

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

AB-7284a

JUAN S. ARTEAGA and CARMEN MARQUEZ dba Zacatecas Bar
1912 E. Anaheim Street, Long Beach, CA 90813,
Appellant s/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 48-291846 Reg: 98043332

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: June 7, 2001
Los Angeles, CA

ISSUED JULY 27, 2001

Appellants appeal from a Decision of the Department Following Appeals Board Decision¹ which ordered appellants' on-sale general public premises license revoked, but which stayed the order of revocation on the conditions appellants serve a 30-day suspension and operate free of discipline for a two-year probationary period. The decision followed an Appeal Board decision which sustained Department findings with respect to a sale of an alcoholic beverage to an intoxicated person² and conduct involving drink solicitation,³ reversed other findings regarding drink solicitation, reversed that part of the Department's original decision ordering appellants' license revoked outright, and ordered the case remanded to the Department for reconsideration of the

¹ A copy of the Department's Decision Following Appeals Board Decision is set forth in the appendix.

² Business and Professions Code §25602, subdivision (a).

³ Business and Professions Code §24200.5, subdivision (b).

penalty.

Appellants now challenge the form of the order entered upon remand, contending that it unfairly exposes them to license revocation for any violation during the two-year period of the stay whether or not such a violation is similar to that upon which the order is based.

DISCUSSION

The stay of revocation is subject to the condition that “no subsequent determination be made ... that cause for disciplinary action occurred” during the period the stay is in effect.

Appellants are correct that the literal wording of the stay would entitle the Department to reinstate the order of revocation for any violation during the period of the stay.

In KDM, Inc. (1997) AB-6647, the Board stated:

“[I]t is the Department’s standard practice to frame an order staying revocation broadly, and not attempt to characterize the kind of future violation which would warrant a lifting of the stay order. A requirement would unduly tie the Department’s hands. The better course is for the Board to review such action consistent with an abuse of discretion standard when and if the situation arises.”

In Tony (1999) AB-7161, the Board reversed the Department’s reimposition of a ten-day suspension for having sold an alcoholic beverage to an intoxicated patron, where the new violations involved a failure to clean up graffiti and litter. Citing KDM, supra, the Board indicated that some minimal nexus to the original violation was required - “There must be some community of improper conduct connecting the original violation with the new violation.”

Since the Department has done no more than enter an order which is proper on its face, any request for relief can only be deemed premature.

ORDER

The decision of the Department is affirmed.⁴

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

⁴ This 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.