

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

AB-7645

GERRARD JONES GERRARD dba Callahan's
507 Water Street, Santa Cruz, CA 95060,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

File: 47-296281 Reg: 99047518

Administrative Law Judge at the Dept. Hearing: Jeevan S. Ahuja

Appeals Board Hearing: May 24, 2001
San Francisco, CA

ISSUED JUNE 19, 2001

Gerrard Jones Gerrard, doing business as Callahan's (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 15 days, and indefinitely thereafter until he is in compliance with the requirements of Business and Professions Code §23038, for violations of the Business and Professions Code consisting of the following: non-compliance with §23038 and a license condition requiring the premises to be equipped with specified cooking equipment (§23804); purchasing distilled spirits from a seller not licensed to sell to him (§23402); failing to comply with a license condition requiring that he maintain separate records of sales of food and alcoholic beverages (§23804); and failing to produce certain records requested by the Department (§§ 25753, 25755, and 25616).

¹The decision of the Department, dated May 11, 2000, is set forth in the appendix.

Appearances on appeal include appellant Gerrard Jones Gerrard, in propria persona, and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas R. Loehr.

FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public eating place license was issued on September 8, 1994. Thereafter, the Department instituted an accusation against appellant charging the various violations from which the present appeal has been taken.

At an administrative hearing on March 22, 2000, appellant's counsel stipulated to the truth of the allegations in the seven counts of the accusation, but reserved the right to present evidence in mitigation of the charges. To that end, appellant testified regarding the circumstances under which he first acquired the license in question,² and his failure to understand the requirements of Business and Profession Code §23038. Appellant testified that, once he became aware of such requirements, he realized he was, for various reasons, incapable of meeting them. He also offered explanations for his purchases from an unlicensed seller, for his failure to offer food, and for the record-keeping and production lapses, and explained that it is his intention to apply for a public premises license, where he would not be subject to any requirements regarding the service of meals.

Subsequent to the hearing, the Department issued its decision which, based upon appellant's admissions, found the charges of the accusation to have been

² Apparently, the license was issued pursuant to a lottery, and appellant simply took what was offered, without realizing the implications of the type of license being issued.

established. The decision acknowledged appellant's evidence in mitigation, imposing a relatively short suspension, but then suspending the license indefinitely until appellant is in compliance with §23038, an event unlikely to occur, given appellant's testimony.

Appellant thereafter filed a timely notice of appeal, but has not filed a brief. Written notice of the opportunity to file briefs in support of the appellant's position was given on February 13, 2001. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review. We have, however, gained some better understanding of appellant's plight through his responses to some of our questions in the course of argument.

As a practical matter, the Department's order is the substantive equivalent of an order of revocation. Since appellant's license is suspended until he can comply with the requirements of §23038, an objective appellant is convinced he cannot accomplish, his suspension is permanent, or at least until he obtains the public premises license he said he intends to seek.

However, the Department had little choice but to frame the order as it did. An order which would have allowed appellant to resume operations under his existing license without compliance with §23038 would have been an abdication of the Department's duty to enforce that section of the law.

Appellant has several alternatives. One is, if possible, to bring his operation into compliance with §23038. Another is to await the issuance of a public premises license. Still another might be to transfer his license to another location. There is, we think, a way for appellant to escape his present dilemma, but it will have to be achieved by way of cooperation with the Department rather than relief from this Board. We note,

in this regard, that appellant was apparently able to operate as a bar for several years without incurring discipline. In this light, we would hope the Department could work with appellant to the extent possible consistent with its constitutional and statutory responsibilities.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³ 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.