

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

AB-9728

File: 21-512692; Reg: 18087138

MOOR, INC.,
dba Woodside Manor Liquor
524 Woodside Road,
Redwood City, CA 94061-3821,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: n/a

Appeals Board Hearing: March 1, 2019
Sacramento, CA

ISSUED MARCH 6, 2019

Appearances: *Appellant:* Dean R. Lueders, of ACTlegally, as counsel for Moor, Inc.,

Respondent: Alana Ormiston, as counsel for the Department of Alcoholic Beverage Control.

OPINION

Moor, Inc., doing business as Woodside Manor Liquor, appeals from a decision of the Department of Alcoholic Beverage Control¹ suspending its license for 15 days because it sold alcoholic beverages to two individuals under the age of 21, in violation of Business and Professions Code section 25658, subdivision (a).

¹The decision of the Department, dated August 7, 2018, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on September 16, 2011. On July 5, 2018, the Department instituted a two-count accusation against appellant charging that, on February 9, 2018, appellant's employee sold alcoholic beverages to two individuals under the age of 21. The accusation, along with a proposed stipulation and waiver offering a 15-day suspension, and other documents as outlined in the Department's brief (RRB at p. 2), were sent to appellant by U.S. mail.

On July 20, 2018, the Department received a signed stipulation and waiver from appellant, acknowledging receipt of the accusation and other forms, agreeing to a 15-day suspension, and waiving all rights to a hearing, reconsideration and appeal.

No administrative hearing was held. Thereafter, on August 2, 2018, a decision was issued by the Department providing that a Petition for Offer in Compromise (POIC) would be considered — i.e., payment of a fine in lieu of suspension. However, on August 7, 2018, an amended decision was issued providing that the suspension would be implemented immediately.

Appellant then filed a timely appeal raising the following issues: (1) the Department failed to provide appellant with a certified copy of the record, (2) appellant was denied due process in the denial of its request to withdraw the stipulation and waiver and pay a fine, (3) the contradictory decisions by the Department constitute a mistake of law, and (4) appellant signed the stipulation and waiver by mistake. These issues will be discussed together.

On December 6, 2018, appellant filed a motion to augment the record with an email exchange between Department General Counsel Matt Botting and Lydia Engdol, an advocate for appellant. The Department filed a response and did not object.

Accordingly, the motion was granted and the email exchange was considered in evaluating this matter.

DISCUSSION

Appellant signed a stipulation and waiver, and in that document it agreed to a 15-day suspension of its license and waived all rights to a hearing, reconsideration, or appeal. The Appeals Board accepts appeals from decisions based on stipulation and waiver, but only for the limited purpose of challenging the validity of the document. In other words, was it obtained improperly?

A stipulation and waiver is governed by contract principles. (*Frankel v. Bd. of Dental Examiners* (1996) 46 Cal.App.4th 534, 544 [54 Cal.Rptr.2d 128].) A stipulation, like other contracts, may be rescinded only if it was procured through fraud, duress, undue influence, or mistake. Therefore, this agreement is binding on appellant, absent fraud, mistake, undue influence, or duress. (*Alhambra Police Officers Assn. v. City of Alhambra Police Dept.* (2003) 113 Cal.App.4th 1413, 1420 [7 Cal.Rptr.3d 432].) As the Board explained in *Sood* (1999) AB-7404:

It has been the Board's position in all cases previously decided, that appellants may not, in matters where a stipulation and waiver form waives appeal, raise substantive issues on the merits of the facts of the case. However, appellants may raise the narrow issues of due process and substantial justice: has the appellant been dealt with fairly. . .

"Stipulations in administrative proceedings would not serve the purpose for which they are intended if they were voidable at the option of the licensee" (*Stermer v. Bd. of Dental Examiners* (2002) 95 Cal.App.4th 128, 133 [115 Cal.Rptr.2d 294].)

[T]he general rule of law in California is that when a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents, and is estopped from saying that its provision is contrary to his intentions or understanding. In *Knox v. Modern Garage & Repair Shop* [1924] 68 Cal.App. 583, 229 P.

880, 881, it is said in the opinion, where the action was upon a contract: 'In such an action a party cannot be heard to say that he had not read the same and did not know the contents thereof. Where a party to a written contract wishes to avoid liability thereon on the ground that he did not know its contents, the question, in the absence of misrepresentation, fraud, undue influence, and the like, turns on whether he was guilty of negligence in signing without such knowledge. When he is negligent in not informing himself of the contents, and signs or accepts the agreement with full opportunity of knowing the true facts, he cannot avoid liability on the ground that he was mistaken concerning such terms in the absence of fraud or misrepresentation.'

(*Dobler v. Story* (9th Cir.1959) 268 F.2d 274, 277.)

Appellant's claim that the record is incomplete, and that the Department failed to provide it with a certified copy of the record, seems to assume that the same documents are generated when a case is resolved by stipulation and waiver as when a case goes to an administrative hearing where exhibits are placed in evidence and a transcript is prepared setting out the testimony and arguments made at the hearing. This is simply not the case. The stipulation and waiver practice is a summary procedure for resolving, without a formal hearing, the charges contained in a Department accusation, and does not generate a record like that described in Appeals Board Rule 183. The documents provided to appellant in this matter gave him everything he needed to effect an appeal.

It seems clear to us that appellant knew that there was an accusation regarding sales to two minors, that its license could be suspended for 15 days, and that it was requesting to pay a fine in lieu of the suspension² rather than ask for a hearing. These facts do not support a conclusion that the contract was void *ab initio* because the terms

²Business and Professions Code section 23095 permits a licensee to petition the Department for permission to make an offer in compromise, consisting of a sum of money in lieu of serving a suspension. The petition is approved or denied at the discretion of the Department.

were not clear to the appellant, nor do they support fraud, misrepresentation, or undue influence in the transaction.

Appellant contends that he should be permitted to withdraw the stipulation and waiver because denial of the withdrawal would deny appellant due process. Procedural due process is met in an administrative setting if the party receives notice, a copy of the charges against him, and the right to respond before a reasonably impartial adjudicator. (*Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219 [79 Cal.Rptr.2d 910].) However, courts have held that "a due process right to a hearing, like any constitutional right, can be waived" (*Barberic v. Hawthorne* (C.D. Cal. 1987) 669 F.Supp. 985, 991.) This waiver must be knowing and voluntary. (See *Johnson v. Zerbst* (1938) 304 U.S. 458, 464 [58 S.Ct. 1019].)

There are no facts to support the claim that appellant was denied due process. It received notice, a copy of the accusation, and an opportunity for a hearing — but waived that right in the stipulation and waiver. The Department's denial of the request to withdraw the document is within their discretion.

In the stipulation and waiver, appellant acknowledged that it had received a copy of the accusation, that it understood that discipline would be imposed without a hearing, that it waived all rights to a hearing, reconsideration, and appeal, and that without further notice the Director of the Department could impose a 15-day suspension. Nevertheless, appellant chose to sign the document. There is no evidence the signature was procured through fraud, duress, undue influence, or mistake.

Appellant contends it believed it would be permitted to pay a fine in lieu of serving the 15-day suspension, based on the language in the August 2, 2018 decision which states: "[t]he beginning date of the suspension will be delayed until further notice,

pursuant to section 23095, to consider your request to make an offer in compromise (pay a fine) in lieu of actual suspension of the license.” However, in the August 7, 2018 amended decision this sentence is omitted. Appellant maintains it was a mistake of law to serve “two contradictory Decisions on appellant.” (AOB at p. 7.) Appellant offers only its opinion — no evidence — to support the assertion that the August 2nd decision was issued by mistake (see AOB, fn. 6, at p. 8) and that this somehow caused confusion for appellant. We fail to see, and appellant has failed to explain, how voluntarily signing an agreement, that one later wishes he had not, rises to the level of mistake of law or mistake of fact.

Without evidence that the stipulation and waiver was procured through fraud, duress, undue influence, or mistake, the Board’s hands are tied. Appellant simply wants a do-over, stating:

it is respectfully requested that appellant be allowed to apply for the payment of a fine with the due process protections of a hearing under the provisions of the APA or, more aptly, the ability to withdraw the Stipulation and Waiver and have a trial on the merits.

(AOB at pp. 8-9.) However, as the Court said in *Dobler* :

When [a licensee] is negligent in not informing himself of the contents, and signs or accepts the agreement with full opportunity of knowing the true facts, he cannot avoid liability on the ground that he was mistaken concerning such terms in the absence of fraud or misrepresentation.

(*Dobler, supra.*)

Appellant was not tricked into signing the stipulation and waiver in the instant matter, nor is there evidence of misrepresentation or undue influence. The fact that appellant erroneously believed that it would be able to pay a fine, and now wishes it had not signed the stipulation and waiver — in other words, buyer’s remorse — is not sufficient grounds for reversal or remand.

ORDER

The decision of the Department is affirmed.³

BAXTER RICE, CHAIRMAN
MEGAN McGUINNESS, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

³This final order is filed in accordance with Business and Professions Code section 23088, and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq.

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

MOOR INC
WOODSIDE MANOR LIQUOR
524 WOODSIDE RD
REDWOOD CITY, CA 94061-3821

OFF-SALE GENERAL - LICENSE

SAN FRANCISCO DISTRICT OFFICE

File: 21-512692

Reg: 18087138

**AMENDED DECISION AND
CERTIFICATE OF DECISION**

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

The above-entitled matter having regularly come before the Department for decision and the respondent(s) having filed a stipulation and waiver, on July 17, 2018 (attached hereto and incorporated by reference herein), in connection with the accusation herein in which respondent(s) waives right to hearing, reconsideration and appeal, and good cause appearing, the Department hereby adopts the terms of the stipulation and waiver as its decision in this matter and further finds that, pursuant to said stipulation and waiver, cause for disciplinary action has been established.

Grounds for suspension or revocation have been established under Article XX, Section 22 of the State Constitution and Business and Professions Code section 24200(a&b).

It is hereby certified that the Department of Alcoholic Beverage Control adopted the foregoing as its decision in this matter, effective immediately.

Sacramento, California
Dated: August 7, 2018



Matthew D. Botting
General Counsel

NOTE: If the stipulation and waiver includes suspension or revocation of the license, the suspension or revocation does not start until the license certificate is picked up by the Department and a notice of suspension or revocation is posted at the licensed premises. A representative of the Department will contact you to make the necessary arrangements.

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

MOOR INC
WOODSIDE MANOR LIQUOR
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Grounds for suspension or revocation have been established under Article XX, Section 22 of the State Constitution and Business and Professions Code section 24200(a&b).

It is hereby certified that the Department of Alcoholic Beverage Control adopted the foregoing as its decision in this matter, effective immediately.

The beginning date of the suspension will be delayed until further notice, pursuant to section 23095, to consider your request to make an offer in compromise (pay a fine) in lieu of actual suspension of the license.

Sacramento, California

Dated: August 2, 2018



Matthew D. Botting
General Counsel

NOTE: If the stipulation and waiver includes suspension or revocation of the license, the suspension or revocation does not start until the license certificate is picked up by the Department and a notice of suspension or revocation is posted at the licensed premises. A representative of the Department will contact you to make the necessary arrangements.

BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE ACCUSATION AGAINST

MOOR INC
WOODSIDE MANOR LIQUOR
524 WOODSIDE RD
REDWOOD CITY, CA 94061-3821

SAN FRANCISCO

FILE 21-512692

REG. 18087138

STIPULATION
AND WAIVER
FOR PREHEARING
SETTLEMENT

RECEIVED

JUL 20 2018

Alcoholic Beverage Control
Office of Legal Services

Respondent(s)

Licensee(s) under the Alcoholic Beverage Control Act

The above-named respondent(s) does hereby:

- (1) Acknowledge receipt of the accusation and stipulation and waiver in the above-entitled action.
- (2) Stipulate that disciplinary action may be taken on the accusation and that such discipline may be determined on the basis of the facts contained in the investigative reports on file with the Department.
- (3) Waive all rights to a hearing, reconsideration and appeal, and any and all other rights which may be accorded pursuant to the Alcoholic Beverage Control Act or the Administrative Procedure Act.
- (4) Acknowledge that the licensee(s) understand(s) that by waiving said rights the Director of the Department of Alcoholic Beverage Control may, without further notice, enter an order suspending the Off-Sale General License(s) at the above-mentioned premises for a period of 15 days, the effective date to be set by further order of the Director of the Department of Alcoholic Beverage Control.

Signed: X Swinder Singh moor Dated: July 17, 2018

524 Woodside Rd Redwood City CA 94061-3821
ADDRESS (Street number and name) City State Zip Code

(650) 366-5456
TELEPHONE NUMBER (including area code)

(If licensee is an individual, he/she must sign. If licensee is a partnership, at least one general partner must sign. If licensee is a corporation, an executive officer must sign showing his/her title.) **This prehearing settlement offer is made solely to promote an early resolution and to eliminate the uncertainty and cost of litigation. If you choose not to accept this settlement offer and, instead, take this matter to hearing, the penalty recommended by the Department may be more or less severe depending upon the evidence presented at hearing. This offer shall expire 15 days from the date this form was mailed to you.**