

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

AB-7897

File: 47-126827 Reg: 01050751

YANKEE DOODLES LTD dba Yankee Doodles
4100 East Ocean Boulevard, Long Beach, CA 90803,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Order under Stipulation and Waiver

Appeals Board Hearing: February 7, 2002
Los Angeles, CA

ISSUED APRIL 18, 2002

Yankee Doodles LTD, doing business as Yankee Doodles (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days pursuant to a stipulation and waiver form signed by a representative of appellant.

Appearances on appeal include appellant Yankee Doodles LTD, appearing through its counsel, Mark Allen Shoemaker, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY

Appellant was issued an on-sale general public eating place license by the Department. The Department at some time during 2001, instituted an action against appellant charging that it had violated California Penal Code Section 330, subdivisions

¹The decision of the Department, dated September 20, 2001, and the Stipulation and Waiver form, dated August 24, 2001, are set forth in the appendix.

(a) and (b), by permitting the operation of a slot machine within the premises.

On August 24, 2001, during the time set for the administrative hearing before the Department concerning that slot machine, appellant by its representative who was accompanied by its attorney, Ralph Barat Saltsman, signed the stipulation and waiver form under review, allowing for the entry of a decision against appellant, the payment of a fine in lieu of serving the agreed-to 15-day suspension, and by the signing, thereby waived right to appeal.

On September 20, 2001, the Department issued its decision pursuant to the terms of the stipulation and waiver form.

Thereafter, appellant filed a timely notice of appeal contesting the validity of that waiver. In its appeal, appellant raises the issue that appellant should be allowed to set aside the stipulation and waiver form and permit the matter to proceed to a hearing on the merits of the matter.

DISCUSSION

Appellant contends it should be allowed to set aside the stipulation and waiver form and allow the matter to proceed to a hearing on the merits. Appellant argues that the California Code of Civil Procedure, Section 473, and California Code of Regulations, title 4, §198, allow for such action.

The conduct of hearings and actions of the Department are controlled by the Alcoholic Beverage Control Act (Business and Professions Code Section 23000 et seq.), and the California Administrative Procedure Act (Government Code Section 11370 et seq.). The California Code of Civil Procedure is not controlling in administrative matters. Business and Professions Code, Section 24300, states that all

hearings by the Department shall be in accordance with the Government Code above cited.

Appellant also cites the Appeals Board Rule 198, that a matter can be remanded to the Department where there is newly discovered evidence which could not be presented at the hearing on the matter by the Department. The Appeals Board rule is not applicable.

Apparently, the controversy over the slot machine between the Department, the police, and appellant existed over a period of time. Basically, from the briefs of the parties, it appears that members of the Long Beach police department made contact with appellant's premises the first part of January 2001, and during the month, seized the slot machine. Appellant argues that during the year 2000, the slot machine had been at the premises, and no police concern was ever shown.

A criminal matter was filed against appellant's owners and the matter was later resolved by dismissing the charges against the owners. Thereafter, on March 22, 2001, a meeting was held between the city attorney, police personnel, Department of ABC personnel, and others including appellant's owners and attorney Shoemaker.

On March 30, 2001, a district administrator of the Department discussed the slot machine with attorney Shoemaker, apparently appellant's ongoing counsel, and informed him of her feelings that a violation under administrative law had occurred, despite the ruling in the criminal case. On April 26, 2001, the Department issued its accusation alleging a violation of law by the possession of the slot machine.

On August 24, 2001, an administrative hearing before the Department was set for consideration of the allegations of the accusation. Attorney Ralph Barat Saltsman

was representing appellant at that hearing. Following negotiations, appellant's representative signed the stipulation and waiver form, at issue in this review. The form includes the hand written term, later incorporated into the decision, that the stipulation would not constitute an admission of liability.

For whatever reason, when appellant's representative signed the stipulation, he was represented by counsel, an astute and seasoned attorney well versed in Department matters.

While appellant's brief decries the alleged fact that other agencies could use the settlement against appellant, the settlement was entered into after a long period of contacts and negotiations with police, courts, attorneys, concerning the law and possible consequences of possessing the slot machine.

We find that the essence of appellant's contentions is that the matter was finalized in the law courts, and apparently such finalization should bind the Department. However, the law is contrary. The Department is not prohibited from proceeding in the administrative process against the license, seeking sanctions for misconduct if proven true. The Department's process allowed for appellant to determine that it would be in its best interest to conclude the administrative process. We see no arbitrary action on the part of the Department notwithstanding appellant's attempts to create such.

Appellant, we point out, was not without a seasoned administrative attorney well versed in Department controversies. Appellant has not shown even with counsel by its side, that it was held hostage by the negotiations with the Department. We have searched the record and the contentions of all the parties, and conclude there was no arbitrary conduct or misconduct by the Department. Appellant sought a bargain in compromise

and received the benefits of that bargain. Its one sided remorse now, without proper showing of undue conduct by the Department, cannot entitle appellant to the relief sought through a mere change of mind, or even adverse consequences of other forums, which even if true, are not applicable and valid in this proceeding.

ORDER

The decision of the Department is affirmed.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.