

ISSUED AUGUST 27, 1998

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

FATEMEH HASSAN)	AB-7061
dba F & F)	
100 River Ridge Way)	File: 21-267038
Folsom, CA 95630,)	Reg: none
Appellant/Licensee,)	
v.)	License Canceled
)	By Operation of Law
DEPARTMENT OF ALCOHOLIC)	
BEVERAGE CONTROL,)	Date and Place of the
Respondent.)	Appeals Board Hearing:
)	June 3, 1998
)	Sacramento, CA

Fatemeh Hassan, doing business as F & F (appellant), appeals from a decision of the Department of Alcoholic Beverage Control which canceled her off-sale general license for failing to pay the annual renewal fee, in accordance with Business and Professions Code §24048.

Appearances on appeal include appellant Fatemeh Hassan, and the Department of Alcoholic Beverage Control, appearing through its counsel, John Peirce.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued December 27, 1991, for a business located at 5207 Madison Avenue, in Folsom, California. The location, we are informed, remained the same until it was closed in early summer, 1997. The "mailing

address" shown on the 1991 application for the license was a residential location, rather than the premises address.

Appellant was evicted from her premises location on or about June 30, 1997.

There is nothing in the record which shows that the Department was informed of the closing of the premises, said notice being required by Department Rule 65.

Coincidentally, on June 30, 1997, the Department sent a license fee renewal notice to appellant addressed to the premises location, for the year commencing September 1, 1997. On October 14, 1997, a late notice was sent to appellant at the premises location. This letter appears to have been returned to the Department. On November 14, 1997, the Department sent a final notice of cancellation of the license, again to the premises address. The license was canceled on December 4, 1997.¹

On January 16, 1998, appellant sent a letter to the Department requesting that her license be reinstated.² She stated that payment of the renewal fee had been delayed because she had been "financially unable to meet my obligation," and ill and unable to work. Appellant sought to have the license reinstated so she could sell it: "[It] is extremely essential to my day-to-day living for the next few months to have my license reinstated so that I can sell it."

On January 27, 1998, the Department rejected appellant's request, reminding

¹ Pursuant to Business and Professions Code §24048, a licensee may reinstate a lapsed license for a period of 60 days following the date of the lapse, with the payment of a fine. Thereafter, if reinstatement is not requested, the license is canceled. However, a licensee may have the license reinstated during an additional 30-day period, upon payment of a substantial fine. Failure to exercise this last reinstatement option results in automatic revocation.

² The return address set forth in this letter is different from the mailing address shown on the 1991 license application, and there does not appear to be anything in the Department's file reflecting any change of address.

her of the deadlines missed, and chiding her for not keeping the Department advised as to any change of address that may have affected the license.

On February 7, 1998, appellant again wrote to the Department, elaborating upon her financial circumstances, and again requesting renewal of the license so she could sell it.

On February 18, 1998, the Department again rejected her request, again citing the notices sent. In this latest letter, the Department reminded appellant that only a year earlier (1996), her license had been canceled for non-payment of the renewal fees. Appellant was reminded that the Department had at that time considered her financial circumstances, and reinstated the license,³ but with a warning that if she failed to pay the renewal fees in the future, and the license was canceled, it would not be reactivated.

Appellant's notice of appeal, filed May 4, 1998, asserts the Department "revoked" her license improperly, blaming her failure to receive the notices of the need to renew the license on the Department's use of an improper mailing address. The appeal was accepted for review in order to determine whether the cancellation was consistent with due process.

A Department Renewal Assignment Sheet, a copy of which accompanied the Department's brief, contains handwritten notes to the effect that, following the sending of the final notice in the current 1997 matter, an investigator called the home of appellant and, by a returned phone call, talked to a man who stated he was the brother

³The 1996 cancellation was rescinded by the Department on March 26, 1997, just some three months prior to her eviction from her premises location.

of appellant. He said that he and his sister would come into the district office and pay the required fees. In the course of oral argument, it was conceded that such notice had been communicated to her.

The statute provides that a license is automatically revoked upon failure to renew after the 90-day "grace" period following the license expiration. Nonetheless, despite the automatic revocation in 1996, the Department allowed the license to be reinstated, after the 90-day cancellation period. At the time it did so, the Department cautioned appellant it would not do so again.

Appellant's legal position has little to support it:

- (a) In 1996, she allowed her license to lapse; but for the Department's leniency, the automatic revocation called for by Business and Professions Code §24048 would have brought this issue to a head a year sooner. It appears that appellant was then also having health and financial problems;
- (b). From June (when she was evicted) to the first of September (when the license lapsed), appellant failed to notify the Department of the cessation of the business at the location, and as required by law, surrender the license within 15 days thereafter;
- (c) Appellant's notice of appeal was filed more than three months after the revocation of the license by operation of law on December 4, 1997;
- (d) Appellant was not without fault. She ignored the requests for payment in 1996, benefited from the Department's leniency, and then, with no notice to the Department that she had ceased doing business, ignored the requests for

payment again in 1977; and,

(e) Appellant has not been entirely candid with the Department. Appellant based her appeal on the alleged lack of notice, implying an innocent lack of knowledge of the renewal fee process on her part. Yet, in contradiction of her claim in this appeal, appellant stated in both her January 16 and February 7, 1998, letters to the Department that the non-payment was because she did not have the money. This explanation, we think, is more consistent with the concession at oral argument that she had been informed of the Department's phone message regarding the renewal fees.

CONCLUSION

The Department has moved to dismiss the appeal as untimely. While we agree with the Department that there is a substantial question whether the appeal was timely filed, we are also satisfied that there was no denial of due process, the basis upon which we agreed to hear the appeal. Hence, we now choose simply to affirm the Department's determination that the revocation of appellant's license was by operation of law in accordance with Business and Professions Code §24048.⁴

RAY T. BLAIR, JR., CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴ In view of our decision affirming the action of the Department, the motion to dismiss is moot.

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

Any party may, before this final decision becomes effective, apply to the appropriate 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.

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