

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

AB-7648a

File: 20-313923 Reg: 00048082

REBHYA Y. ABDELJAWAD dba John's Market
1122 East State Street, Ontario, CA 91761,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Rodolfo Echeverria

Appeals Board Hearing: December 6, 2001
Los Angeles, CA

ISSUED MARCH 5, 2002

Rebhya Y. Abdeljawad, doing business as John's Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which revoked her license pursuant to Business and Professions Code §24200, subdivision (d), following her entry of pleas of guilty on May 6 and May 27, 1999, to separate misdemeanor charges that she violated Penal Code §488.

Appearances on appeal include appellant Rebhya Y. Abdeljawad, appearing through her counsel, Rick Blake, 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 June 21, 1996. Thereafter, the Department instituted an accusation against appellant alleging the

¹The Decision Following Appeals Board Decision, dated June 20, 2001, is set forth in the appendix.

convictions. An administrative hearing was held on April 13, 2000, with a decision being entered by the Department revoking the license.

Appellant appealed and the Appeals Board affirmed the Department's decision except as to penalty and remanded the matter for the Department to explain why this particular type of license was a factor in its decision to revoke the license. The Board stated:

"The decision is lacking in a rational explanation as to why the particular type of license held by appellant should have been a consideration. We decline to speculate about what may have been in the mind of ALJ. Suffice it to say, that without such an explanation, we are unable to assure ourselves that the order of revocation was a proper exercise of discretion by the Department."

In the order of reversal with instructions, the Board stated:

"We reverse the decision of the Department and remand the case to the Department for reconsideration of the penalty. By our so doing, the Department will have the opportunity to explain why one type of license is to be treated differently from another when discipline is involved, as appears to have been the case here"

The Department issued its Decision Following Appeals Board Decision with no explanation as ordered by the Appeals Board, but essentially rewrote the language under review. That portion of the original finding states: "After considering the entire evidence presented at the hearing as well as the type of license we are dealing with, it is found" Basically, the Department just eliminated the language shown underlined.

Appellant thereafter filed a timely notice of appeal. In her appeal, appellant raises the issue that the Department abused its discretion by entering a decision which on its face is contrary to the decision of the Appeals Board.

DISCUSSION

The Department's decision in part, states:

“The Board, in its decision, reversed the Decision of the Department and remanded the case for reconsideration of the penalty, and **invited** the Department to explain why one type of license is to be treated differently from another when discipline is involved.” (Emphasis added.)

We did not “invite” an explanation. The word “invite” implies an encouragement or solicitation of a response. We remanded the reversed decision for the sole purpose of obtaining an intelligent and explanatory response (see Business and Professions Code §23085). The Department’s statement in its Determination of Issues, that: “While the type of license may be a factor in some cases, it is not a factor here ...” begs the question and does not answer the order of the Appeals Board for an explanation of the original statement.

Additionally, the administrative hearing was before Rodolfo Echeverria, an administrative law judge (ALJ) within the Department employment. The ALJ is the one who inserted the questioned language which was subsequently adopted by the Department. It appears to us the conduct of the Department of not returning the matter to the ALJ who would know what he meant by the questioned phrase is an exercise in meaninglessness.

We understand that the ultimate trier of fact in most cases is the Department. However, the language in question was from the mind set of the ALJ, and an intelligent explanation most likely could only come from him. This license, while under the control of the Department, is still valuable property to the appellant. The taking of this privilege of licensure, must only be accomplished under a processes which carefully and properly, scrutinizes and balances the law and the facts. The original question is still left improperly and unclearly unanswered.

In such conduct, the Department merely excised the questioned phrase as if that would solve the problem as to a confusion in the original decision. Far worse, ignoring the remand order appears to hide a possible arbitrary penalty which is unacceptable in due process and equal justice under the law.

ORDER

The decision of the Department is reversed.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

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 §23090 et seq.