

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

**AB-9763**

File: 42-569419; Reg: 18087124

THE ORIGINAL WINE CLUB, INC.,  
dba The Original Wine Club  
1431 South Village Way, Unit A,  
Santa Ana, CA 92705-4714  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: n/a

Appeals Board Hearing: July 25, 2019  
Los Angeles, CA

**ISSUED AUGUST 12, 2019**

*Appearances:*      *Appellant:* Simon Semaan, President, The Original Wine Club, Inc.,  
in propria persona,

*Respondent:* Joseph J. Scoleri III, as counsel for the Department of  
Alcoholic Beverage Control.

**OPINION**

The Original Wine Club, Inc., doing business as the Original Wine Club, appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> suspending its license for 15 days for possession of distilled spirits for which a license had not been

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<sup>1</sup> The Decision Following Default of the Department, dated November 29, 2018, is set forth in the appendix, as well as the Department's Order on Motion to Vacate Default, dated January 4, 2019.

issued, in violation of Business and Professions Code section 25607. Further, the Department found that appellant, directly or indirectly, accepted free drink kits and free distilled spirits as prohibited things of value in connection with the sale and distribution of alcoholic beverages, in violation of Business and Professions Code section 25504, and California Code of Regulations, title 4, Section 106, subdivision (a).

#### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale beer and wine public premises license was issued on September 1, 2016. There is no history of discipline against the license.

On May 30, 2018, the Department instituted a five-count accusation against appellant charging that, on July 7, 2017, appellant: 1) possessed distilled spirits for which a license had not been issued, in violation of Business and Professions Code section 25607, and; 2) directly or indirectly solicited or received a premium gift, free goods, or thing of value in connection with the sale or distribution of alcoholic beverages, in violation of Business and Professions Code section 25504. The accusation was served on appellant by certified mail on June 29, 2018, along with the Notice of Defense, copies of the Government Code, and the Department's Request for Discovery. Appellant's Notice of Defense was due on July 14, 2018. Appellant never submitted a Notice of Defense to the Department.

On November 29, 2018, the Department issued a Decision Following Default and it was served on appellant on the next day. Appellant filed a Motion to Vacate Default on December 4, 2018, which the Department denied on January 4, 2019.

Appellant then filed a timely appeal asking that the Board grant it a hearing. Appellant contends that it failed to file a Notice of Defense because its President,

Simon Semaan (Semaan), “relied on the representations of [SAC] Musselman” that appellant could appeal and “get a hearing on the merits.” (AOB, at p. 1.) Further, appellant contends that “any delay in filing was based on excusable neglect and that there is no prejudice.” (*Ibid.*)

## DISCUSSION

Under Government code section 11520(c), the recipient of a Decision Following Default is entitled to serve a written motion on the Department, requesting that the decision be vacated. The Department then has discretion to vacate the decision and grant a hearing — provided the respondent has demonstrated good cause.

"Good cause" includes (but is not limited to): failure to receive notice, mistake, inadvertence, surprise, or excusable neglect. (*See Ray Kizer Constr. Co. v. Young* (1968) 257 Cal.App.2d 766, 65 [Cal.Rptr. 267] (“[A] default may not be set aside unless the moving party fulfills the burden of showing its entry through mistake, inadvertence, surprise, or excusable neglect.”))

Here, although appellant timely requested to vacate the default decision, the Department denied the request, finding that appellant failed to establish good cause. In appellant’s Motion to Vacate, its president, Semaan, admits to receiving the accusation on or about June 29, 2018. Yet, Semaan does not articulate why he failed to submit a Notice of Defense before July 15, 2018, when it was due<sup>2</sup>. Semaan only

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<sup>2</sup> Semaan also claims that, in addition to his accusation, he received a packet for a different file (Mundo Liquor & Market, Inc.). However, Semaan does not explain how this is relevant to a finding of good cause. In fact, since Semaan also received appellant’s correct packet, the Board does not see how the second packet could impact Semaan’s understanding of when appellant’s Notice of Defense was due, especially since Semaan makes it clear that he understood the Mundo Liquor packet was incorrectly sent to him.

states that on or about July 23, 2018, eight days after the deadline to respond, he informed the Department that he would be filing a notice. By then it was already too late. Further, although Semaan states that he discussed the case with the Department prior to the July 15<sup>th</sup> deadline, he does not offer any facts to suggest that those conversations changed his understanding of when his Notice was due.

Finally, appellant explained at oral argument that he was genuinely confused with the paperwork provided by the Department, which referenced various dates and deadlines in addition to numerous statutory and regulatory citations. Appellant then did what any reasonable non-attorney would have done and picked up the phone to seek clarity and additional information. Unfortunately, the Department did not oblige.

While we sympathize with appellant, and have no doubt in the veracity of his confusion with an otherwise non-intuitive process, we cannot give him special treatment simply because he chose to represent himself. In this regard, the law is clear: “When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.” (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444 [34 Cal.Rptr.3d 383, 390], as modified (Sept. 28, 2005) [citations omitted].)

Because appellant failed to make the requisite showing of good cause to vacate the Decision Following Default, the Department did not abuse its discretion in denying its Motion.

ORDER

The decision of the Department is affirmed.<sup>3</sup>

SUSAN A. BONILLA, CHAIR  
MEGAN McGUINNESS, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>3</sup>This 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.

# APPENDIX

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION  
AGAINST:**

The Original Wine Club, Inc.  
Original Wine Club  
1431 S. Village Way, Unit A  
Santa Ana, CA 92705-4714

Licensee(s).

**File No.: 42-569419**

**Reg. No.: 18087124**

**ORDER ON MOTION TO VACATE DEFAULT**

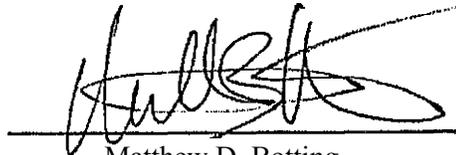
On November 29, 2018, the Department issued a Decision Following Default (“Decision”). On December 4, 2018, a timely Motion to Set Aside Default (“Motion”) was received.

The Motion Asserts that a Department representative, SAC Brett Musselman, said on July 23, 2018, that it was “OK to send the appeal.” The Department disputes that a request for an extension of time was made or that SAC Musselman granted any such extension of time. Even assuming Licensee’s assertion is correct, SAC Musselman’s alleged response that it was “OK to send the appeal” does not constitute an acceptance of a late-filed Notice of Defense. At best, it is simply evidence that SAC Musselman did not advise Licensee that he could not send the Notice of Defense to the Department.

Licensee has failed to establish good cause to vacate the Decision pursuant to Government Code section 11520. The Motion is denied.

Sacramento, California

Dated: January 4, 2019



Matthew D. Botting  
General Counsel

**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION  
AGAINST:

ORIGINAL WINE CLUB INC. THE  
ORIGINAL WINE CLUB  
1431 S VILLAGE WAY  
UNIT A  
SANTA ANA, CA 92705-4714

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FILE: 42-569419  
REG: 18087124

**DECISION FOLLOWING  
DEFAULT**

**RECEIVED**  
**DEC 03 2018**  
**Alcoholic Beverage Control  
Office of Legal Services**

under the Alcoholic Beverage Control Act.

This proceeding is conducted pursuant to Government Code section 11520. An Accusation against the above-referenced Respondent-licensee was registered by the Department June 29, 2018.

According to Department records the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery were served on Respondent-licensee on June 29, 2018.

According to Department records, no timely Notice of Defense has been filed. Accordingly, it is hereby found that Respondent licensee is in default and the Department makes the following Findings of Fact, Conclusions of Law, and Order:

Exhibits:

1. A true and correct copy of the Accusation registered in this matter is identified and admitted into evidence as Exhibit 1. Official Notice is taken of the license history as outlined in said Accusation.
2. A true and correct copy of the Proof of Service of Notice of Defense, Accusation, Department's Request for Discovery and Statement re Discovery, establishing service on Respondent-licensee, is identified and admitted into evidence as Exhibit 2.
3. A true and correct copy of the Department form ABC-333, Report of Investigation, and related documents are identified and admitted into evidence as Exhibit 3.

Findings of Fact:

1. Pursuant to Exhibit 2 as well as Government Code section 11505 and Miller Family Home, Inc. v. Department of Social Services (1997)57 Cal.App.4th 488, it is found that Respondent-licensee was properly served with the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery in this matter. No timely Notice of Defense has been received.

2. Pursuant to Exhibits 1 and 3 it is found that Respondent-licensee did violate the Alcoholic Beverage Control Act.

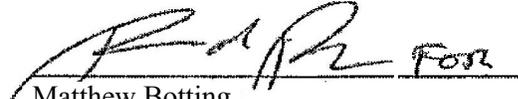
Conclusions of Law:

1. Pursuant to Finding 1 above, Respondent-licensee has defaulted in this matter and the Department is authorized pursuant to Government Code section 11520 to conduct this default proceeding.
2. Pursuant to Finding 2 above, Respondent-licensee did violate the Alcoholic Beverage Control Act as alleged in said Accusation.
3. That by reason of the foregoing Findings of Fact and Conclusions of Law, grounds for suspension or revocation of such license(s) exist and the continuance of such license(s) would be contrary to public welfare and morals, as set forth in Article XX, Section 22, State Constitution, and Section(s) 24200(a) and (b) of the Business and Professions Code.

Order:

WHEREFORE, it is hereby ordered that Respondent-licensee's license be, and hereby is, suspended for a period of **15** days. This decision is hereby adopted and is effective immediately. A representative of the Department will call on Respondent-licensee on or after DEC 11 2018 to pick up the license certificate.

Dated: 11/29/18

  
Matthew Botting  
General Counsel

Should you have any questions regarding the penalty imposed herein contact your local Alcoholic Beverage Control office.

Any Motion to Vacate this default decision must be made in accordance with Government Code section 11520, subdiv. (c), which states:

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505,
- (2) Mistake, inadvertence, surprise, or excusable neglect.

If you wish to file a Motion to Vacate this default decision, it must be directed to the General Counsel. In addition, any other parties in the matter, including the Department's Office of Legal Services, must be served. The Motion must be sent by mail, but you may also e-mail it. The addresses for filing and service are:

ABC General Counsel  
c/o Administrative Records Secretary  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834

[Mark.Kinyon@abc.ca.gov](mailto:Mark.Kinyon@abc.ca.gov)

Department of Alcoholic Beverage Control  
Office of Legal Services  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834

[Dominique.Williams@abc.ca.gov](mailto:Dominique.Williams@abc.ca.gov) and  
[Beth.Matulich@abc.ca.gov](mailto:Beth.Matulich@abc.ca.gov)

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 1325 J Street, Suite 1560, Sacramento, CA 95814.