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

AB-9207
File: 48-393384 Reg: 11074194

GLMR PROPERTIES LLC, dba The Barracks Bar
67625 East Palm Canyon Drive, Bldg. 2 C7, Cathedral City, CA 92234,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: None

Appeals Board Hearing: May 31, 2012
Los Angeles, CA

ISSUED JUNE 15, 2012

GLMR Properties LLC, doing business as The Barracks Bar (appellant), appeals from a decision of the Department of Alcoholic Beverage Control[1] which, pursuant to entry of an order by default, revoked appellant's license for violations of Department rule 143.3 (4 Cal. Code Regs., §143.3) occurring in November 2009 and January and February 2010.

Appearances on appeal include appellant GLMR Properties LLC, appearing through its counsel, Joshua Kaplan, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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[1]The Department's Order On Motion To Vacate Decision Following Default, dated January 4, 2012, together with the Department's Decision Following Default, dated November 16, 2011, is set forth in the Appendix .

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on November 25, 2002. Until the events in question, appellant's license was discipline-free.

An accusation package, consisting of a copy of an accusation, a form notice of defense, a stipulation and waiver form, and a cover letter over the signature of District Supervisor Sean Ramos was served on appellant by certified mail on January 20, 2011. Service of the accusation was preceded by a December 2010 telephone conversation between Ramos and John Rentsch, a managing member of appellant,[2] during which Ramos advised Rentsch that the Department was aware of certain violations and illegal acts which had taken place in the premises, and that the Department intended to take disciplinary action. (Declaration of Sean Ramos dated December 12, 2011.) According to the Ramos declaration, Rentsch said he was out of the country because of his father's illness, and would not address the matter until he returned in late December 2011 or January 2012.[3] Rentsch stated he was unaware of any violations or of any convictions for acts occurring on the licensed premises. (*Ibid*.)

The cover letter which accompanied the accusation package, signed by Sean Ramos, District Supervisor, recited:

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[2] Rentsch's sworn declaration describes himself as "a managing member," suggesting there are other managing members. The Rentsch declaration does not identify any other managing member.

[3] The statement in the Ramos declaration regarding the date Rentsch would return to California is apparently mistaken, as Rentsch states in a declaration that he returned in late December, 2010.

Dear Licensee:

An accusation has been filed against you. If you feel the charge is unjustified or for any reason you desire a hearing, please sign the enclosed Notice of Defense and return to the above address within fifteen days. If you sign the Notice of Defense, do not sign any other document enclosed.

The Department feels that, from the evidence available, a revocation of the license(s) is warranted. Accordingly, you may admit the offense charged and the Department will revoke your license(s).

If you accept this offer, sign one copy of the enclosed Stipulation and Waiver and return it to the above address within ten days. Do not sign the Notice of Defense. If you accept this offer, you waive all rights of appeal or reconsideration and you should prepare to stop dealing in alcoholic beverages.

The stipulation and waiver is offered and is intended solely as a pre-hearing settlement of the matter. It is possible that a different penalty will be ordered as a result of a hearing.

If you wish additional information, please write the PALM DESERT district office, at 34160 Ste.120, Gateway Dr., Palm Desert, CA 92211.

The licensee did not return either a signed stipulation and waiver **or** a signed notice of defense.

On August 9, 2011, the Department sent a warning letter to appellant captioned "NOTICE," and stating, in pertinent part:

> An Accusation Package was mailed to you by certified mail. Since you did not respond to the Accusation Package, you are in default and the Department may enter a default judgment against you.
>
> However, the Department will not enter a default judgment at this time if you sign and file a Stipulation & Waiver **or** a Notice of Defense within **twenty** calendar days of this letter. (A copy of each is attached.)
>
> ...
>
> **If you do not file either of the documents within twenty calendar days**

of this letter, a default judgment will be entered against you.

(Emphasis in original.)

Although Rentsch later acknowledged having received this letter, he took no action, and **three months later**, on November 16, 2011, the Department entered a Decision Following Default and ordered appellant's license revoked. Appellant filed an appeal from this order and also moved to vacate the order.

Appellant's motion to vacate the default order, filed November 25, 2011, was denied on January 4, 2012, and appellant filed an appeal from this ruling. The two appeals have been consolidated.

DISCUSSION

Appellant contends the default order and the decision denying its motion to vacate the decision following default should be vacated and the matter be set for hearing. It relies on Government Code section 11520, subdivision (c), which provides that a default can be vacated and a hearing granted on a showing of good cause, defined as including "mistake, inadvertence, surprise or excusable neglect." In support of its contention that relief under section 11520 is justified, appellant argues that the managing member was

> at all times relevant herein, faced with his own real potential, demise and the demise of his father as well. His own horrific, recurring medical condition and the grave health of his father rendered him incapable of a reasoned approach to the issues in this matter. What reasonable person would not have had those same difficulties?

(App. Br., p.8.)

In its written motion before the Department seeking to set aside the default judgment, appellant posited three grounds for relief: (1) the license [*sic*] has been and is

totally unfamiliar with any ABC notifications and processes such that the accusation package and the warning letter were not familiar to nor understood by the licensee and its then temporarily incapacitated managing member, John Rentsch; (2) it would be shameful for the Department to revoke the license without affording the licensee a chance to defend the allegations against it on the merits; and (3) the allegations of the accusation are barred by the statute of limitations;

Appellant relies on cases decided under Code of Civil Procedure section 473, subdivision (b), which utilizes the same criteria for a showing of good cause as does Government Code section 11520. We have reviewed those cases and do not find the issues in those cases sufficiently similar to the issues in this case.

Appellant argues that the broad remedial provision relating to relief from defaults should be applied liberally to carry out the policy of a trial on the merits. (App. Br., p.6.) We do not dispute there is such a policy. Yet, when appellant's declaration is examined, it is difficult to avoid the conclusion that appellant wanted nothing to do with a trial on the merits.

Accepting as true Mr. Rentsch's claim of emotional trauma in December 2010, and January 2011, and again upon receipt of the warning letter in August 2011, there is nothing to indicate that this emotional paralysis continued unabated during the eight months that passed until another attack of that paralysis when the warning letter was received. Was he so emotionally crippled that he could not contact his physician, his attorney, other managing members if there were any, or a trusted employee, for assistance? His declaration does not contain anything to account for his condition during the many months between the time the accusation package was received and the warning letter some eight months later, as well as the three months following his

receipt of the warning letter.

> In reviewing the evidence in support of a section 473 motion, we extend all legitimate and reasonable inferences to uphold the judgment. The disposition of such a motion rests largely in the discretion of the trial court, and its decision will not be disturbed on appeal unless there has been a clear abuse of discretion. Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. ... We have said that when two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court. [Citations.]

(In re Marriage of Connolly (1979) 23 Cal.3d 590, 597-598 [153 Cal.Rptr. 423].)

The Department was the finder of fact on appellant's motion seeking relief under section 473. Its findings and reasoning are persuasive:

> With respect to Mr. Rentsch being unable to comprehend what was going on or pay attention to his business because of illness, there is insufficient evidence provided. It is respondent/licensee's burden to establish good cause for setting aside the default. However, the sole "evidence" provided is a self-serving declaration that Mr. Rentsch was suffering from emotional distress to such a degree that he could not concentrate on this (or presumably any other) matter, to the point where he was paralyzed. There is no medical support for these claims, and no evidence provided from any additional source that would tend to show that Mr. Rentsch was so incapacitated that he was unable to handle his affairs.

(Order on Motion to Vacate Decision Following Default, p. 2.)

The facts of the cases cited by appellant bear no resemblance to the facts in this case. *In re Marriage of Park* (1980) 27 Cal.3d 337 [165 Cal.Rptr. 792] awarded relief to a spouse who had involuntarily been deported to Korea, and a dissolution hearing in her absence awarded her husband the remaining community, including two businesses, and custody of the children. In *Dingwall v. Vangas, Inc*. (1963) 218 Cal.App.2d 108 [32 Cal.Rptr. 351], relief from a judgment of default was denied where an attorney had

substituted into a case where the original service of summons appeared to be invalid and opposing counsel had represented the complaint had been filed to avoid laches, and failed to respond to a cross-complaint. The new attorney took no action until learning six months after the fact that a judgment awarding the property in question to the plaintiff had been entered. In *Martin v. Taylor* (1968) 267 Cal.App.2d 112 [72 Cal.Rptr. 847], the court sustained a default judgment where the defendants had failed to file an answer to a complaint, and then waited three days short of six months before seeking relief from the default judgment. In *Credit Managers Ass'n v. National Indep. Bus. Alliance* (1984) 162 Cal.App.3d 1166 [209 Cal.Rptr. 119], the court set aside a default judgment where there was a question whether service was proper on a cross-defendant/assignee who had the responsibility for defending creditors of the assignor.

In *Draper v. City of Los Angeles* (1990) 52 Cal.3d 502 [276 Cal.Rptr. 864], the only case even remotely resembling the facts of this case, relief from the failure to file a timely claim against the City of Los Angeles was granted where the plaintiff's incapacity during the claim-filing period was supported by two doctors' declarations and hospital records establishing that she was severely injured and brain damaged when struck at a cross-walk.

In contrast, appellant's claim in this case was accompanied by nothing except Mr. Rentsch's unsupported and undocumented claim. The Department had little choice but to deny his much-belated effort to obtain relief.

ORDER

The decision of the Department is affirmed.

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD