

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

AB-8920

File: 20-434216 Reg: 07065713

REGIONAL EXPRESS TAX SERVICES, INC., dba Jefferson Street Chevron & Deli
27570 Jefferson Avenue, Temecula, CA 92590,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: December 3, 2009
Los Angeles, CA

ISSUED MARCH 23, 2010

Regional Express Tax Services, Inc., doing business as Jefferson Street Chevron & Deli (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 15 days for its clerk selling an alcoholic beverage to a law enforcement minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Regional Express Tax Services, Inc., appearing through its counsel, Ralph B. Saltsman and Alicia R. Ekland, and the Department of Alcoholic Beverage Control, appearing through its counsel, Valoree Wortham.

¹The decision of the Department, dated August 7, 2008, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on March 3, 2006. On May 11, 2007, the Department filed an accusation charging that appellant's clerk sold an alcoholic beverage to 17-year-old Eric Greenstein on March 1, 2007. Although not noted in the accusation, Greenstein was working as a minor decoy for the Department and the Riverside Sheriff's Department at the time.

At the administrative hearing held on June 24, 2008, documentary evidence was received, and testimony concerning the sale was presented. Subsequent to the hearing, the Department issued its decision which determined that the violation charged was proved and no defense was established. Appellant filed a notice of appeal and now contends that the Department failed to file a complete certified record on appeal. It also filed a motion to augment the record with any Report of Hearing or ABC Form 104, the Department's General Order No. 2007-09, and any documents related to the specifically requested documents.

DISCUSSION

Appellant contends the Department's decision must be reversed because the Department certified the record on appeal without including the Proposed Decision of the administrative law judge or the certification by the Department that it adopted the Proposed Decision as its decision. We conclude that the appeal must be dismissed for lack of jurisdiction.

Appellant recited the general statutory grounds for an appeal to this Board in its notice of appeal. In its brief, however, appellant abandoned those grounds, limiting its argument to the single issue of the Department's alleged failure to include certain documents in the certified administrative record. The documents alleged to be missing

were the proposed decision of the administrative law judge and the Department's certification adopting the proposed decision as the Department's own.²

An incomplete certified record, however, is not a basis for an appeal. Any deficiency in the record is cured by having the record augmented, either by an informal request or a Motion to Augment. While appellant did file a Motion to Augment in the present case, it did not include among the items requested the documents it says were omitted from the certified record.³

It is the appellant's responsibility to provide the reviewing tribunal with an adequate record. (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354-355 [25 Cal.Rptr.2d 852]; *Hothem v. City and County of San Francisco* (1986) 186 Cal.App.3d 702, 705 [231 Cal.Rptr. 70]; *Foster v. Civil Service Com.* (1983) 142 Cal.App.3d 444, 453 [190 Cal.Rptr. 893].) If the record provided by the Department is incomplete, it is the appellant's responsibility to make sure that the deficiency is cured:

[T]he burden is always upon an appellant to use reasonable diligence to perfect and prosecute his appeal. Where some step is required by the rules to be taken by an officer of the court and such officer delays unreasonably the appellant cannot sit by indefinitely and do nothing. He must exercise a reasonable amount of diligence to investigate any unwarranted delays and if necessary take steps to see that the legal duty is performed.

(*Flint v. Board of Medical Examiners* (1946) 72 Cal.App.2d 844, 846 [165 P.2d 694].)

"The existence of an appealable judgment is a jurisdictional prerequisite to an appeal." (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [32 Cal.Rptr.2d 275, 876 P.2d

²There is no dispute that these documents should have been included in the certified record. The documents appellant alleges to be missing were received by the Appeals Board under a certification dated March 13, 2009.

³The motion filed requests documents that have nothing to do with the issue raised on appeal. The motion is denied.

1074]; *Olson v. Cory* (1983) 35 Cal.3d 390, 398 [197 Cal.Rptr. 843, 673 P.2d 720].)

While the Department's decision was an appealable judgment, appellant did not base its appeal on that decision, but on the non-appealable procedural issue of the incomplete record. Appellant was under a duty, as soon as it received the certified record from the Department, to have the Department cure any deficiencies in the record. (Cf. Cal. Rules of Court, rule 8.155(b) [procedures for curing omissions from record].) Its failure to do so does not convert an easily curable incomplete record into the basis for pursuing an appeal. Under the circumstances, this Board does not have jurisdiction to consider this appeal and it must be dismissed.

ORDER

The appeal is dismissed.⁴

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

⁴This 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.