

ISSUED DECEMBER 20, 2000

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

BASEM M. HAWAMDEH	)	AB-7393
dba 99-Cent Store)	
1050 East Palmdale Blvd., #207A	)	File: 21-28197 transferred to
Palmdale, CA 93550,	)	21-350235
Appellant/Licensee,	)	Reg: 93028943
)	
v.	)	Administrative Law Judge
	)	at the Dept. Hearing:
	)	None
)	
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,	)	Date and Place of the
Respondent.	)	Appeals Board Hearing:
	)	November 5, 1999
	)	Los Angeles, CA

Basem M. Hawamdeh, doing business as 99-Cent Store (appellant), appeals from an order of the Department of Alcoholic Beverage Control¹ which reimposed the stayed portion of a suspension for the licensee's failure to comply with the terms of the Department's Decision dated September 2, 1993.

Appearances on appeal include appellant Basem M. Hawamdeh, appearing

¹The Order of the Department, dated April 23, 1999, is set forth in the appendix.

through his counsel, Ralph Barat Saltsman and Steven Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Jonathon E. Logan.

FACTS AND PROCEDURAL HISTORY²

In 1993, the Department, in a decision entered pursuant to a stipulation and waiver, ordered a 25-day suspension, 15 days of which were stayed, of appellant's off-sale general license for premises located at 1050 East Palmdale Boulevard, #207A, Palmdale, California 93550, for appellant having violated conditions on his license relating to the sale of single containers of malt beverages and advertising of alcoholic beverages on the exterior of the premises.³ The stay was conditioned upon, among other things, a one-year period of discipline-free operation.

A second accusation was filed in 1994, again charging violations of the condition relating to single-container sales, and an additional violation relating to exterior advertising.⁴ Following an administrative hearing, the Department revoked appellant's license, but stayed the revocation conditioned upon a three-year period of discipline-free operation and an actual suspension of 30 days.

² To a large extent, the procedural history which follows is based upon the factual recitals in the Board's decisions in the appeals which are summarized herein. The record which was transmitted to the Board with this appeal leaves much to be desired, as the discussion which follows will indicate.

³ This matter was identified as File No. 21-281797 and Registration No. 93028943.

⁴ This matter was identified as File No. 21-281797 and Registration No. 94030576.

On appeal, the Appeals Board reversed that portion of the Department's decision which had found a violation of the single-container condition as applied to sizes not packaged or sold in six-packs, declaring the condition "ambiguous and thus defective" as to those sizes, but sustained the charges relating to 12- and 16-ounce containers and exterior advertising, and remanded the matter to the Department for reconsideration of the penalty. The Board also ordered deleted from the Department's order a two-year restriction on appellant's ability to apply for an unconditional license or for the removal of any conditions on his license. (Basem M. Hawamdeh (January 3, 1996) AB-6518.)

The case returned to the Appeals Board after the Department, on remand, again ordered a stayed revocation, a reduced suspension of 20 days, and the imposition of a new single-container condition (prohibiting sales of single containers of malt beverages 20-ounces or larger except for kegs). The Appeals Board reversed the order imposing the new single-container condition on the ground it lacked a reasonable connection with the problem sought to be eliminated, but otherwise affirmed the Department's order. (Basem M. Hawamdeh (April 7, 1997) AB-6518a.)

Thereafter, the Department entered a new decision which reimposed the stayed revocation and the 20-day suspension. This order was affirmed by the Board, which held that appellant's challenge to the penalty had been rejected in the prior appeal. (Basem M. Hawamdeh (March 31, 1999) AB-6518b.)

At some unknown date,⁵ appellant apparently was permitted to transfer his license from premises located at 1050 Palmdale Boulevard to 1013 Palmdale Boulevard,⁶ and a new license issued.⁷ The record which was transmitted to the Board in connection with the present appeal does not contain any information regarding the circumstances under which this took place.⁸

The Department, on April 23, 1999, entered an order reciting appellant's failure to comply with the terms of the Department's decision of September 2, 1993 (the order entered pursuant to stipulation and waiver) and reimposed the stayed 15-day portion of the penalty ordered in that decision. The order does not disclose the nature of appellant's failure to comply with the terms of that order, but, presumably, his non-compliance derives from that portion of the 1994 proceeding that survived the three prior appeals. The caption of the order recites the following:

"FILE 21-281797 tfr'd to 21-350235 REG. 93028943"

⁵ Appellant states in his brief that this occurred sometime after Registration No. 94030576 became final but before the issuance of the April 23, 1999, order.

⁶ We might assume, since the street number changed from even to odd that the premises moved across the street in the same block.

⁷ This license was apparently recorded as File No. 21-350235.

⁸ The Department's brief has as an appendage thereto a Declaration of Lonnie Corley, a Department investigator, which sets forth what the Department's records purport to show regarding the relocation of appellant's premises. The declaration makes no claim that appellant stipulated to any carry-over of discipline in connection with the relocation.

Appellant has filed a timely appeal from the April 23, 1999, order, and now contends that the Department lacks jurisdiction to reimpose a stayed suspension on premises different than the premises upon which the discipline was originally imposed.

DISCUSSION

Appellant challenges the Department order on the ground it improperly attempts to impose on his current premises the stayed portion of a penalty which had been imposed upon his previous premises, the license of which was transferred to, and the basis for the issuance of a new license to, the current premises.

Appellant claims that the disciplinary processes in Registration No. 93028943 and Registration No. 94030576 both pertained to condition violations "where those conditions were unique and pertained to the licensed premises located at 1050 E. Palmdale Boulevard No. 207A," and that the Department lacks jurisdiction to impose a suspension on the current premises where the suspension arose from the operation of the previous premises.

The Department contends that the relocation involved no change in the privileges for which appellant was licensed, and the relocation simply involved a move across the street - something which could be inferred from the similarity in addresses. Therefore, the Department argues, the mere fact that he moved his store to another location should not reduce his accountability for prior violations.

We are unaware of any express statutory limitation upon the Department's

ability to hold a licensee accountable under a prior order of discipline even though that licensee has transferred his license to a new premises and, in the process, secured the issuance of a new license. It seems to us that it would exalt form over substance to permit a licensee to escape discipline simply because the Department, in the course of granting a premises to premises transfer, did not expressly condition the transfer on the accompanying transfer of potentially outstanding discipline. It seems to us that the purpose of discipline is to guide the conduct of a licensee more than simply to encumber a license.

Appellant has cited Coleman v. Harris (1963) 218 Cal.App.2d 401 [32 Cal.Rptr. 486], for the proposition that disciplinary action is taken against a specific licensed premise. In our reading of the case, we can find no support for appellant's description of its holding. At most, the case simply stands for the proposition that the Department has considerable discretion when it comes to the imposition of discipline, and certainly is of no assistance to appellant.

We are not aware of any rule which dictates that in all circumstances the Department is precluded from continuing a disciplinary order to a newly-issued license, especially where there is no change in the identity of the licensee or the privileges for which the license is issued, and all that is involved is a simple geographical relocation.

Again, the issue seems to be the scope of the Department's discretion. We do not believe it has been exceeded here.

ORDER

The decision of the Department is affirmed.⁹

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

⁹ 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.