

ISSUED MARCH 21, 2000

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

ALBERTO LEON QUINTERO and	)	AB-7119a
LOURDES QUINTERO)	
dba La Boom	)	File: 40-301252
37 North Catalina Avenue	)	Reg: 97041272
Pasadena, CA 91106,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	[No Hearing]
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	January 20, 2000
Respondent.	)	Los Angeles, CA
)	

Alberto Leon Quintero and Lourdes Quintero, doing business as La Boom (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ entered after the Department's original decision, which suspended their license for 45 days, with 15 days stayed for a two-year probationary period, for violations of a condition on their license and for appellants' bartender furnishing an alcoholic beverage to a person under the age of 21, was affirmed by the Appeals

¹The Department's Decision Following Appeals Board Decision, dated July 13, 1999, is set forth in the appendix.

Board, except as to the penalty, which was reversed and the case remanded to the Department for reconsideration of the penalty.

Appearances on appeal include appellants Alberto Leon Quintero and Lourdes Quintero, appearing through their counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale beer license was issued on December 5, 1994. Thereafter, the Department instituted an accusation against appellants charging that, on July 26, 1997, appellants' bartender furnished a beer to a 16-year-old (Count 1), on various dates appellants violated a condition on their license (Counts 2, 3, 4, 5, and 7), and appellants' bartender sold an alcoholic beverage during hours when it was unlawful to do so (Count 6).

Following an administrative hearing on March 23, 1998, the Department issued its decision which found that the furnishing-to-a-minor and the condition violations had been established, and ordered appellants' license suspended for 45 days, with 10 days stayed for a probationary period of two years. On appeal to the Appeals Board, the Department's decision was affirmed insofar as it found the violations of Business and Professions Code §§25658, subdivision (a), and 23804 to have occurred, but the penalty portion of the decision was reversed, because of the Department's failure to specify how much of the penalty was attributable to each of the violations, and the case was remanded to the Department for reconsideration of the penalty. (See Quintero (May 26, 1999) AB-7119.)

DISCUSSION

Appellants now appeal from the decision of the Department, entered following the order of remand, which made the following order:

“The license is suspended for fifteen (15) days for the sale to a minor. The license is suspended for violating its conditions for twenty (20) days, provided that ten (10) days of the suspension shall be stayed for one (1) year upon the condition that no cause for disciplinary action occurs during the stayed period. If cause for disciplinary action occurs during the stayed period, the Director of the Department may, in his discretion and without further hearing, vacate this stay order and *revoke the license*; and should no such determination be made, the stay shall become permanent. The actual suspensions shall run consecutively for an aggregate penalty of a thirty-five (35) day suspension with ten (10) days stayed for one year.” [Emphasis added.]

In their appeal, appellants raise the following issue: the Department abused its discretion in imposing the revised penalty by providing for conditional revocation of the license, which does not conform to the mandate of the Appeals Board decision, is excessive, is not supported by the record, and is vague and ambiguous.

Appellants have not filed a brief, but have submitted the matter on the record and the Department's brief, and waived oral argument.

The Department's brief concedes that an error was made in the Order of the Decision Following Appeals Board Decision, in that it provided that the license could be *revoked* should a cause for disciplinary action arise during the period of the stay. The order should have provided that the *10 stayed days* could be reimposed should a cause for disciplinary action arise during the stay. The Department concedes that it should issue a corrected order striking the reference to revocation and substituting a reference to the stayed suspension.

The Department is ready to issue the corrected order, but contends that it cannot because jurisdiction over the matter is with the Appeals Board now.

ORDER

The Department's Decision Following Appeals Board Decision in this matter is affirmed, except the penalty is reversed and the matter is remanded to the Department to issue a corrected order in accordance with the concession in its brief that the order should not provide for revocation should cause for discipline arise during the one-year stayed period, but should provide only for reimposition of the 10 stayed days should cause for discipline arise during that one-year period.

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD