsideration of the penalty.

The order from which the present appeal has been taken imposed a penalty substantially similar to that in the Department's original order, but reducing the actual suspension to 25 days from the original 30.

Appellant thereafter filed the present appeal, contending that the Department is obligated to state in its most recent order that there was no violation of Penal Code §647, subdivision (b). Appellant asserts that, without such a recital, the order is unclear as to what future violations could trigger the reimposition of the stayed portion of the order.

DISCUSSION

We do not agree with appellant that the Department is under any obligation to include in its order an express reference to the fact that it is not based upon a violation of Penal Code §647, subdivision (b).

The Department's April 7, 2000, order acknowledges that the Appeals Board reversed the Department's decision as to count 8 (the prostitution charge). It would seem obvious, then, that the order necessarily was based upon conduct other than any violation of the Penal Code.

It appears that what appellant is seeking is a ruling from the Board to the effect that the Department cannot reimpose the stayed revocation in the event of a future violation of Penal Code §647, subdivision (b).

In KDM, Inc. (1997) AB-6647, the Board referred to the Department's standard practice of framing an order staying revocation broadly, and not to attempt to characterize the kind of future violation which would warrant a lifting of the stay order. Such a requirement would unduly tie the Department's hands. The better course is for the Board to review such action consistent with an abuse of discretion standard when and if the situation arises.

The principle reflected in KDM, supra, was applied in Virgeen and Wilson Tony (1999) AB-7161, where a stayed suspension, for the licensees having sold an alcoholic beverage to a person displaying obvious signs of intoxication, was reimposed by the Department after the licensees were found to have violated conditions on their license relating to the removal of graffiti and litter.

The Board reversed the Department, citing its KDM decision, stating:

“[The vacation of a probationary stay] is best used to command conformity of a licensee to a course of conduct which is proper, thus allowing for an orderly alcoholic beverage distribution system. Vacation of a probation becomes arbitrary, and therefore improper, when the use thereof has minimal nexus to the original scheme of conduct. There must be some community of improper conduct connecting the original violation with the new violation. No such connection has been shown in this case.”

Since there is no legal defect in the Department’s order, appellant’s appeal must be rejected.

ORDER

The decision of the Department is affirmed.¹

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

¹ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.