

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

AB-8150a

File: 48-362045 Reg: 02054221

JOEL SETH CORENMAN and JASON M. MONTELLO dba Le Cannon
21797 Ventura Blvd., Woodland Hills, CA 91364,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: May 5, 2004
Los Angeles, CA

ISSUED JULY 6, 2005

Joel Seth Corenman and Jason M. Montello, doing business as Le Cannon (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days, all conditionally stayed for one year, for having allowed patrons to purchase and consume beer in an unlicensed area, a violation of Business and Professions Code sections 23300² and 23355.³ This is the second appeal in this matter.

¹The decision of the Department, dated August 31, 2004, is set forth in the appendix.

² Section 23300 provides: "No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."

³ Section 23355 provides: "Except as otherwise provided in this division and subject to the provisions of Section 22 of Article XX of the Constitution, the licenses provided for in Article 2 of this chapter authorize the person to whom issued to exercise the rights and privileges specified in this article and no others at the premises for which issued during the year for which issued."

Appearances on appeal include appellants Joel Seth Corenman and Jason M. Montello, appearing through their counsel, Robert D. Coppola, Jr., and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

FACTS AND PROCEDURAL HISTORY

Appellants' on-sale general public premises license was issued on February 22, 2000. Thereafter, the Department instituted an accusation against appellants charging that, on or about August 16, 2002, co-licensee Joel Seth Corenman allowed patrons to purchase and consume beer in an unlicensed area.

An administrative hearing was held on April 11, 2003. Thereafter, the Department issued its decision sustaining the charge of the accusation and ordering a 15-day suspension. In the initial appeal, the Board concluded that the Department, when it ordered a 15-day suspension, and justified the departure from its original penalty recommendation - a 15-day suspension, all stayed⁴ - relied on a finding which lacked substantial evidence to support it. The Board reversed the decision and remanded the case to the Department for reconsideration of the penalty. Upon remand, the Department again ordered a 15-day suspension, but ordered all 15 days stayed, as Department counsel had recommended at the first hearing, conditioned upon one year of discipline-free operation.

Appellants now contend that, subsequent to the filing of the accusation in this matter, but prior to the entry of the order imposing the stayed penalty, the Department

⁴ When recommending an all-stayed 15-day penalty, Department counsel stated: "In light of the innocent mistake and the attempts to rectify, the Department's asking for what amounts to the lowest penalty as possible [sic] it can, which is a 15-day suspension all state [sic - stayed]." [RT 73.]

instituted a second accusation against appellants, charging the sale of an alcoholic beverage to an intoxicated patron. A hearing on that accusation resulted in a decision adverse to appellants which is presently on appeal to this Board.⁵ Appellants assert that the Department's has proceeded in excess of its jurisdiction by including in its order on remand the conditioning of the stay on one year of discipline-free operation.

DISCUSSION

The order from which this appeal has been taken provides as follows:

The respondent's [sic] license is suspended for 15-days [sic] with all 15-days of said suspension stayed for a period of one (1) year provided that no subsequent determination be made after hearing or upon Stipulation and Waiver that cause for disciplinary action occurred within one year from the effective date of this decision. Should such determination be made the Director of the Alcoholic Beverage Control may vacate this stay and re-impose the stayed portion of this Order. Should no such determination be made the stay shall become permanent one year from the effective date of this decision. Should an accusation alleging a violation to have occurred within one year from the effective date of this decision be filed against the licensee, the stay imposed herein shall be extended until such time as that accusation is final, and the Department of Alcoholic Beverage Control shall retain jurisdiction over this matter until that time.

Appellants assert that the inclusion of the condition of the stay was not part of the Department's original penalty recommendation, that it operates as an ex post facto punishment, and that its language exposes them to the imposition of an actual 15-day suspension in perpetuity. They contend that the stay must be for a set period of time, and assert that the one-year period is "normal, usual, and customary." Appellants also object to the inclusion of the stay on the ground it was not prayed for at the original

⁵ The original accusation was filed December 17, 2002, and the Department's initial order was issued on May 29, 2003. The decision of the Board which reversed the Department's decision and ordered a reconsideration of the penalty was issued on May 12, 2004. According to appellants, the subsequent accusation was filed on November 10, 2004.

hearing.

Appellants cite no authority for their assertion that the normal period of a stayed penalty is one year, and we know of no such authority. In any event, that is a false issue.

The penalty imposed by the Department is exactly what the Department recommended at the initial hearing. Even if the dire consequences of which appellants complain were likely to happen, we would find it difficult to conclude that the Department's discretion had been abused.

However, the Department puts appellants' fears to rest. It states in its brief to the Appeals Board (Dept. Br., at page 5): "[T]he stay in this case will commence when the decision becomes final, and will continue for one year. Any violations which occur within that one-year period would trigger the stayed time. *The violation in the other case is outside this time frame and, therefore, is not a triggering violation.*" (Emphasis added.)

The Department's position correctly describes the operation of the stay order. All appellants need do to avoid a reimposition of the stayed suspension is operate violation-free for one year from the time this decision becomes final. Appellants have no cause to complain.

ORDER

The decision of the Department is affirmed.⁶

SOPHIE C. WONG, MEMBER
FRED ARMENDARIZ, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁶ 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.