

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

AB-8039

File: 40-346941 Reg: 02052250

GEORGINA VIMBELA and JOSE VIMBELA dba La Tapatio
9231 Telegraph Road, Pico Rivera, CA 90660,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: None

Appeals Board Hearing: August 14, 2003
Los Angeles, CA

ISSUED NOVEMBER 4, 2003

Georgina Vimbela and Jose Vimbela, doing business as La Tapatio (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which revoked their license for their failure to transfer it within the time period prescribed in the Department's order dated January 28, 2002.

Appearances on appeal include appellants Georgina Vimbela and Jose Vimbela, 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

Appellants' on-sale beer and wine license was issued on October 28, 1998. A decision and order entered on January 28, 2002, required appellants to transfer the

¹The decision of the Department, dated October 18, 2002, is set forth in the appendix.

license in question to persons acceptable to the Department. The order was stayed for 180 days pending the transfer, and further provided that if the license was not transferred within that time period, the Department could order the license revoked without further notice.

On October 18, 2002, the Department entered an order of revocation, effective immediately, for appellants' not having complied with the Department's order of January 28, 2002.

Appellants have filed a timely appeal from the order of October 18, 2002, in which they contend that their failure to transfer the license within the period of the stay was the fault of the Department.

DISCUSSION

This order in question was entered pursuant to stipulation and waiver concurrently with the filing of an accusation charging violations of Business and Professions Code sections 24200.5; 25657, subdivisions (a) and (b); 23804; and Department Rule 143. Pursuant to the terms of the stayed order, appellant was obligated to transfer the license on or before July 28, 2002, or face revocation.

The license had not been transferred when, on May 3, 2002, the Department filed a new accusation (Registration No. 02052853) against appellants, again charging violations of Business and Professions Code sections 24200.5; 25657, subdivisions (a) and (b); and 23804, on March 1, 2002.

An application for transfer which was filed on January 7, 2002, was withdrawn on May 8, 2002.

On October 18, 2002, the Department entered an order declaring the license revoked. Also on October 18, 2002, the Department entered an order which declared

the accusation in Registration No. 02052853 moot and terminating all proceedings on the accusation, reciting that the license had been revoked in the proceeding under Registration No. 02052250. Then, on November 22, 2002, the Department entered a further order setting aside, without explanation, its order of October 18, 2002 in Registration No. 02052853.

Appellants state in their brief:

Reading between the lines (paraphrasing several ABC memoranda) it appears that Appellant [sic] herein stipulated and waived their rights to a hearing in the first accusation based upon their knowledge that a transferee had or was in the process of filing an application for a person-to-person transfer of this business.

However, while the transfer application was pending from January to May, a second accusation was filed in early May. Very shortly thereafter, Applicants withdrew their application.

Appellants argue that they should not be punished for the “inappropriate and negligent” acts of the Department (App.Br., page 2), suggesting some impropriety in the filing of the second accusation. It was this filing, appellants suggest, that led to the withdrawal of the application for transfer.

There is nothing in the record to indicate why appellants elected to enter into the stipulation and waiver, nor does the record indicate the reason the application for transfer was withdrawn. However, it is not difficult to draw the inference that the filing of the application for transfer shortly after the stipulation and waiver was a factor in appellants’ decision to agree to an order, or that the pendency of the second accusation could have discouraged the transfer applicants and led to their withdrawal of their application.

The Department, however, cites an October 2, 2002, letter from Matthew G. Ainley to Stephen Hollingsworth, appellants’ former attorney, stating that appellants had

been advised at the time of the signing of the stipulation and waiver that they had until the end of July to transfer the license, and that, upon failure to do, the stay would be lifted and the license revoked by operation of law. The letter represents that the licensees were also advised that extensions of the 180-day period would be granted, if warranted, and recited the Department's awareness that the earlier application for transfer had fallen through. Importantly, Ainley represented to Hollingsworth that, in the event any failure to request an extension of the 180-day period was due to an oversight, an opportunity to request such an extension was being afforded "at this time." Ainley warned that if no request for an extension was requested in writing prior to October 15, the stay would be lifted and the license revoked. The Department represents that no request was made, and there is nothing in the record to suggest the contrary.

The Department acknowledges in its brief that it does not permit license transfer while disciplinary action is pending. Thus, the pendency of the second accusation was a deterrent to appellants' ability to effect a transfer. However, in the absence of any request for an extension of the stay, it cannot be said that the failure to transfer the license was prevented by the Department. Nor can the Department be required to ignore violations which occur during the period of a stay, even if the consequences may be to discourage a potential buyer.

ORDER

The decision of the Department is affirmed.²

² 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

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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.