

ISSUED MARCH 27, 1998

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

7607 VINELAND INCORPORATED)	AB-6892 & 6892m
dba El Noa Noa)	
7607 Vineland Ave.)	File: 48-256103
Sun Valley, CA 91352,)	Reg: 96036600
Appellant/Licensee,)	
)	
v.)	Order of Revocation
)	
)	
DEPARTMENT OF ALCOHOLIC)	Date and Place of the
BEVERAGE CONTROL,)	Appeals Board Hearing:
Respondent.)	November 5, 1997
)	Los Angeles, CA
)	

7607 Vineland Incorporated doing business as El Noa Noa (appellant), appeals from an Order of Revocation of the Department of Alcoholic Beverage Control¹ which vacated a previously entered stayed revocation and entered an order revoking the license, upon the grounds that appellant had violated the terms of a stayed revocation decision which was entered upon a finding by the Department of conduct contrary to the universal and generic public welfare and morals provisions

¹An Order of Revocation dated June 25, 1997, a Motion to Dismiss dated July 28, 1997, with attached Stipulation and Waiver form, and a decision dated July 5, 1996, are set forth in the appendix.

of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §§24200.5, subdivision (b) (permitting the soliciting of drinks under a profit-sharing plan), 25602, subdivision (a) (sale of an alcoholic beverage to a person exhibiting obvious signs of intoxication), and 25657, subdivisions (a) and (b) (employment for, and loitering for, the purpose to soliciting alcoholic beverages); and California Code of Regulations, title IV, §143 (employment for, and loitering for, the purpose of soliciting alcoholic beverages).

Appearances on appeal include appellant 7607 Vineland Incorporated, appearing through its counsel, Andreas Birgel, Jr.; and the Department of Alcoholic Beverage Control, appearing through its counsel, David B. Wainstein.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises has been licensed since March 25, 1991. On May 8, 1996, appellant's representative signed a stipulation and waiver form acknowledging receipt of an accusation, agreeing that disciplinary action could be taken against the license, and consenting to the transfer of the license from appellant, within a period of 180 days. Thereafter, on July 5, 1996, a decision was entered in conformity with the stipulation and waiver form, alleging the violations as set forth above.

Apparently, the license was not transferred within the time agreed, and the Department on June 25, 1997, approximately one year following the order to transfer the license, ordered the stayed revocation vacated and the license revoked.

Appellant filed a timely notice of appeal. The Department thereafter filed a motion to dismiss the appeal, contending that the appeal was not timely and the order of revocation was not the proper subject of an appeal.

Pursuant to invitation of the Appeals Board, appellant filed a brief in opposition to the motion and the order of revocation. In that brief, appellant alleges that it had obtained a potential buyer in December 1996,² a corporation was formed on January 7, 1997, on behalf of the buyer, and escrow instructions were prepared dated February 5, 1997.

Appellant argues that the escrow had not gone forward because appellant's counsel had been informed that a new accusation was to be filed. In its brief, appellant states that the date of the violation to be charged in the intended accusation was April 25, 1997. The record does not show, however, any attempt to file an application by the new buyer.

We view that preparation of an application to transfer was not foreclosed by conduct of the Department: (1) from the final date that the application to transfer of the license should have been filed, to the signing of escrow instructions on February 5, 1997, a period of 31 days passed, without an application being filed, (2) from February 5, 1997 (escrow instructions date), to the date of the alleged new violation of April 25, 1997, another 79 days passed without an application being filed (or a total of 110 days from the final date for any application to be

²The terms of the 180-day probationary period were that the license must be transferred on or before January 5, 1997.

filed), and (3) a total of 171 days passed from the final date when an application should have been filed, to the date the Department ordered the probation vacated and revocation re-imposed, or, a period of almost one year.

We find no evidence in the record, and no allegations have been made by appellant, that an accusation was ever filed.

Appellant refers to an Appeals Board case entitled Lee (1996) AB-6573, wherein the Board reversed a Department's revocation order as the Department filed an accusation during the 180-day transfer period. The Lee case does not apply. The Department in that case, filed an accusation during the 180-day transfer period, essentially prohibiting the transfer of the license notwithstanding the order of probation that appellant therein must do so. The Board reversed the revocation order, and advised the Department it would have to choose between allowing the transfer to go forward, or in the alternative, to proceed with the accusation, one or the other, but not both.

We conclude that it was appellant's responsibility to find a buyer and then see that the new buyer filed an application to transfer the license. While the practical circumstances of any such search may be that the finding of a willing buyer could occur at the end of the critical time period when the transfer was to have been made, in such circumstances, the Department most likely would be duty bound to allow sufficient time for the Department, itself, to enter into and conclude an investigation of the application. Such, however, is not the case in the present

appeal.

Appellant argues that it has been difficult to obtain a willing buyer due to the enforcement activity around the premises. This point may be true, but certainly does not justify a stay on the running of the probationary period.

CONCLUSION

The motion to dismiss the appeal is granted. The appeal is dismissed.³

BEN DAVIDIAN, CHAIRMAN
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD⁴

³This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

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

⁴Ray T. Blair, Jr., Member, did not participate in the oral arguments or decision in this matter.