

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

AB-8016

File: 42-340466 Reg: 01050703

LOUIS CAMPANELLI, dba Mugsy's
17531 Chatsworth Street, Granada Hills, CA 91344,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: none

Appeals Board Hearing: February 13, 2003
Los Angeles, CA

ISSUED APRIL 16, 2003

Louis Campanelli, doing business as Mugsy's (appellant), appeals from an Order Following Default of the Department of Alcoholic Beverage Control¹ which revoked his license pursuant to Business and Professions Code section 24200, subdivision (d), following his plea of nolo contendere to violation of Penal Code section 242-243, subdivision (e) (violence used against former spouse), a public offense involving moral turpitude.

Appearances on appeal include appellant Louis Campanelli and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew Botting.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine license was issued on June 5, 1998. Thereafter, the Department instituted an accusation, filed April 25, 2001, against

¹The decision of the Department, dated August 12, 2002, is set forth in the appendix.

appellant charging appellant with violating Business and Professions Code section 24200, subdivision (d), in that, on March 31, 2000, appellant pled nolo contendere to a complaint charging him with the crime of violence against a former spouse in violation of Penal Code section 242-243, subdivision (e) (count 1), and, on March 31, 2000, appellant possessed on the licensed premises a controlled substance (marijuana), in violation of Health and Safety Code section 11357 (count 2), both counts constituting public offenses involving moral turpitude. On June 28, 2001, the Department, by its attorney Matthew G. Ainley, filed an amendment to the accusation dismissing count 2.

According to Department records, appellant was served with the accusation, notice of defense, and statement re discovery on July 13, 2001, pursuant to Government Code section 11505. No notice of defense was filed by appellant and on August 12, 2002, the Department found appellant to be in default. No hearing was held, but the Department made findings of fact, conclusions of law, and issued its order of August 12, 2002, revoking appellant's license.

The Department found that appellant had been properly served with the accusation, notice of defense, and statement re discovery in this matter and that appellant had failed to file a timely notice of defense or otherwise make an appearance. It also found that the charges of counts 1 and 2, above, were true.

Appellant thereafter filed a timely notice of appeal. In his appeal, appellant raises the following issues: (1) Count 2 of the accusation was dismissed by the Department; and (2) the accusation, notice of defense, and statement re discovery were never actually received by appellant. It is clear, and undenied by the Department, that count 2 was dismissed and is no longer at issue.

DISCUSSION

Appellant contends that, although the Department records show that the accusation was served, he did not actually receive it. The peculiar problems appellant has with actually receiving mail and other deliveries at the address used by the Department cast grave doubt on the proper service of the accusation documents as indicated in the Department's records. Notice of a proceeding and the opportunity to be heard are fundamentals of fairness and due process, applicable both to courts and to administrative tribunals. (*Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219 [79 Cal.Rptr.2d 910]; *Burrell v. City of Los Angeles* (1989) 209 Cal.App.3d 568, 576-577, 581 [257 Cal.Rptr. 427].) With these principles in mind, we are convinced that this matter should be reversed and remanded to the Department to allow appellant the opportunity for a hearing.

ORDER

The decision of the Department is reversed and remanded for further proceedings in accordance with the foregoing opinion.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 section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 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 section 23090 et seq.