

ISSUED JANUARY 17, 2001

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

ALBERTO LEON QUINTERO and	)	AB-7119b
LOURDES QUINTERO)	
dba La Boom	)	File: 40-301252
37 North Catalina Avenue	)	Reg: 97041272
Pasadena, CA 91106,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	[No Hearing]
)	
	)	Date and Place of the
DEPARTMENT OF ALCOHOLIC	)	Appeals Board Hearing:
BEVERAGE CONTROL,	)	September 7, 2000
Respondent.	)	Los Angeles, CA
)	

Alberto Leon Quintero and Lourdes Quintero, doing business as La Boom (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ correcting the Department's Decision Following Appeals Board Decision, which was issued after the penalty in the Department's original decision was reversed and remanded to the Department for correction of an admitted error in the wording of the penalty.

Appearances on appeal include appellants Alberto Leon Quintero and Lourdes Quintero, appearing through their counsel, Armando Chavira, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹*The Department's Decision Following Appeals Board Decision (Corrected), dated March 24, 2000, is set forth in the appendix.*

FACTS AND PROCEDURAL HISTORY

The Department filed an accusation against appellants, a hearing was held, and the Department issued its decision finding furnishing-to-a-minor and condition violations and ordered appellants' license suspended for 45 days, with 10 days stayed for a probationary period of two years. The Appeals Board affirmed the Department's decision, but reversed the penalty because the decision did not specify how much of the penalty was attributable to each of the violations, and remanded the case to the Department. (See Quintero (May 26, 1999) AB-7119.)

On July 13, 1999, the Department issued a new order suspending the license 15 days for the furnishing violation and 20 days for the condition violations, with 10 days stayed for a one-year probationary period. However, the order provided that, if the probation were violated, the Director of the Department could, "in his discretion and without further hearing, vacate this stay order and *revoke* the license; . . ." (Emphasis added.) Appellants appealed again and the Department conceded that a typographical error had occurred; vacation of the stay was intended to allow re-imposition of the 10-day suspension, not to impose revocation. This Board again reversed the penalty and remanded, specifying that a corrected order should be issued in accordance with the Department's concession. (See Quintero (March 21, 2000) AB-7119a.)

On March 24, 2000, the Department issued a corrected order that eliminated the reference to revocation and substituted the correct language regarding re-imposition of the stayed suspension. Appellants now appeal that order.

DISCUSSION

Appellants are asking the Appeals Board to order the Department to make the one-year stay begin July 13, 1999, the date of the second order, rather than March 24,

2000, the date of the corrected order. They argue that “But for the department’s error [in the second order], the stayed probationary period would end on July 13, 2000.”

They contend they “SHOULD NOT SUFFER FROM A MISTAKE COMMITTED BY THE DEPARTMENT.” [Caps. in original.] (App. Opening Br. at 2.)

What the appellants are arguing for is *no* stayed suspension at all, since July 13, 2000, has already passed. In reality, they have not suffered at all from the Department’s mistake; they benefitted, since they were able to file a third appeal, delaying imposition of the penalty still further.

Stayed suspensions are imposed to ensure continuing compliance and, as long as there is no violation, they do not affect the licensees’ conduct of their business at all. There is absolutely no reason appellants should be relieved from serving the probationary period of one year.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

² *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 order as provided by §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 §23090 et seq.