

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

AB-8654

File: 21-384196 Reg: 06063995

RHS ENTERPRISES, INC. dba A 1 Food Store
10821 Studebaker Road, Downey, CA 90241,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: None

Appeals Board Hearing: May 3, 2007
Los Angeles, CA

ISSUED JULY 19, 2007

RHS Enterprises, Inc., doing business as A 1 Food Store (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its off-sale general license for 15 days following its stipulation to a violation of Business and Professions Code section 25658, subdivision (a), for having sold an alcoholic beverage to a minor, and waiving its right to a hearing or appeal.

Appearances on appeal include appellant RHS Enterprises, Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Julia H. Sullivan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated November 30, 2006, is set forth in the appendix.

DISCUSSION

I

Appellant, through its owner, signed a form on September 28, 2006, acknowledging service on it of an accusation charging the sale of beer to a minor.² On that same day, appellant, again through its owner, executed a Stipulation and Waiver in which it waived its right to a hearing, reconsideration and appeal,³ consented to the

² The form identifies appellant, contains file and registration numbers, acknowledges service of an accusation, and recites:

I have been advised of the following:

1. That I may, but need not, be represented by counsel at any or all stages of these proceedings.
2. The basic facts against me and my right to discovery.
3. My rights to a hearing, the appeal procedure, and the offer to compromise process.
4. The stipulation and waiver process.
5. That a decision did not have to be made at this time.

With all this in mind, it is my wish to settle this matter as soon as possible, and I am sending a signed Stipulation and Waiver for your consideration.

I understand the Stipulation is not binding on the Department and I reserve the right to withdraw the offer at any time prior to the date of the Department's decision.

³ The Department's Stipulation and Waiver in this case provided that the captioned respondent licensee:

- (1) Acknowledge[s] receipt of the accusation (with printed statement to respondent) and forms for notice of defense and stipulation and waiver in the above action.
 - (2) Stipulate[s] that disciplinary action may be taken on the accusation and that such discipline may be determined on the basis of the facts contained in the investigative reports on file with the Department.
 - (3) Waive[s] all rights to a hearing, reconsideration and appeal and any and all other rights which may be accorded pursuant to the Alcoholic Beverage Control
- (continued...)

imposition of a 15-day suspension of its license, and checked a box on the Department form indicating it wished to pay a fine in lieu of serving a suspension. The record copy of the stipulation and waiver is date-stamped September 29, 2006. On November 30, 2006, the Department issued a decision referring to the terms of the stipulation and imposing the 15-day suspension. Although the decision provided that it was to be effective immediately, it also provided that the beginning date of the suspension would be held in abeyance while it considered appellant's request to pay a fine in lieu of the suspension. For reasons not disclosed in the record, the matter was not resolved by payment of a fine.

Although the record furnished by the Department is silent on the point, appellant's appeal brief asserts that appellant's newly retained counsel (Solomon, Saltsman & Jamieson) wrote the Department's Acting Director, David Goss, on December 1, 2006, requesting that the stipulation and waiver be withdrawn, and that the Department's General Counsel, John Peirce, replied by letter on December 8, 2006, stating that he had reviewed the file and determined that appellant's request should be denied. Appellant argues that the Department's refusal to permit the withdrawal was an abuse of discretion and a decision from which an appeal may be taken. (App. Br.,

³(...continued)

Act or the Administrative Procedure Act.

(4) Acknowledge[s] that the licensee(s) understand(s) that by waiving said rights the Director of the Department of Alcoholic Beverage Control may, without further notice, enter an order suspending the **Off-Sale Beer & Wine** license(s) at the above-mentioned premises for a period of **15** days, the effective date to be set by further order of the Director of the Department of Alcoholic Beverage Control.

pages 2, 4.)⁴

The stipulation and waiver recites, in plain language, that appellant “waive[s] all rights to a hearing, reconsideration, and appeal.” Moreover, there is a signed acknowledgment by the licensee that he has been advised of his rights and of the consequences of the stipulation and waiver. Nevertheless, the Board has been provided no information bearing on why it was an abuse of discretion on the part of the Department to refuse to permit the withdrawal of the stipulation and waiver and vacate a decision which was entered on the basis of that document, one which went unchallenged for more than a month.

Appellant relies on Code of Civil Procedure section 473, subdivision (b), which permits a court to relieve a party or his or her legal representative “from a judgment, dismissal, order or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” Nowhere in appellant’s brief is there any claim that appellant executed the stipulation and waiver as a result of “mistake, inadvertence, surprise, or excusable neglect.” Nor is there any declaration of appellant claiming he executed the stipulation and waiver for any of those reasons.

Appellant’s reliance on the decision of the California Supreme Court in *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249 [121 Cal.Rptr.2d 187] (“*Zamora*”) is misplaced. In *Zamora*, an attorney’s assistant had mistakenly typed the word “against” instead of the phrase “in favor of” in a Code of Civil Procedure section 998 offer of settlement. Upon discovery of the mistake, the plaintiff in the civil action,

⁴ In view of the timing of the notice of appeal, this is a moot issue.

Zamora, moved to set aside the offer of settlement. While the court ruled that relief was available in that case, its closing remarks made it clear that voluntary settlements are not lightly to be set aside:

In any event, we are confident trial courts will exercise this discretionary power to vacate judgments entered pursuant to settlement agreement both carefully and sparingly. We suspect most, if not all courts will see through claims of buyer's remorse or breach of contract. ... Indeed, courts have been exercising this power for over a century with no ill effects. ... Most cases still settle, and courts rarely set aside settlement agreements. Our holding today should not change that.

(*Zamora, supra*, 28 Cal.4th at p. 261.)

Finally, we see only the unsupported assertions of appellant's counsel that grounds exist for the withdrawal of the stipulation. This case again involves nothing more than a settlement agreement that should not be set aside. There was no abuse of discretion in the Department's refusal to do so.

II

The brief filed on behalf of appellant also asserts that appellant has not been provided copies of the administrative record.

We find it ironic that the law firm which, in at least the last decade, has probably been involved in more appeals of Department of Alcoholic Beverage Control decisions than all other law firms combined, now purports to find deficiencies in the record supplied by the Department in a case resolved by way of a stipulation and waiver.

Appellant's claim that the record is incomplete assumes that the same documents are generated when a case is resolved by stipulation and waiver as when a case goes to an administrative hearing where exhibits are placed in evidence and a transcript is prepared setting out the testimony and arguments made at the hearing. This is simply not the case, and counsel knows better. The stipulation and waiver

practice is a summary procedure for resolving without a formal hearing the charges contained in a Department accusation, and does not generate a record like that described in Appeals Board Rule 183. The documents provided to appellant in this matter gave it everything it needed to effect an appeal.

ORDER

The decision of the Department is affirmed.⁵

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ 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.