

ISSUED JANUARY 18, 2001

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

ALVIN B. KLEIN, ROBERT LIPPMAN	)	AB-7184a
and STEVEN LIPPMAN)	
dba Village Expressmart	)	File: 20-141764
10974 Le Conte Avenue	)	Reg: 97041857
Los Angeles, CA 90024,)	
Appellant s/Licensees,	)	Notice that the Department's
	)	Decision of July 2, 1998,
v.	)	Is Now Final
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	October 5, 2000
	)	Los Angeles, CA

Alvin B. Klein, Robert Lippman and Steven Lippman, doing business as Village Expressmart (appellants), appeal from a Notice of the Department of Alcoholic Beverage Control¹ which notified appellants that the Alcoholic Beverage Control Appeals Board had reversed the Board's own decision of July 19, 1999, thus making the Department's decision of July 2, 1998, final.

Appearances on appeal include appellants Alvin B. Klein, Robert Lippman and

¹The notice of the Department dated August 11, 2000, is set forth in the appendix.

Steven Lippman, appearing through their counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on April 16, 1984. Thereafter, the Department instituted an accusation against appellant charging that appellants had sold an alcoholic beverage to a person under the age of 21 years. An administrative hearing was held and subsequently the Department issued its decision which revoked the license based on the current violation and prior violations of sales to underage persons.

Thereafter, appellants filed a notice of appeal. The matter was heard and the Appeals Board issued its decision reversing the Department's decision. The Department filed a writ in the court of appeal which on January 26, 2000, reversed the decision of the Appeals Board, and ordered the Board to reinstate the Department's order of revocation. The remittitur from the court of appeal was issued on June 8, 2000, which reinvested the Appeals Board with jurisdiction. The Appeals Board thereafter filed its order remanding the matter to the Department reinvesting the Department with jurisdiction to revoke the license in accordance with the decision of the court of appeal.

Appellants filed their notice of appeal alleging that they had filed a petition in

the United States Supreme Court, and also requested that the Board issue a stay until the Supreme Court matter is resolved.

Appellants argue there were issues raised in the first appeal which were not fully addressed by the Appeals Board due to the determination of the Board to reverse the decision of the Department. It appears to us that the evidence in the record was sufficiently considered by the court of appeal. We would find it inappropriate at this time to attempt any circumvention of the court of appeal decision by attempting a rehearing of issues which were not decisive to the central issue before the court of appeal. The decision of the court of appeal is specific: "The order of the Alcoholic Beverage Control Appeals Board is reversed, and the Board is directed to reinstate the Department's order revoking [appellants'] liquor license."

The Notice issued by the Department only states that its original decision of revocation is now final. We determine that Business and Professions Code §23081 means what it says, and we have ruled upon this question many times that an appeal can only be taken from a final decision of the Department. The Notice in question is not such a final decision. Appellants have had full and complete litigation and review of their contentions, by the Department, the Appeals Board, and the court of appeal. Their due process rights have faithfully been considered and ruled upon.

ORDER

The request for a stay at this time is not within the jurisdiction of the Appeal Board, and is therefore denied. The appeal is dismissed on the ground that the Appeals Board does not have jurisdiction to consider this matter at this time.²

TED HUNT, CHAIRMAN
E. LYNN BROWN, 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 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.