

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

AB-9161

File: 48-479515 Reg: 11074169

DANIEL MICHAEL MCGRATH and JUDITH ANN MCGRATH, dba The Main Place
1145 South Main Avenue, Fallbrook, CA 92028,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: None

Appeals Board Hearing: August 4, 2011
Los Angeles, CA

ISSUED AUGUST 29, 2011

Daniel and Judith McGrath, doing business as The Main Place (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days pursuant to a stipulation authorizing the imposition of a suspension for having violated or permitting a violation of Business and Professions Code section 25602, subdivision (a).

Appearances on appeal include appellants Daniel and Judith McGrath, representing themselves, and the Department of Alcoholic Beverage Control, appearing through its counsel David W. Sakamoto.

FACTS AND PROCEDURAL HISTORY

This is an appeal from a decision of the Department entered pursuant to a stipulation executed by appellant/co-licensee Daniel McGrath in which he

¹The decision of the Department, dated February 28, 2011, is set forth in the appendix, together with the stipulation and related documents.

acknowledged receipt of an accusation, stipulated that disciplinary action may be taken on the accusation, waived all rights to a hearing, reconsideration and appeal, and agreed to the entry of an order suspending the license in question for 15 days for having violated or permitting a violation of Business and Professions Code section 25602, subdivision (a) (sale to an obviously intoxicated person).

Appellants have filed an appeal making the following contention: Appellants should be relieved of their stipulation and waiver and charged with the same infraction as was the person cited for the offense, who appeared in civil court, pled to a lesser charge, and was fined for a minor infraction.

DISCUSSION

Appellants have not filed a brief. Their notice of appeal is factually deficient as a basis for relief. Their appeal is little more than an example of buyers' remorse.

Appellant/co-licensee Daniel McGrath executed a document in which, on behalf of himself and appellant/co-licensee Judith McGrath, he stipulated that disciplinary action may be taken on the accusation, based on facts contained in investigative reports on file with the Department; he waived all rights to a hearing, reconsideration or appeal; and he acknowledged that the Director of the Department of Alcoholic Beverage Control could without further notice order a license suspension of 15 days. In this same document, McGrath elected to pay a fine in lieu of serving a suspension.

Both Daniel and Judith McGrath also acknowledged, in writing, the following: they had been served with a copy of the accusation; they had been advised that they could, but need, not be represented by counsel; and they had been informed of the basic facts of the case and of their rights to discovery, of their right to a hearing, the appeal procedure and the offer in compromise process, the stipulation and waiver

process, and that a decision did not have to be made at that time. Finally, appellants expressed their wish to settle the matter, made reference to a signed stipulation and waiver, and acknowledged their right to withdraw the stipulation any time prior to the date of the Department decision.

Appellants' notice of appeal states:

The person cited for the offense appeared in civil court and pled to a lesser charge, was fined for a minor infraction and the case was closed.

We feel that we as owners of the establishment should be charged for the same infraction and therefore subject to a lesser charge.

The Department's decision recites that appellants violated or permitted a violation of Business and Professions Code section 25602, subdivision (a). That section makes it a misdemeanor to sell, furnish or give an alcoholic beverage to an obviously intoxicated person. We infer from the content of appellants' notice of appeal that an employee, a bartender or a server, was cited for a violation of that code section, pled guilty or nolo contendere, and was fined. The manner in which that charge was handled is separate and distinct from the charge against appellants.

The Department has no control over the disposition of a misdemeanor criminal charge. By the same token, the Department's imposition of discipline is not subject to any overview by the court hearing the misdemeanor charge. The Department in each case must take the long view, i.e., how its handling and processing a disciplinary proceeding best serves the goal of fair and uniform enforcement under the Alcoholic Beverage Control Act. That view does not lend itself to a process where a licensee can opt to avoid a hearing, with its concurrent cost and inconvenience, by choosing a quick resolution with a known outcome, only to change its mind if it learns at some later date that the charged employee may have negotiated a better deal with a court.

Appellants' appeal is devoid of merit, and must be dismissed.

ORDER

Appellants' appeal is dismissed.

FRED ARMENDARIZ, CHAIRMAN
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD