

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

AB-9899

File: 47-585595; Reg: 20090671

JJ'S SPORTS BAR AND Grill #2,
dba JJ's Sports Bar and Grill #2
7955 Webster Street, Units 1, 2, 3, 4
Highland, CA 92346-3885,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

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

Appeals Board Hearing: May 7, 2021
Telephonic

ISSUED MAY 10, 2021

Appearances: *Appellant:* Ashraf Swidan, *in propria persona*;

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

OPINION

JJ's Sports Bar and Grill #2, doing business as JJ's Sports Bar and Grill #2 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control (Department)¹ suspending its license for 15 days (with all 15 days stayed for a period of one year provided no further cause for discipline arises during that period) because appellant permitted activity in the licensed premises injurious to public health and safety, in violation of Business and Professions Code section 25601; and violated Governor Gavin Newsom's Executive Orders N-33-20 and N-60-20 by not obeying

¹The Decision Following Default, dated February 4, 2021, is set forth in the appendix.

California Department of Public Health Guidance prohibiting indoor operations at the licensed premises, in violation of Government Code section 8665.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general eating place license was issued on December 5, 2017. There is one prior instance of departmental discipline against the license.

On December 21, 2020, the Department instituted a two-count accusation against appellant charging that, on July 9, 2020, appellant violated two Executive Orders and Public Health Guidance by serving alcohol indoors at the licensed premises. (Exh. 2.)

The accusation was served on appellant on December 21, 2020, along with the Notice of Defense, copies of Government Code sections 11507.5, 11507.6, and 11507.7, and the Department's Request for Discovery. USPS tracking information² shows that the accusation was sent via certified mail and delivered to an individual at the licensed premises on December 24, 2020 at 1:28 p.m.

Pursuant to Government Code section 11506(a) and Code of Civil Procedure section 1013, appellant had 20 calendar days, or until January 10, 2021, to file a Notice of Defense. There is nothing in the record indicating that appellant responded in any way to the accusation on or before January 10, 2021.

On February 4, 2021, the Department issued a Decision Following Default. (Exh. 1.) USPS tracking information³ shows that the accusation was sent via certified mail and delivered to an individual at the licensed premises on February 16, 2021 at

² Tracking #7019 2280 0000 9324 5543 (exh. 2.)

³ Tracking #7019 0700 0002 0748 7802 (exh. 1.)

10:17 a.m. Included with the default decision was the following instruction:

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 . . .

(Exh. 1.)

There is nothing in the record indicating that appellant followed these instructions by requesting that the Department vacate the default decision. Without this vital step, the Board's hands are tied. Since appellant did not request that the Department vacate the default decision, he was unable to put evidence in the record that he did not receive the notice. Thus, there is nothing in the record to rebut the Department's position that the notice was properly served and that the default was lawfully entered.

The first record of action by appellant in this matter was his Notice of Appeal, filed on February 22, 2021, in which he maintains he did not receive notice of the violation, and that he disagrees with the penalty. Appellant asserts a problem exists because the accusation cites units 1, 2, 3, and 4 — the premises' physical address — and that he was not served with the accusation. However, as noted, the record shows that the accusation was sent via certified mail to unit 1 and USPS tracking shows that the accusation was delivered to appellant on December 24, 2020.

In appellant's opening brief (AOB) he does not discuss any of these issues, or offer facts to support his assertions, but merely asks for the Board's lenience in light of the economic difficulties suffered due to Covid-19.

DISCUSSION

The Board is not required to make an independent search of the record for error not pointed out by appellant. It was appellant's duty to show the Board that some error existed. Without such assistance, the Board may treat unsupported contentions as waived or forfeited.

Appellate briefs must provide argument and legal authority for the positions taken. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.] We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived. [Citations.]

(*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956-957 [124 Cal.Rptr.3d 78], internal quotation marks omitted.)

Beyond a request for leniency, no legal basis for the appeal of the Decision Following Default has been put forth, no arguments have been presented in the brief, and no legal authority has been cited by appellant. While we are sympathetic to the difficulties experienced by licensees during this pandemic, we have no alternative under the circumstances but to affirm the Department's decision.

ORDER

The Decision Following Default is affirmed.⁴

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

⁴ 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:

JJ'S SPORTS BAR & GRILL #2
JJ'S SPORT'S BAR AND GRILL #2
7955 WEBSTER ST
UNIT 1, 2, 3, 4
HIGHLAND, CA 92346-3885

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FILE: 47-585595

REG: 20090671

**DECISION FOLLOWING
DEFAULT**

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 on December 21, 2020.

According to Department records the Accusation, Notice of Defense, Statement re Discovery and Department's Request for Discovery were served on Respondent-licensee on December 21, 2020.

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 Packet served on Respondent-licensee, including the Cover Letter, Accusation, Stipulation & Waiver, Notice of Defense, Request for Discovery, and Proof of Service is identified and admitted into evidence as Exhibit 1.
2. A true and correct copy of the Accusation registered in this matter is identified and admitted into evidence as Exhibit 2. Official Notice is taken of the license history as outlined in said Accusation.
3. 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 3.
4. 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 4.

Findings of Fact:

1. Pursuant to Exhibit 3 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 2 and 4 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 the license be, and hereby is, suspended for 15 days, provided, however, 15 days of said suspension is stayed for a period of one year, from the effective date of this decision, upon the following conditions:

- (a) That no subsequent determination be made after hearing or upon Stipulation and Waiver that cause for disciplinary action occurs;
- (b) That should such determination be made the Director of the Alcoholic Beverage Control may vacate this stay and impose the stayed portion of this Order;
- (c) That should no such determination be made the stay shall become permanent; and,
- (d) That should an accusation alleging a violation to have occurred within one year of the effective date of this decision be filed against the licensee/respondent, the stay imposed herein shall be extended until such time as that accusation is final, and the Department of Alcoholic Beverage Control shall retain jurisdiction over this matter until that time.

This Decision Following Default is hereby adopted and is effective immediately.

Dated: _____

2/4/21


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:

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- (2) Mistake, inadvertence, surprise, or excusable neglect.

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

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

Mark.Kinyon@abc.ca.gov

Lele.Mai@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.