

ISSUED MARCH 6, 1998

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

MOHAMED S. MOHAMED)	AB-6836
dba Nashawn Liquors)	
8937 MacArthur Boulevard)	File: 21-229666
Oakland, CA 94605,)	Reg: 96034916
Appellant/Licensee,)	
)	No administrative hearing
v.)	was held.
)	
)	Date and Place of the
DEPARTMENT OF ALCOHOLIC)	Appeals Board Hearing:
BEVERAGE CONTROL,)	December 3, 1997
Respondent.)	San Francisco, CA
)	

Mohamed S. Mohamed, doing business as Nashawn Liquors (appellant), appeals from an order of the Department of Alcoholic Beverage Control¹ which revoked his license for not reactivating or transferring his surrendered license within the time allowed, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Rule 65(d) (Cal.Code Regs., title 4, §65, subdivision (d)).

Appearances on appeal include appellant Mohamed S. Mohamed, representing himself, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Peirce.

¹The order of the Department, dated March 10, 1997, is set forth in the appendix, along with all other documents included in the record.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on August 3, 1989.

Appellant surrendered his license to the Department pursuant to Rule 65 in September 1992. Thereafter, on December 28, 1995, the Department instituted an accusation against appellant charging that he had failed to reactivate or transfer his license, or to obtain an extension of the surrender period for his license within one year from the date of its surrender as required by Rule 65(d). Also on December 28, 1995, appellant signed a Stipulation and Waiver form stipulating that disciplinary action could be taken, waiving all rights to hearing, reconsideration, and appeal, and acknowledging that the Department could, without further notice, enter an order revoking the license, with the revocation stayed for 180 days to allow appellant to activate the license or transfer it to persons acceptable to the Department, and if not activated or transferred before the stayed period, the Department could vacate the stay and order the license revoked.

On February 8, 1996, the Department issued a decision determining that appellant had violated Rule 65(d) and ordering that the license be revoked, with revocation stayed for 180 days, until August 8, 1996, upon the condition that appellant reactivate the license or transfer it, and if not reactivated or transferred within the stayed period, the Director could revoke the stay and order the license revoked.

On August 12, 1996, the Department issued an order in which the revocation imposed by the February 8, 1996, decision was further stayed until February 8, 1997, to permit reactivation or transfer of the license.

On March 10, 1997, another order was issued, stating that, because the license had not been reactivated or transferred, the stay was vacated and the license revoked. A Certificate of Service of Notice for the revocation order, dated April 2, 1997, stated that the notice could not be served because the premises was no longer in business, the licensee was out of the country, the son and nephew of the licensee were notified by telephone of the revocation, the license certificate could not be located, and the revocation was to go forward.

Appellant, on his own behalf, filed a timely notice of appeal, dated April 14, 1997. In his notice of appeal, appellant lists only the statutory grounds for appeal found in Business and Professions Code §23084.

Written notice of the opportunity to file briefs in support of the appellant's position was given on September 22, 1997. No brief was filed by appellant.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the Appeals Board that the claimed error existed. Without such assistance by appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

Although not required to do so, we have reviewed the entire record. However, the record consists only of the documents described above. There is no information about the circumstances involved, and it is impossible to determine any basis for this appeal from the record.

Appellant appeared at the hearing and described difficulties he had encountered in trying to relocate his license. However, as counsel for the Department pointed out, appellant has had more than 5 years to reactivate or sell his license. There is no indication that he has made any progress in his attempts to reactivate and it appears that no attempt has been made to sell the license. Under the circumstances, we see no alternative but to sustain the action of the Department.

CONCLUSION

The decision of the Department is affirmed.²

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate 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.