

ISSUED JANUARY 12, 1999

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

AGAPITO CONTRERAS	)	AB-7086
dba New Horseshoe Club)	
1415 South Airport Way	)	File: 48-326924
Stockton, California 95206,	)	Reg: 97040806
Appellant/Applicant,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Julia Cline Newcomb
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	December 2, 1998
	)	Sacramento, CA
)	

Agapito Contreras, doing business as New Horseshoe Club (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied his application for a person to person/premises to premises transfer of an on-sale general public premises license.²

¹The decision of the Department, dated April 23, 1998, is set forth in the appendix.

² The license in question is the subject of a contract for its purchase by appellant. Appellant and the seller are parties to an escrow, the completion of the purchase transaction contingent upon favorable action from the Department.

The Department, in addition to opposing the appeal, moved that the appeal be dismissed as moot, asserting that the owner of the license which was to be the subject of the transfer failed to renew the license and allowed it to be revoked, pursuant to Business and Professions Code §24048.

Appearances on appeal include appellant Agapito Contreras, appearing through his counsel, Frear Stephen Schmid, and the Department of Alcoholic Beverage Control, appearing through its counsel, John R. Peirce.

DISCUSSION

The parties were advised by letter that the dismissal motion would be heard at the same time as the appeal on the merits. In addition, the Department was requested to furnish to the Board and opposing counsel certified copies of any application for renewal, notice of cancellation, or other document upon which the Department relies in support of its contention that the license in question has been revoked. In response to this request, the Department submitted a certified copy of the Department record evidencing the automatic revocation of the license in question.

Appellant opposed the motion, initially representing to Board staff that the renewal fees were paid by cashier's check in late May, 1998. He later rescinded that representation. No evidence was thereafter presented by appellant that any renewal fees were paid.

Based upon the documentation furnished to the Board by the Department, and the absence of any evidence to the contrary, we are satisfied that this appeal

must be dismissed as moot. The license which was to have been transferred ceased to exist.

ORDER

The appeal is dismissed as moot.³

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

JOHN B. TSU, Member, did not participate in the hearing or decision in this matter.

³ This 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 order as provided by §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 §23090 et seq.